JOURNAL

of the

HOUSE OF REPRESENTATIVES

of the

General Assembly

of the

Commonwealth of Kentucky

Regular Session of 1994

Held in the State Capitol in the City of Frankfort,
at Frankfort, in the Year of Our Lord 1994,
and in the Two Hundred and Second
Year of the Commonwealth

Begun on Tuesday, the Fourth Day of January, 1994, and Adjourned
Sine Die on Friday, the Fifteenth Day of April, 1994

Paid for from state funds

FOREWORD

The Kentucky Constitution requires each house of the General Assembly to keep a journal as a public accounting of daily legislative activity. It is the official record of action by the General Assembly.

The *Kentucky Revised Statutes* require the Legislative Research Commission to compare, edit, correct, and publish the journals of each chamber. This is the *House Journal* for the Regular Session of 1994.

The texts of simple and concurrent resolutions appear on first reading or adoption. Appendices contain a table of actions on bills and resolutions, a list of elected representatives, the budget memorandum, roll call votes, and a subject index.

Mrs. Jean Wallace and Mrs. Wilda Bond prepared the *House Journal* for the Regular Session of 1994. The edited copy and appendices in this volume reflect the cooperative efforts of the LRC Staff.

DON CETRULO
Director

The Capitol
Frankfort, Kentucky
1995

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JOURNAL
OF THE
HOUSE OF REPRESENTATIVES
OF THE
COMMONWEALTH OF KENTUCKY
REGULAR SESSION 1994
TUESDAY, JANUARY 4, 1994
FIRST LEGISLATIVE DAY

At a General Assembly of the Commonwealth of Kentucky, held at the Capitol in the City of Frankfort, and begun on January 4, 1994, the two hundredth and second year of the Commonwealth, in accordance with the provisions of the Constitution, Speaker Joe Clarke assumed the Chair and called the House to Order.

Invocation by Reverend Mark Hopper, First Baptist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The Speaker announced that the membership is the same as it was in the Third Extraordinary Session of 1993 with the exceptions of vacancies existing in the 49th District, 24th District, 65th District and the 34th District and a new member in the 26th District. The Clerk read the Certificate of Election of the newly elected member from the Secretary of State.

Representative Bondurant produced a certificate of election and was duly sworn.

The roll was called. All members present except Representatives Allen, Bryant, Maggard and Stengel.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Stumbo moved the nomination of the following Constitutional officers:

Chief Clerk, Evelyn Marston

Assistant Clerk, Julie Wheat

Enrolling Clerk, Margaret Watts

Sergeant at Arms, Emmett A. Slattery

Chief Doorkeeper, William E. Davis

Cloakroom Keeper, Lawrence Parrish

Cloakroom Keeper, Albert Robinson

Janitor, George Fritz

Page, Jessica Call

Page, Joe Thomas

Page, Melanie Parrish

Page, Matthew Coldiron

Representative Stumbo moved that the nominations cease and that the Constitutional Officers be elected by acclamation. Agreed.

The oath of office was administered to the Constitutional Officers by the Honorable Robert F. Stephens, Chief Justice, Supreme Court.

Representative Stumbo moved that the rules be suspended to introduce and act upon Resolutions. Agreed.

HR 8, by Representatives Clarke, Rapier, Stumbo, L. Clark and Richards: A RESOLUTION adopting rules to govern the 1994 Regular Session of the House of Representatives.

HR 9, by Representatives Clarke, Rapier, Stumbo, L. Clark and Richards: A RESOLUTION extending an invitation to the pastors of the Frankfort churches to open sessions of the House of Representatives with prayer.

HR 10, by Representatives Clarke, Rapier, Stumbo, L. Clark and Richards: A RESOLUTION directing appoint of a committee to wait upon the Governor.

Representative Stumbo moved the adoption of the following **HR 8**:

HR 8, A RESOLUTION adopting rules to govern the 1994 Regular Session of the House of Representatives.

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. That the following Rules are adopted to govern the 1994 Regular Session of the House of Representatives:

Rule 1. **Hours of Meeting.** The House shall meet at times set by the Committee on Committees.

Rule 2. **Quorum.** A majority of the members elected to the House shall constitute a quorum. If a quorum is not present at the time fixed for a meeting of the House, five members may adjourn or recess from day to day or from time to time and fifteen members may order a call of the House and send for absent members.

Rule 3. **Call of the House.** Upon a call of the House, the Clerk shall call the roll. Absentees are then only noted, but no excuses shall be made until the full roll is called. The Clerk shall then call the absentees again. Excuses will be heard at this time. The doors of the House Chamber shall then be closed and the absentees not excused by the House may be sent for and arrested by the Sergeant-at-Arms and the House shall determine upon what conditions they shall be discharged from arrest. Members who voluntarily appear shall be immediately admitted to the floor of the House and names returned upon the Journal as present unless the House otherwise directs. Excuses for leaves of absence must receive a consent approval of 2/3 of the members elected.

ORDER OF BUSINESS

Rule 4. **Order of Business.** The order of business shall be as follows:

1. Invocation.
2. Roll Call.
3. Reading and Approval of the Journal.
4. Introduction and Reading of New Bills and Resolutions Introduced by Title and Sponsor.
5. Report of Reference of Bills to Committees.
6. Report of Committees.
7. First Reading of Bills.
8. Second Reading of Bills.
9. Orders of the Day.
10. Motions, Petitions and Communications.
11. Announcements.
12. Adjournment.

No more than thirty minutes shall be allotted to Motions, Petitions and Communications.

Rule 5. **Unfinished Business.** Unfinished business which was being considered upon adjournment shall have precedence in the class of business to which it properly belongs upon the next succeeding legislative day.

MOTIONS

Rule 6. **Reading of Motions.** When a motion has been made and seconded, it shall be stated by the Speaker, or, being in written form, it shall be read by the Clerk before debate, amendment or motion concerning it shall be in order.

Rule 7. **Withdrawal of Motions.** Every oral motion after it has been stated by the Speaker, and every written motion, bill, resolution or other paper, after it has been read by the Clerk, shall be the property and in the possession of the House and shall not be withdrawn without consent of the House. Every written motion, report or measure may be committed or recommitted at the pleasure of the House.

Rule 8. **Order of Questions.** All questions, whether in Committee of the Whole or in the House, when not privileged questions, shall be propounded in the order in which they were moved, except that in filling blanks the smallest sum and the most remote date shall be put first.

Rule 9. **Precedence of Motions.** When a question is under consideration, no motion shall be in order except:

1. To call the House when there is no quorum present.
2. To fix the time to which the House shall adjourn.
3. .To adjourn.
4. To take recess.
5. To lay on the table.
6. For the previous question.

7. To limit or extend limits of debate.
8. To postpone to a fixed time.
9. To lay on the Clerk's desk.
10. To refer or commit.
11. To amend.
12. To postpone indefinitely.

The above several motions shall have precedence in the order in which they are arranged and the first seven of them shall not be debatable.

A second motion to adjourn, to take a recess, to lay on the table, for the previous question, to limit or extend limits of debate, to postpone to a time certain, to lay on the Clerk's desk, to refer or commit or to postpone indefinitely shall not be in order on the same day, upon the same question, and at the same status unless other business intervenes; provided, however, that amendments may be made to the time to which it is proposed to adjourn, to take a recess or to postpone to a fixed time.

Rule 10. Motion to Adjourn. A motion to adjourn, to take a recess, or a motion to adjourn to a time certain, shall always be in order, except when a member is speaking, while a vote is being taken or when the Committee on Committees is reporting; subject, however, to the limitations set out in Rule 9. A motion to adjourn or a motion to adjourn to a time certain shall be taken by roll call vote.

Rule 11. Motion to Table. The adoption of the motion to table, under these rules, defeats the subject matter under consideration. The reconsideration of the motion to table shall require approval of a majority of the members elected.

Rule 12. Previous Question. When the previous question has been ordered, a vote shall be taken immediately upon the pending measure and such pending amendments as are in order. The effect of the previous question shall be to put an end to all debate; to prevent the offering of additional amendments and to bring the House to an immediate vote upon the measure and amendments aforesaid. The previous question may be ordered by a majority of the members elected. On the call of the roll, no member shall be allowed to speak more than three minutes to explain his vote and shall not speak at all if the question is not a debatable question. After the previous question has been ordered, and before the vote upon the main question, the opponents of the measure shall have ten minutes, and proponents of the measure shall have ten minutes.

Rule 13. Motion to Set the Limits on Debate. A motion to set a time limit for debate on a measure, in excess of that permitted under Rule 12, shall be in order unless the previous question shall have been ordered on the measure. The time limit set for debate under this rule shall be allotted by the Speaker evenly between the opponents of the measure and the proponents of the measure. Adoption of a motion under this rule does not prevent the offering of additional amendments.

Rule 14. Motion to Reconsider. A motion to reconsider a vote shall not be in order unless made by a member who voted upon the prevailing side of the question; nor shall such motion be in order unless made within two legislative days in which the House is in session next after the date the vote was taken; however, the motion to reconsider when coupled with the additional motion to lay that motion upon the table may be made by any member.

Rule 15. Motion to Lay on Clerk's Desk. The effect of the adoption of a motion to lay on the Clerk's desk under these rules is to place in charge of the Clerk the pending question and everything adhering to it. A motion laid on the Clerk's desk may be taken from the desk and proceeded with at any time in the same order as when laid on the Clerk's desk.

Rule 16. Motion to Strike Out Enacting Clause. A motion to amend by striking out the enacting words of a bill or resolution shall have precedence over a motion to amend; and, if adopted, shall have the same effect as though the bill or resolution were regularly voted upon and rejected.

Rule 17. Motion to Separate Part of a Measure. A motion to commit, recommit, or postpone a part of a measure so as to separate that part of the measure from the remainder shall not be in order.

Rule 18. Postponement of Measure. When a measure shall have been postponed indefinitely it shall not be in order again during the session.

Rule 19. Reading of Pending Papers. Any pending bill, resolution, motion or report shall be read by the Clerk upon the demand of any member, but it shall not again be read on the same day unless so ordered by the House.

Rule 20. Nominations. In all elections a previous nomination shall be made.

MEMBERS

Rule 21. Attendance of Members. No member shall absent himself from a session of the House without leave from the House. Written request for leave of absence may be obtained from the Clerk of the House and shall be submitted to the Speaker. The request shall state thereon the member's excuse for obtaining the leave. No excuse for leave of absence shall be heard from the floor.

Rule 22. Decorum of Members. No member shall designate another member by name.

Rule 23. Call to Order. If any member, in speech or otherwise, transgress the rules of order or decorum, he shall immediately be called to order by the chair and shall take his seat. The Clerk shall reduce the objectionable words to writing and read them to the House. After hearing a short explanation from the member called to order, or upon the withdrawal of the objectionable language, the Speaker may permit the member to proceed, or may compel silence upon him until the matter is disposed of. The ruling of the chair shall be subject to an appeal to the House. A member offending the House shall be liable to censure.

Rule 24. **Debate.** No member may speak more than once to the same subject until all members desiring to be heard have spoken, but nothing in this rule shall do away with the previous question if then in effect, nor permit debate on an undebatable motion.

No member shall speak more than thirty minutes in the aggregate on any question or measure, at the end of which period, or any portion thereof, the floor shall be returned to the Speaker.

Rule 25. **Members Shall Vote at Seats.** A member shall vote only when at his seat or visibly approaching it.

OFFICERS AND EMPLOYEES

Rule 26. **Duties of Speaker.** The Speaker shall take the chair every day precisely at the hour fixed for the meeting of the House and on the appearance of a quorum, shall cause the Journal of the preceding day to be read, unless the reading of the same is dispensed with by the House.

The Speaker shall preserve decorum and order and, in the event of any disorder in the gallery or in the House Chamber, may cause the same to be cleared of any persons creating disturbances or disorders.

All writs, warrants, subpoenas or other processes shall be signed by the officer who may be presiding over the House when the paper is issued; and his signature shall be attested by the Clerk, when ordered by a majority of the members.

Rule 27. **Appeal from Decision of Chair.** The Speaker while presiding may speak to points of order in preference to members. He shall decide points of order and manner of procedure. If two or more members arise from their respective seats and address the chair, the Speaker shall determine who was first and recognize him.

Any decision made by the Speaker shall be subject to appeal to the House. Every such appeal shall be in writing and signed by at least two members. During the pendency of an appeal to the House from a decision of the chair, the Speaker shall vacate the chair and call the Speaker Pro Tempore to preside. When the Speaker Pro Tempore is presiding on an appeal to the House from a decision of the Chair, no motion or business shall be in order except the motion on appeal from the decision of the Chair, and that motion shall not be debatable.

Rule 28. **Speaker Pro Tempore.** The House shall elect a Speaker Pro Tempore. The Speaker Pro Tempore shall perform the duties of the Speaker when the Speaker is absent from the House or when empowered by the Speaker to perform the duties of the chair.

Rule 29. **Duties of Legislative Research Commission.** The Legislative Research Commission shall have charge of all clerical, technical and procedural matters which relate to legislation including but not limited to: notification of committees of their appointment and business referred to them; keeping a calendar showing such bills as are entitled to their second reading each day, distinguishing between House and Senate bills; superintend the engrossing and enrolling of bills; and such other matters as are assigned by the Committee on Committees.

Rule 29A. **Duties of Clerk.** The Clerk shall have charge of clerical and administrative functions not assigned to the Legislative Research Commission and shall cooperate with the Commission to facilitate the work of the House. The Clerk shall read to the House papers ordered to be read; call the roll and note the answers of members when a question is taken by yeas and nays; assist the Speaker in taking the count when any vote of the House is taken; attest all writs, warrants and subpoenas issued by order of the House; certify to the passage of all bills and to the adoption of all joint and concurrent resolutions by the General Assembly; and make all reports to the Senate. The Clerk shall perform such other duties as are assigned by the Committee on Committees.

Rule 30. **Journal of Proceedings.** The Legislative Research Commission shall cause to be kept the Journal of the proceedings of the House. The Commission staff shall note upon the Journal all questions of order, together with the disposition of same, and the dates upon which all bills and resolutions were sent to committee and returned to the House. The House may correct errors in the Journal the day the Journal containing errors is presented to the House. No record which is in the hands of the Commission staff and is required by law to be entered upon the Journal of the House shall be copied by any person until same shall have been entered upon the Journal and said Journal shall have been approved.

Half an hour before the time fixed for the meeting of the House each day, the Commission staff shall be present at the Clerk's desk with the Journal of the preceding session for inspection of any member of the House.

The Journal for each day, as soon as it has been approved by the House, shall be delivered by the Commission staff to the public printer. The Commission staff shall proofread and index the Journal upon return from the printer and make necessary typographical corrections.

Rule 31. **Custody of Papers.** The Legislative Research Commission shall have custody of all records, minutes, reports, and documents pertaining to legislation, and shall not allow them to be taken from its possession without the leave of the House, unless to be delivered to the chairman of a committee to which they have been referred. The Legislative Research Commission shall cause to be enclosed on bills and papers brief notes of proceedings had thereon by the House and preserve the same in convenient files for reference.

Rule 32. **Accounts of Expenditures.** The Legislative Research Commission shall keep the accounts for pay and mileage of members, officers and attaches, and for printing and other contingent expenses of the House and Senate.

Rule 33. Printing of House Papers. The Legislative Research Commission shall have supervision and charge of all printing done for the House as certified by the Clerk and the public printer shall print only such documents and other matter as the Legislative Research Commission authorizes. The Clerk shall report to the Speaker every failure to execute printing work correctly and promptly.

Rule 34. Duties of the Sergeant-at-Arms. It shall be the duty of the Sergeant-at-Arms and the Doorkeeper to exclude or remove all persons not entitled to the floor of the House. One hour before convening of the House each day the Sergeant-at-Arms shall announce in a loud, distinct voice: "All persons not entitled to the floor of the House under the rules thereof will now vacate the House Chamber." He shall then compel all persons who are not entitled to remain therein to leave the House Chambers and shall prohibit their entry until one hour after the House has adjourned.

Rule 35. Appointment and Conduct of Constitutional Employees. The constitutional employees of the House shall be appointed by election during the organizational and regular sessions of the General Assembly and shall serve one year terms or until the election of their successors.

All the constitutional employees of the House, shall, one hour before the meeting of the House each day, report to the Clerk, who shall report to the Committee on Committees whether or not all of said employees are on duty. The Committee on Committees, whenever it deems it necessary, shall report to the House any dereliction of duty.

Rule 36. Other Employees. All other professional, clerical and other services required by the House or its committees shall be furnished by the Legislative Research Commission, upon the request of the Committee on Committees. Employees performing such services shall be under the supervision of the Committee on Committees.

No officer or employee of the House shall receive any fee, tip or compensation from any member and violation of this rule shall be ground for dismissal.

COMMITTEES

Rule 37. Committee on Committees. There shall be a Committee on Committees composed of the Speaker of the House, the Speaker Pro Tempore, the Majority Caucus Chairman, the Majority Floor Leader of the House, the Majority Party Whip, and the Minority Floor Leader of the House. The Speaker shall be Chairman of the Committee and the majority of said Committee shall have full power to act on all matters referred to said Committee, either by these rules or by the action of the House. All bills and resolutions, either joint or concurrent, shall upon their introduction, be automatically referred to the Committee on Committees who shall refer same to the proper Committee not later than the second day in which the House is in session after the date of introduction.

The Committee on Committees shall have supervision and control over all employees of the House, whether elected by the House or provided by the Legislative Research Commission, and the Committee on Committees shall see that they perform all of their duties to the House and the members thereof. The Committee on Committees is empowered to discharge any or all said employees and officers except the constitutional officers of the House. The Committee on Committees shall appoint the members of all standing and special committees and shall fill any vacancies thereon in accordance with Rule 39.

Rule 38. Standing Committees. The following shall be the standing committees of the House:

1. Agriculture and Small Business
2. Appropriations and Revenue
3. Banking and Insurance
4. Business Organizations and Professions
5. Cities
6. Counties and Special Districts
7. Economic Development
8. Education
9. Elections and Constitutional Amendments
10. Health and Welfare
11. Judiciary
12. Labor and Industry
13. Natural Resources and Environment
14. State Government
15. Tourism Development and Energy
16. Transportation

Rule 39. Appointment Committees. The Committee on Committees shall appoint the Chairman, Vice Chairman and the members of all standing and special committees and shall fill any vacancies thereon. In making such appointments to standing committees the Committee on Committees shall appoint a member with service in the immediately preceding regular session to at least one committee on which the member served in such previous regular session. Such appointment to the one committee shall be at the preference of the member, and the Committee on Committees shall be bound by the member's preference for that one committee; provided, however, a member who was a committee chairman in the preceding regular session must select for reappointment the committee he so chaired if he wishes to be considered for the chairmanship of that committee; if another selection is made, he shall not be reappointed chairman of the committee which he chaired in the preceding regular session. A member of the Committee on Committees shall not serve as chairman of a standing committee. A chairman of a standing committee or statutory committee shall not serve as a member of the Committee on Appropriations and Revenue. The Committee on Committees shall select members of each standing and special committee in proportion to the representation of each political party in the House. The Vice Chairman shall act in the absence of the Chairman. The Chairman of any committee may appoint subcommittees to conduct hearings or study any matters which have been referred to the committee.

Before the Committee on Committees shall appoint the members of standing and special committees the number of members on the committee to be appointed shall be announced to the House. At the same time, the Committee on Committees shall announce the number of members of the committee to be appointed from the majority party and the number of members to be appointed from the minority party.

The Committee on Committees shall not appoint more than twenty-four members to any one standing committee. Every member of the House shall be appointed to at least one standing committee and no member shall be appointed to more than three of the following committees: all standing committees except the Committee on Appropriations and Revenue, the Committee on Education and the Committee on State Government, and the Committee on Committees.

In appointing the membership of standing committees, the Committee on Committees shall consider the predominant business interests or occupation of each member so that the private interests of a majority of a committee's members do not correspond to the jurisdiction of the standing committee.

Rule 40. Jurisdiction of Standing Committees. The Committee on Committees shall refer each bill to the Committee with control over the subject matter. All bills and resolutions on the same subject matter shall be referred to the same committee. The general jurisdiction of the several standing committees shall be:

1. **Agriculture and Small Business:** matters pertaining to crops, livestock, poultry and their marketing; disease control and warehousing; tobacco; stockyards; agricultural cooperatives and marketing associations; agriculture weights and measures; veterinarians; the State Fair; county fairs; all matters not specifically assigned to another committee relating to administrative, regulatory or operating issues which, because of their smaller size, uniquely impact small business.

2. **Appropriations and Revenue:** matters pertaining to the executive budget and other appropriations of state monies; the levying of state and local taxes, including school taxes; property tax rates and assessments; the state debt; revenue bond projects; veterans bonus; claims upon the treasury; accounting of state funds by local officers; audits for state purposes; budget and financial administration; payment, collection and refund of taxes.

3. **Banking and Insurance:** matters pertaining to banking; banks and trust companies; petty loan companies; building and loan associations; credit unions; investment companies; industrial loan corporations; securities; the Blue Sky Law; mortgage guaranty insurance; assessment and cooperative insurance; fraternal benefit societies; hospital service corporations; burial associations; medical and dental service corporations; life, accident, indemnity and other forms of insurance; stock and mutual insurance companies; banking and insurance aspects of the Uniform Commercial Code; interest and usury; pawnbrokers; private credit; consumer credit; sale of checks; installment sales contracts; legal investments; principal and income.

4. **Business Organizations and Professions:** matters pertaining to professional licensing not assigned specifically to another committee; racing; prize fighting and wrestling; places of entertainment; laundry and dry cleaning; alcoholic beverage control; private corporations; cooperative corporations and marketing associations; religious, charitable and educational societies; nonprofit corporations; professional service corporations; cemeteries; barbers and cosmetologists; professional engineers and land surveyors; architects; real estate brokers and salesmen; public accountants; watchmakers; detection of deception examiners; auctioneers; business schools; warehouses and warehousemen; partnerships; trade practices.

5. **Cities:** matters pertaining to the officers, organization, government and financing of city government; special purpose assessment and taxing districts within a city; incorporation and classification of cities; city revenue bond projects; the imposition of duties and costs on cities; city taxes and licenses; city indebtedness; compensation of city officers; metropolitan sewer districts; interlocal government cooperation; housing projects; urban renewal and redevelopment; city streets and sidewalks; sewers; annexation of territory; consolidation of local government services; forms of city government; city civil service; city finances and revenue; public works; police and fire departments and their retirement systems; parks and playgrounds; planning and zoning; acquisition of waterworks and water districts by cities; financing of municipal improvements; urban service districts; police court and city attorney; city libraries.

6. **Counties and Special Districts:** matters pertaining to the officers, organization, government and financing of county governments; county imposed taxes and licenses; county and special district debt; the imposition of duties and costs on counties; special districts not assigned to another committee; the powers, duties and composition of fiscal court; compensation of county officers and employees; the offices of county judge, magistrates, county attorney, sheriff, constable, county police, jailer, coroner, surveyor, county clerk; county employees' civil service and retirement; planning and zoning; interlocal cooperation and consolidation of services; county roads; public road districts; water districts; fire protection districts; issuance of bonds for county

and special district projects; metropolitan sewer and sanitation districts; local air pollution control districts; county and county law libraries; library districts.

7. **Economic Development:** matters pertaining to commerce, industry, and economic and industrial development not specifically assigned to another committee; economic development planning, international trade and investment; investment companies and industrial loan corporations as they relate to economic and industrial development; recruitment of business and industry; small business matters relative to economic and industrial development; financing of business and industrial development; business regulatory matters, including the Uniform Commercial Code, relative to economic and industrial development; worker training; technology development and application; chambers of commerce; convention centers and publicly owned exhibition and parking facilities; arts and arts exhibition facilities; state, interstate, and national parks and historic sites; travel promotion and advertising.

8. **Education:** matters pertaining to public primary, secondary and higher education; the State Board of Education; the State Department of Education; the powers and duties of local boards of education; conduct of schools; attendance; state support of education; the operation of school districts, teachers' qualifications and tenure; the school curriculum; teachers' retirement; school employees; pupil transportation; school property and buildings; vocational education and rehabilitation; state universities and colleges; community colleges; municipal universities and colleges; regional education; education of the physically handicapped; educational television.

9. **Elections and Constitutional Amendments:** matters pertaining to the proposing of constitutional amendments and the calling of a constitutional convention; ratification of amendments to the United States Constitution; the election of officers to state, local and school board positions; election commissioners, officers and precincts; qualifications, registration and purgation of voters; conduct of regular elections; primary elections; presidential and congressional elections; special elections to fill vacancies; contest of elections; corrupt practices and election financing; election offenses and prosecutions; voting machines; absent ballots.

10. **Health and Welfare:** matters pertaining to health and welfare in cities; fire prevention and protection; support of dependents; garbage and refuse disposal; public assistance; child welfare; adoptions; mothers aid and assistance to children; children's homes; incompetents; poor persons and poor houses; confederate pensions; aid to needy blind; commitment and care of children; mental health; health, medical and dental scholarships; local health units and officers; vital statistics; communicable diseases; tuberculosis hospitals; hospitals, clinics and personal care homes; foods, drugs and poisons; trailer park regulations; hotel and restaurant regulations as they pertain to public health; sanitation plants; sanitation districts; frozen food locker plants; alcoholism; physicians, osteopaths and podiatrists; chiropractors; dentists and dental specialists; registered nurses and practical nurses; pharmacists; embalmers and funeral directors; clinical psychologists; optometrists, ophthalmic dispensers; physical therapists.

11. **Judiciary:** matters pertaining to contracts; the Uniform Commercial Code; debtor-creditor relations; ownership and conveyance of property; private corporations and associations; competency proceedings; administration of trusts and estates of persons under disability; descent, wills and administration of decedents' estates; domestic relations; support of dependents; statutory actions and limitations; eminent domain; arbitration; summary proceedings; declaratory judgments; witnesses; evidence; legal notices; construction of statutes; civil procedure; the Supreme Court, the Court of Appeals, Circuit Courts and District Courts; jurisdiction, rules, terms, judges, commissioners, selections, districts, qualifications, compensation and retirement; clerks of courts; juries, attorneys; commissioners and receivers; court reporters; habeas corpus; crimes and punishments; criminal procedure; probation and parole; correctional penitentiaries; civil rights; and juvenile matters.

12. **Labor and Industry:** matters pertaining to the work-force and workplace not specifically assigned to another committee; labor unions; collective bargaining; liquefied petroleum gas and other flammable liquids; electricians; plumbers and plumbing; wages and hours; garnishments; safety and health of employees; child labor; employment agencies; apprenticeship; unemployment compensation; workers' compensation; consumer protection; industrial weights and measures.

13. **Natural Resources and Environment:** matters pertaining to forestry; mining; fish and wildlife resources; soil and water conservation; flood control and water usage; drainage and irrigation; geology and water resources; waterways and dams; oil, gas and salt water wells; state and national parks; drainage districts and local flood control and water usage; water pollution; air pollution; management of waste; protection of the environment; Natural Resources and Environmental Protection Cabinet.

14. **State Government:** matters pertaining to the sovereignty and jurisdiction of the Commonwealth; the General Assembly, its committees, officers and service agencies; redistricting; the Governor; the Lieutenant Governor; intergovernmental cooperation; relations with the federal government; administrative organization; administrative regulations; statutory administrative agencies; Department of Law; Secretary of State; state personnel; state retirement systems; military affairs and civil defense; public property and public printing; public officers, their terms, appointments, fees, compensation, removal, oaths and bonds; public information; state and regional planning; the libraries; archives and records; public corporations; Commonwealth's attorneys; circuit clerks.

15. **Tourism Development and Energy:** matters relating to tourism and travel promotion and development; state, interstate, and national parks and historic sites; fish and wildlife; small business matters relative to tourism development; hotels and motels generally; hotel and restaurant regulations; billboards; advertising related to tourism development; entertainment establishments; campgrounds; the Tourism Cabinet; privately owned public utilities; rates, permits, certification of convenience

and necessity; water district rates; utilities in cities; public utility cooperatives; electric and gas utilities and cooperatives; oil and gas transmission companies; telephone companies and cooperatives; municipal utilities and water works; energy and fuel development, including synfuels; energy waste disposal; Utility Regulatory Commission and Energy Regulatory Commission; solar and other renewable energy; hydroelectric and thermo-nuclear energy; and gasohol. Subcommittees of the Committee on Tourism Development and Energy shall include but not be limited to the Subcommittee on Tourism and the Subcommittee on Energy.

16. **Transportation:** matters relating to airports and aviation; boats and boating; licensing of motor vehicles; operators and trailers; financial responsibility law; nonresident motorists; motor vehicle sales; railroad rates, service and operating regulations; motor carriers; matters pertaining to the construction and maintenance of the state highway system; the Department of Transportation; state aid for local roads and streets; the state police; the Federal Highway Safety Law; turnpike authority; state and federal highways; limited access facilities; use of road bond monies; automobile recyclers; highway beautification; bridges, tunnels and ferries; traffic regulations; vehicle equipment and storage; driver training schools.

Rule 41. Rules Committee. There shall be a Rules Committee composed of the Speaker of the House, the Speaker Pro Tempore, the Majority Floor Leader, the Majority Caucus Chairman, the Majority Party Whip, the Minority Floor Leader, the Minority Caucus Chairman, the Minority Party Whip, and not less than nine nor more than thirteen members appointed by the Committee on Committees. All bills and resolutions having been reported out of the committee to which referred and having received their second reading shall be referred to the Rules Committee. The Rules Committee may refer any bill or resolution before it back to a standing committee; provided, however, that such recommitment shall be accompanied by an explanation of the reason therefor, and that no bill or resolution shall be referred back by the Rules Committee on more than one occasion. All meetings of the Rules Committee shall be open to members of the House and to members of the Capitol Press Corps only. No electronic devices of any nature including cameras and recording devices shall be allowed in the committee room or to be used therein by any person while the Rules Committee is in session. No bill may be kept in Rules Committee for longer than five legislative days. Within that time, each bill must be reported to the floor or referred back to a standing committee.

The Majority Floor Leader shall while the Rules Committee is in session call bills and resolutions and shall call the same for consideration by the Rules Committee. A bill or resolution may be placed for consideration in the first order of business at the next regular Rules Committee meeting by a majority of the membership voting for such consideration.

Each member shall be given an opportunity upon request to appear before the Rules Committee when a bill of which he is a sponsor or co-sponsor is under consideration including the subsequent vote thereon. No measure shall be posted in the Orders of the Day for final passage except by order of the Rules Committee unless otherwise ordered posted for the next succeeding legislative day by a majority of the members voting. The Rules Committee shall arrange the Orders of the Day so that all measures shall appear thereon for the consideration of the House, but the Rules Committee may not place in the Orders of the Day any bill or other measure in the possession of a standing or special committee of the House. The Rules Committee, prior to each day's session, shall post a notice in a regular place in the House Chamber listing the bills to be considered that day in the Orders of the Day. Should the House not complete any day's Orders of the Day, the bills and resolutions remaining unconsidered shall go to the top of the Orders of the Day on the next day that Orders of the Day are considered.

The Speaker of the House shall act as Chairman of the Rules Committee. The Majority Floor Leader of the House shall act for the Rules Committee in calling from the Orders of the Day any bills or resolutions in the order he deems proper and shall be recognized by the Speaker for said purpose during all times that the Rules Committee is in charge of posting the Orders of the Day. The Speaker Pro Tempore shall act as chairman in the absence of the Speaker.

Rule 42. Liaison Subcommittees: The Committee on Appropriations and Revenue shall be divided into the following six standing subcommittees of seven members each:

1. Subcommittee on Economic Development and Energy, Natural Resources, and Environmental Protection;
2. Subcommittee on Education;
3. Subcommittee on General Government, Finance, and Public Protection;
4. Subcommittee on Human Resources;
5. Subcommittee on Justice and Judiciary;
6. Subcommittee on Transportation.

On four of the subcommittees, as designated by the Committee on Committees, four members shall be members of the Committee on Appropriations and Revenue designated by the chairman of such committee, and three members shall be appointed by the Committee on Committees from the membership of one or more of the remaining standing committees of the House. On the remaining two subcommittees, either three or four members shall be appointed by the Committee on Committees from the membership of one or more of the remaining standing committees of the House, and the remaining members shall be members of the Committee on Appropriations and Revenue designated by the chairman of such committee. A member of the Committee on Appropriations and Revenue may, however, serve on no more than one standing subcommittee. The chairman of each standing subcommittee shall be appointed by the chairman of the Committee on Appropriations and Revenue from the membership of such committee on the particular standing subcommittee.

The liaison subcommittee members of a standing subcommittee shall have full voting authority in all matters before a standing subcommittee.

The Committee on Committees may assign the chairman of a standing committee as an ex officio non-voting member of a standing subcommittee.

Rule 42A. Budget Review. The standing budget review subcommittees shall notify the membership of the standing substantive committees whose jurisdictional area will be affected by their action of any meetings or hearings and the members of the standing committees may participate as non-voting members.

When the budget review subcommittees have concluded their hearings and formulated their recommendations they shall communicate their recommendations to the affected standing committee or committees who may thereafter file a written response to the recommendations, which response shall be transmitted to the full Committee on Appropriations and Revenue with the subcommittee recommendations.

When the full Committee on Appropriations and Revenue has reported the final budget bill or bills to the floor, it shall notify the affected standing committees of the content of the budget relating to their areas of jurisdiction.

Any budget bill reported out of the Committee on Appropriations and Revenue shall be accompanied by a detailed explanation of modifications of the original budget. The Rules Committee shall not post for passage any budget bill less than five days after the bill has been finally reported out of committee.

Rule 43. Enrollment Committee. The Committee on Committees shall appoint an Enrollment Committee of not more than seven members. The Enrollment Committee shall be responsible for the engrossment and enrollment of bills and resolutions under the Rules of this House.

Rule 44. Committee on Conference. When a House bill has been amended in the Senate and the House refuses to concur in said amendment, or when a Senate bill has been amended in the House and the Senate refuses to concur in said amendment and when neither will recede from such action, the Committee on Committees shall appoint a Committee on Conference to meet a like committee from the Senate. The Committee on Conference shall confer with the Senate Committee and report back to the House within a reasonable time, in the same manner as reports are made for House bills. The conference report shall make no recommendation other than agreement upon or rejection of the matter or matters in controversy, and shall be voted upon, and, if adopted the bill shall immediately be put upon its final passage.

Should a committee on conference report its inability to submit a report, or if either house refuses to adopt its report, each house may appoint a committee on free conference, consisting of three or more members. A committee on free conference shall propose no new appropriation or any appropriation above the level originally designed by either chamber. The free conference report shall be voted on, and if adopted, the bill shall immediately be put upon its final passage.

Except for report of disagreement, the question of consideration of the report of a conference committee or a free conference committee shall not be in order on the same legislative day as distribution of copies of the report together with a staff analysis of the report to the members of the House.

Rule 45. Meetings of Committees. No committee except the Committee on Committees, the Committee on Enrollment and a Committee on Conference between the House and the Senate shall sit while the House is in session, unless by consent of the House. The Committee on Committees and Committee on Enrollment may report at any time except during roll call or while a vote is being taken.

The Committee on Committees, in conference with committee chairmen, shall schedule a definite time and place for the regular weekly meetings of each committee, such schedule to be posted in the House Chamber and published in the Legislative Record. A committee shall meet at the regular weekly scheduled time and place so long as business is pending before the committee. Nothing herein shall prevent the Chairman or a majority of any committee from calling a special meeting in addition to those regularly scheduled.

The Chairman shall keep a record of the attendance of members at meetings, which record shall be filed with the Clerk.

The Director of the Legislative Research Commission, under the direction of the Committee on Committees, shall assign a secretary to each committee and provide any professional, clerical or other employees required by any committee.

The Committee on Committees shall meet on call of the Speaker or on call of a majority of the members of the Committee on Committees.

Rule 46. Committee Reports. No bill or resolution shall be considered by the House except on report of committee. Upon the call of standing committees, the Clerk or the Chairman or ranking member of the committee may report the bill in the following manner:

"With the expression of opinion that the same should pass," or

"With the expression of opinion that the same should pass, with the committee amendment attached thereto," or

"With the expression of opinion that the same should pass, with the committee substitute attached thereto," or

"With the expression of opinion that the same should not pass."

Rule 47. Majority and Minority Reports. It shall require a majority of the committee membership to report a bill. The chairman shall keep a record of the vote of each member on the disposition of each bill, and shall report the total vote on each side to the House. The chairman may sign reports on behalf of a majority of the committee members. His signature shall attest to the action of a majority, but shall not be construed as his personal approval or disapproval of the bill.

A committee report may be accompanied by a minority report, signed by those members who have dissented from the committee's report, and it shall be in order to move the adoption of the minority report as a substitute for the committee's report when the committee offers its report. It shall require a majority of the members elected to adopt the minority report. The committee's report shall always be read before the minority report is read.

Rule 48. **Failure to Report.** Whenever a committee fails or refuses to report within a reasonable time a bill submitted to it, any member may by filing with the Clerk a written request signed by twenty-five or more members, call the same up for consideration on the next succeeding legislative day after the filing of said request. If a majority of the members elected to the House concur therein, the bill shall be considered as though it had been regularly reported.

Rule 49. **Procedure in Committee.** The rules of procedure in the House shall be observed in committee insofar as the same are applicable. The committee chairman, or the committee by majority vote in a regularly called meeting, shall post at least three calendar days prior to their consideration the bills and resolutions to be considered by the committee at its next meeting provided that no bill or resolution shall be posted by the chairman or the committee by a majority vote unless and until a request for posting form has been filed with the committee chairman or secretary and approved as containing satisfactory information by the committee chairman. No measure shall be considered except those posted. A list of the measures to be considered shall be filed with the Clerk at least three calendar days prior to the meeting. In the case of prefiled bills receiving a favorable expression from the interim joint committee to which they were assigned, posting by the chairman or the committee shall occur during the first week of the session, and such bills shall be considered by the appropriate committee during the first three weeks of the session. No posting request shall be required for such prefiled bills. This rule does not apply to bills with a fiscal impact of more than $20,000.

BILLS AND RESOLUTIONS

Rule 50. **Form of Bills.** All bills introduced shall be printed on the computerized bill preparation system of the Legislative Research Commission, and none otherwise prepared shall be accepted for introduction. Bills shall be offered as one original and three distinctly legible copies. Identical bills for introduction in the other chamber may be exact reproductions of original bill provided one copy is authenticated by the Director of the Legislative Research Commission as the original to be introduced in the other chamber. The original shall be the official bill, and shall be retained by the Legislative Research Commission staff for the use of the House until engrossed and sent to the Senate. A replacement original of a bill, generated pursuant to these Rules, shall thereafter be considered the original and official bill. One copy shall be used by committees; one copy shall be for the use of the press and shall be given to a person designated by the Press Club; and one copy shall be retained by the Legislative Research Commission for its work file. Each copy shall be backed with a protective cover, as provided for this purpose by the Legislative Research Commission. The title of the bill, or a portion thereof, and the signature of the member introducing the bill shall be placed on each cover.

In all bills, as introduced and as printed, any new matter contained therein shall be underscored; and when an amendment proposes the omission or elimination of matter in an existing law, such omission or elimination shall be indicated on the bill by placing the material proposed to be eliminated in brackets, and by striking through the words to be omitted or eliminated with a single line so as not to render such words illegible. In any bill seeking to repeal existing sections of the Kentucky Revised Statutes said sections sought to be repealed shall be identified by way of inclusion of the headnotes applied to each such section as it appears in the Kentucky Revised Statutes. The Legislative Research Commission staff shall see that all bills introduced have been prepared through the computerized bill preparation system of the Legislative Research Commission.

Rule 51. **Introduction of Bills.** Bills and resolutions may be introduced by filing them with the Bill Introduction Clerk in her office at any time the same is open. Bills and resolutions introduced by filing them with the Bill Introduction Clerk after the House has concluded Item 4, in Rule 4, Order of Business, shall be considered as having been introduced the next succeeding legislative day. The Bill Introduction Clerk shall number bills in the order received and transmit a copy immediately after introduction on the House floor to the Committee on Committees for reference to committee. No bill or resolution having the force of law shall be introduced after the thirty-eighth legislative day of the session. The last two legislative days preceding the veto recess shall be reserved by the House exclusively for the business of concurring in amended House bills.

Rule 52. **Fiscal** ***Statement*** ~~[Note Required]~~. ***A sponsor of a bill which, if enacted, would affect the revenues or expenditures of state government generally, may at any time by request cause the staff of the Legislative Research Commission to analyze and prepare a fiscal statement for the measure. The staff of the Legislative Research Commission shall analyze and prepare a fiscal statement for any bill which, if enacted, would fiscally affect local governments through the imposition of a local mandate; or fiscally affect state or local corrections services in a significant manner, including any bill which would modify or create a criminal penalty or otherwise affect the population of a correctional system or facility. The chairman of the committee to which a bill has been referred may require that a fiscal statement be attached to the bill prior to posting. The chairman or a majority of the committee to which a bill has been referred may require that a fiscal statement be attached to the bill prior to final committee action. No measure for which the preparation of a fiscal statement has been requested or is required pursuant to this rule shall be placed in the Orders of the Day until the fiscal statement is attached. Members may require, by majority vote, that a fiscal statement be prepared for any bill on the Orders of the Day not otherwise requiring preparation of a fiscal statement. In such instance, the fiscal statement shall be attached to the bill prior to final consideration on the floor of the House. Any member proposing an amendment from the floor***

which relates to fiscal matters herein described shall cause a fiscal statement to be prepared and attached to the amendment. Until the time the fiscal statement is prepared and attached to the amendment, action on the bill to be amended along with the proposed amendment shall be passed over in the Orders of the Day but retained in the Orders of the Day. The requirement for a fiscal statement may be waived by a vote of a majority of the members elected to the House [~~A sponsor of a measure may at any time prior to the filing of a request for posting form require a fiscal analysis to be made by the Legislative Research Commission upon the same and a fiscal note attached thereto.~~

~~The chairman of the committee to which the measure has been referred may, at any time after a request for posting form is filed with the committee by the sponsor, determine that a fiscal analysis is required on any measure not carrying a fiscal note. The chairman upon such determination shall cause a fiscal analysis to be made by the Legislative Research Commission and a fiscal note attached prior to posting the measure for consideration.~~

~~After posting the measure, a majority of the committee may determine that a fiscal analysis is required on any measure not already carrying a fiscal note and shall direct the same to be accomplished and fiscal note attached with all dispatch. A committee may consider any measure on the date for which it is posted even if it is determined by the committee on that date that a fiscal analysis is required, however, no final action shall be taken by the committee upon said measure until a fiscal note is presented to the committee and attached to the measure.~~

~~Any member proposing to amend from the floor a bill or resolution which carries a fiscal note or if the proposed amendment itself carries a fiscal implication, the member proposing the amendment shall cause a fiscal analysis of the amendment to be made and a fiscal note attached to the proposed amendment at the time of introduction. In the event an amendment is introduced without a fiscal note, any member may raise the question of fiscal implication to the amendment by a motion and by majority vote require a fiscal analysis to be made and a fiscal note attached to the amendment. If a fiscal analysis and note is required by the membership, action on the bill or resolution to be amended along with the proposed amendment shall be passed over in the Orders of the Day but retained in the Orders of the Day. A fiscal note required by the membership shall be filed and attached to the amendment prior to the convening of the session of the next legislative day. In the event it is impossible to complete the analysis and prepare a fiscal note before the convening of the session on the next legislative day, the Director of the Legislative Research Commission shall so advise the membership by letter and state a time in which the same can be completed and filed with the House.~~

~~If the Director of the Legislative Research Commission certifies that the fiscal note cannot be completed within the prescribed time, the amendment shall not be in order unless the members, by majority vote, determine either: (1) act on the amendment and the bill or resolution without the benefit of the fiscal note, or to (2) pass over the bill or resolution in the Orders of the Day and allow it to be retained in the Orders of the Day until the fiscal note is filed.~~

~~**Rule 52A. Local Mandate Impact Statement.**~~ ~~Any bill which relates to any aspect of local government or any service provided thereby shall be analyzed by the Legislative Research Commission for its fiscal impact upon local governments and if determined to contain a local mandate shall have a local mandate impact statement attached prior to final consideration.~~

~~No measure which contains a local mandate shall be placed in the Orders of the Day until the local mandate impact statement is attached unless the requirement of the statement has been waived by a vote of two-thirds of all members of the House.~~

~~Any member proposing to amend from the floor a bill which contains a local mandate or if the proposed amendment itself contains a local mandate, shall cause a fiscal analysis of the amendment to be made and a local mandate impact statement attached to the proposed amendment. Until such time as the local mandate impact statement is prepared and attached to the amendment, action on the bill to be amended along with the proposed amendment shall be passed over in the Orders of the Day but retained in the Orders of the Day.~~

~~**Rule 52B. Corrections Impact Statement.**~~ ~~Any bill which relates to any aspect of state or local corrections or any service provided thereby, including any bill which creates or modifies any criminal penalty, shall be analyzed by the staff of the Legislative Research Commission for its fiscal and corrections population impact upon state and local governments and shall have a fiscal and population impact statement attached prior to final consideration. No measure which relates to any aspect of state or local corrections shall be placed in the Orders of the Day until the corrections impact statement is attached. Any member proposing an amendment from the floor which relates to state or local corrections shall cause a corrections impact statement to be prepared and attached to the proposed amendment. Until the time the corrections impact statement is prepared and attached to the amendment, action on the bill to be amended along with the proposed amendment shall be passed over in the Orders of the Day but retained in the Orders of the Day. The requirement for the corrections impact statement may be waived by a vote of two-thirds (2/3) of all members of the House~~].

Rule 53. Proposed Administrative Regulations. (1) Before committee consideration of any bill originating in the House, which contains the authority for any agency, board or political subdivision of state government to promulgate regulations, the bill shall have attached a copy of a statement of legislative intent for the bill, including a summary of guidelines to be followed in preparing regulations pursuant to the bill.

Every committee shall have the exclusive right to determine whether the summary submitted meets the requirements of this rule. The committee may waive the provisions of this rule by majority vote, and shall acknowledge on its committee report the receipt of and consideration of the matters submitted with the bill pursuant to this rule.

The purpose of the requirements of this rule is to inform the House of the general scope of the regulations authorized by the bill and to provide a permanent record of legislative intent; and pursuant thereto, when any bill subject to the provisions of this rule becomes law the Director of the Legislative Research Commission shall cause to be filed with the Administrative Regulation Review Subcommittee of the Legislative Research Commission the summary of the regulations submitted with the bill to be used by the Administrative Regulation Review Subcommittee when reviewing regulations promulgated pursuant to the bill. The Administrative Regulation Review Subcommittee shall use the material submitted with the bill to determine legislative intent.

Nothing contained in this rule shall preclude the promulgation of regulations differing from those filed or summarized and submitted with the bill.

(2) This amendment of the Rules of the House of Representatives shall apply only to bills introduced after February 5, 1980.

Rule 54. Rejected Administrative Regulations. When an administrative regulation has been referred by the Clerk to a standing committee of the House, the committee shall review the regulation and take such action as it deems appropriate. If the committee recommends rejection it must set forth in its report the reasons for its rejection which shall be for either of the following reasons, or both: (1) The administrative regulation does not conform to statutory authority. (2) It does not carry out legislative intent.

Unless the House and Senate committees both recommend rejection of the regulation in their committee reports and the committee reports are thereafter adopted by at least two-fifths of the members elected to each house, and a majority of the members voting, the regulation shall become effective.

When a House committee report recommending rejection has been adopted by the House as set forth above, the House Clerk shall so notify the Clerk of the Senate.

If both the Senate and the House have approved committee reports recommending rejection of a regulation, a report to that effect shall be signed by both clerks and sent to the promulgating agency and the regulations compiler. A copy of this report shall be on file in the office of the Clerk of the Senate and in the office of the Clerk of the House.

Proposed regulations that have been properly laid before the General Assembly shall become effective upon sine die adjournment of the General Assembly unless the General Assembly in regular session shall disapprove the proposed regulation.

Rule 55. Reference of Bills. The Committee on Committees shall refer all bills to the proper standing committee not later than the second day in which the House is in session after the date of introduction. When a House bill has been amended in the Senate and has been returned to the House for concurrence in the amendment, it may be referred to a committee in the same manner as original bills are referred. Bills originating in and passed by the Senate when reported to the House shall be referred to the Committee on Committees and shall take the same course as other bills.

Rule 56. Printing of Bills. Upon receipt of a bill, the Legislative Research Commission shall examine the form of the bill to ensure that it is free from errors of form or typography and has been assigned the proper KRS section or chapter numbers. If a formal change is necessary the Commission shall request the sponsor of the bill to sign a form approving the specified changes. If a bill is found to be correct, or corrections have been approved, the Commission shall authorize its printing.

The Legislative Research Commission shall have printed at least two hundred copies of each bill or resolution carrying the force and effect of law introduced in the House and of each bill or resolution carrying the force and effect of law acted on by the Senate and reported to the House. Bills shall be printed in the order in which they are introduced and shall be distributed to members immediately upon receipt from the printer.

Rule 57. Readings of Bills. If a bill be reported with the expression of opinion that it should not pass a vote may then be taken on whether it shall be read at length and be placed on the Calendar, if a majority of the members elected to the House shall concur therein. When reported favorably by the committee, the bill shall then be given its first reading at length and shall be placed by the Commission staff upon the Calendar to be kept by the staff, and shall then be entitled to its second reading the next succeeding legislative day.

Every bill shall be read at length on three different legislative days; but the second and third readings thereof at length may be dispensed with by a majority of all the members elected to the House and the bill read by its title.

Rule 58. Calendar; Consent Calendar. (1) In order to reduce the time required for final passage of bills posted in the Orders of the Day, a consent procedure for the consideration of uncontested bills shall be established and designated as follows:

(a) The Commission staff shall keep a Regular Calendar and a Consent Calendar for each legislative day showing the bills receiving their second reading.

(b) The Commission staff shall also keep a Regular Orders and a Consent Orders showing bills posted for final passage by the Rules Committee.

(2) Bills reported by a Standing Committee with a regular "should pass" or "should pass with committee amendment/substitute attached" recommendation shall be shown in the Regular Calendar on the day on which they are entitled to a second reading.

(3) A Standing Committee may at the time of favorably reporting any House or Senate Bill, recommend that it be

placed in the Consent Calendar provided:

(a) The primary sponsor has so requested when it is a House Bill, and

(b) The bill receives a "should pass" or "should pass with committee amendment/substitute attached" recommendation from such committee by a unanimous vote of the members present.

Any House or Senate Bill thus reported shall be first placed in the Consent Calendar on the day on which it is entitled to a second reading and shall continue to be shown in said Calendar until taken therefrom by the Rules Committee and posted in the Consent Orders. Bills receiving a second reading should be so designated to distinguish them from bills which have already received their second reading.

(4) A certificate shall be attached to each bill recommended for the Consent Calendar showing the request of the sponsor of any House Bill, and the unanimous recommendation of the members present signed by the Chairman.

(5) After a sufficient number of bills have accumulated in the Consent Calendar, the Rules Committee may post any or all of said bills to the Consent Orders for a day certain. On that day certain the Consent Orders shall be called before the Regular Orders.

(6) Upon the call of the Consent Orders each bill in said Orders shall be given a third reading by title only. The Speaker shall then allow a reasonable time for questions from the floor and any explanation necessary by the sponsor or committee chairman. Consent Order bills may not be amended from the floor.

(7) The Commission staff shall attach a roll call to each bill in the Consent Calendar and any member may at any time prior to passage of the Consent Orders record with the Commission staff his "nay" or "pass" vote on any bill within the Consent Calendar or Consent Orders.

(8) Upon the call for the question on the Consent Orders, the Speaker shall instruct the Commission staff to announce the "nay" and "pass" votes previously filed on each bill in the Consent Orders. All other members present in the chamber on the day and at the time the Consent Orders are called shall be considered as having voted "aye" and the roll call attached to each bill shall so reflect as the final vote.

(9) Upon the written petition of any five members objecting to the placement or retention of any bill in the Consent Calendar or Consent Orders, such bill shall cease to be so considered and shall be placed in the Regular Calendar or Regular Orders as provided in these rules.

Rule 59. Orders of the Day. When a bill has had its second reading it shall be placed in the Orders of the Day, or be recommitted, and when next reached in the House it shall be ready for recommitment, or to be read a third time and placed upon its passage, and the Speaker shall so announce to the House.

A bill may be recommitted or amended in accordance with these rules at any time before its passage. Bills shall be placed in the Orders of the Day in the order in which they have been given their second reading, and shall be taken therefrom in accordance with Rule 41. When a House bill is in the Orders of the Day, it shall be in order on motion of the author to substitute for it an identical Senate bill which is in the Calendar of the House.

No bill shall be taken from the Orders of the Day unless it shall have been printed and previously distributed to members.

Rule 60. Final Passage. When a House bill has been amended in the Senate and the House has concurred in the amendment, the bill as amended shall immediately be placed upon its passage.

Rule 61. Amendments to Bills. All amendments offered shall be on sheets with a proper heading printed in black, furnished by the Commission staff, and shall bear the signature of the members offering the same. All amendments shall give the proper page and line of the printed bill. Three copies of each amendment shall be introduced. No amendment shall be in order that is not germane to the matter under consideration and unless it shall have been printed and previously distributed by the Clerk to members at least one legislative day prior to consideration of the bill or resolution and unless it complies with Rule 52 relative to fiscal analysis; and the Speaker, when the question is raised, shall rule as to the admissibility of the proposed amendment, subject to appeal to the House.

Any amendment to a House bill under consideration containing the substantial text of the language of another bill shall require for its consideration the affirmative vote of a majority of the members of the House. The commission staff shall cause such amendments to be identified when the bill proposed to be amended thereby is posted on the Orders of the Day. When a question is raised as to the identity of the proposed amendment containing the substantial text of another bill the Speaker shall rule thereon, subject to appeal to the House.

Rule 62. Engrossment of Bills. Every House bill and joint resolution, together with the amendments thereto, which has been passed by the House and not subject to further amendment or motion, shall be engrossed by the Commission staff. The Clerk shall endorse thereon the day of passage or adoption. The bill shall be delivered to the Senate in open session by the Clerk or someone designated by him, and Senate concurrence asked therein. A like procedure shall be observed toward Senate bills.

When engrossing a bill, the Commission staff may incorporate amendments by means of typing or by generating a replacement original of the bill through computerized process.

Rule 63. Enrollment of Bills. All House bills and resolutions which have passed both the Senate and the House shall be delivered by the Commission staff to the Enrolling Clerk, taking a receipt therefor, in the order in which passed. The Commission staff shall keep the number and title of all bills and joint and concurrent resolutions carrying the force and effect of law, passed by the House of Representatives and the Senate in a suitable record book attesting the fact and date of passage.

In the event a bill which originates in the House is amended by the Senate and the House concurs in the amendments proposed and adopted by the Senate, the Commission staff shall engross said amendments in the original copy of the bill by typing or may generate a replacement original copy of the House bill through computerized process, before delivering the bill to the Enrolling Clerk of the House.

In cases of extreme emergency and during the last three days prior to sine die adjournment, where no correct printed copy can be produced, the Enrolling Clerk may enroll such bill or resolution by typing the same.

The original bill or resolution or replacement therefor, if applicable, and an enrolled copy shall be delivered to the Committee on Enrollment. The Enrolling Clerk shall certify that each are in the exact form as finally passed prior to such delivery. The Committee on Enrollment and the Enrolling Clerk shall jointly compare the original bill with the enrolled copy, and if the enrollment is ascertained to be correctly done, the Committee shall report the same to the House. If any bill or resolution is found not correctly enrolled, it shall be returned to the Enrolling Clerk to be properly enrolled and delivered to the Committee on Enrollment as is first provided herein.

Rule 64. Signing of Bills. The Enrolling Clerk of the House shall deliver the original and enrolled copies of House bills and resolutions signed by the Speaker to the Chairman of the Enrollment Committee of the Senate for presentation to the President of the Senate for his signature. When signed by the President of the Senate, the enrolled bill or resolution and the original copy thereof shall be returned by the Enrolling Clerk to the Clerk of the House who shall present the enrolled bill or resolution to the Governor for his approval and take his receipt for same.

Rule 65. Resolutions. Resolutions having the force and effect of law shall be treated and considered as bills in all respects under these rules. However, simple resolutions expressing the will of the House and all resolutions recommending a study by an interim committee may be considered for adoption after receiving a recommendation from a standing committee and being posted for passage by the Rules Committee. All resolutions recommending a study by an interim committee shall include an approximate cost of the proposed study. All resolutions recommending or requiring a study, or which recommend or create a task force or special committee of the Legislative Research Commission shall be concurrent or joint resolutions.

Rule 66. Legislative Citations. For the purpose of extending the commendations, condolences or congratulations of the General Assembly to a particular person, or to recognize a particular event or occasion, there may be issued a "Legislative Citation." Citations may not be used for procedural matters, matters of a controversial or partisan political nature, nor in place of resolutions memorializing the U.S. Congress, but only when appropriate to express the feeling of the House or of the General Assembly with reference to a person or event.

Each such citation shall be prepared in single copy on an artistically designed form, suitable for framing, shall bear the signature of the sponsor and the name of the person or event cited, and upon adoption shall be spread at length upon the Journal. Citations shall be considered in the order of business "Motions, Petitions and Communications," and without objection shall be adopted en bloc after reading individually by title. Citations shall be offered for consideration through presentation to the Clerk.

A resolution shall not be accepted for introduction if offered in lieu of a legislative citation.

VOTING

Rule 67. Roll Call. Any member, with a second, may demand a roll call on any matter pending before the House. The names of members shall be arranged alphabetically when taking a yea and nay vote.

Any time these rules require a roll-call vote, or a yea and a nay vote of the members, such vote may be taken by either a voice roll call or the electrical voting system, as ordered by the Speaker.

The Speaker, before each roll-call vote is taken, shall instruct the Clerk to sound the warning chimes installed in that part of the Capitol assigned to the use of the House.

During a roll call any one member, with a second, may request and be afforded a delay of two minutes prior to the closing of the roll. Only one such motion shall be observed during any one roll call.

Rule 68. Electrical Voting System. When the House is ready to vote upon any question requiring a roll call, and the vote is to be taken by the electrical roll call system, the Speaker shall announce:

"The question is on the passage of (designating the matter to be voted upon). All in favor of such question shall vote 'yea,' and all opposed shall vote 'nay.' The House roll is now open for voting."

The Speaker shall recognize any member who rises for the purpose of explaining his vote. No member shall be allowed to speak more than three minutes to explain his vote, and shall not speak at all if the question is not a debatable question.

When sufficient time has been allowed the members to vote and to explain their vote, the Speaker shall announce: "Have all voted?" "Does anyone desire to change his vote?" And after sufficient pause shall lock the roll call system and instruct the Clerk to record the vote. It shall be the responsibility of each member to determine the accuracy of his individual vote as registered opposite his name on the electrical roll call board and advise the Speaker of any desired change before the roll call system is locked.

The Clerk shall immediately start the recording equipment, and when completely recorded, shall present the result to the

Speaker who shall announce same to the House. The Clerk shall enter upon the Journal the result in the manner provided by the rules of the House.

At the same time the vote is recorded by the electric recording equipment an original and five duplicate roll call sheets shall be made showing the vote, two of which duplicates shall be for use of the press, and one copy shall be furnished to the Legislative Research Commission.

Rule 69. Voting for Others Prohibited. No member shall vote for another member, nor shall any person not a member cast a vote for a member. In addition to such penalties as may be prescribed by law, any member who shall vote or attempt to vote for another member may be punished in such manner as the House may determine. If a person not a member shall vote or attempt to vote for any member he shall be barred from the floor of the House for the remainder of the session and may be further punished in such manner as the House may deem proper, in addition to such punishment as may be prescribed by law.

Rule 70. Pairing. All pairs announced in the House shall be entered on the Journal.

Rule 71. Adjournment Extended During Roll Call. When the roll is being called in taking a yea and nay vote, and the hour of an adjournment arrives, the same shall stand extended until after said yea and nay vote has been completed and the result announced.

PRIVILEGE OF THE FLOOR

Rule 72. Persons Entitled to the Floor. No person shall be permitted upon the floor of the House when in session and two hours before and after the House is in session except the present members of the General Assembly and all officers and employees of the General Assembly. Bona fide newspaper correspondents designated in writing by the daily newspapers or press service they represent, shall be admitted to the floor when recommended by the Committee on Committees and shall be governed by the rules of the House and assigned by the Committee on Committees to a press section specifically set aside for them.

A special section of the gallery shall be reserved for the families and guests of members, who shall be admitted upon presentation of an identification card. Other persons shall be admitted to that part of the galleries not reserved for members' families. Members may submit the names of guests to the Clerk, who shall read the names to the House. Members shall not introduce guests from the floor.

Rule 73. Restriction of lobbying and access to the House Chambers and office areas. No person shall engage in lobbying for or against any measure while the House is in session, or in recess, in any of the corridors or passages or in any of the rooms in that part of the Capitol assigned to the use of the House, and no registered lobbyist shall enter that part of the Capitol while the House is in session. This rule shall not be construed to prohibit the use of the corridors or passages in going to and from the House galleries by any person.

Only authorized persons shall be allowed access to the office areas assigned for use of the members and staff of the House. For the purposes of this paragraph, "authorized person" means a member of the General Assembly, an employee of the General Assembly or Legislative Research Commission, or a person having obtained specific access authorization from such member or employee. For the purposes of this paragraph, "office areas" means the fourth floor of the Capitol.

Rule 74. Restrictions. No article, booklet, pamphlet or any other printed material shall be placed upon the desk of any member unless said article, booklet, pamphlet or other printed matter contains the signature of the author, or the party interested in the distribution thereof is clearly identified. All such articles, booklets, pamphlets or any other printed material shall conform to accepted public taste and shall contain no matter appealing to prurient interest or without redeeming social value. Such documents shall be delivered to the message room and shall upon direction of the Clerk after inspection, be placed in the members' bin. The Sergeant-at-Arms shall be charged with the duty of inspecting such material and seeing that no individual other than employees of the House under the direction of the Clerk or House members shall cause materials of any nature to be distributed in the House Chamber. Questions as to the propriety of such materials shall be referred to the Committee on Committees for resolution. Any material found so distributed by unauthorized individuals shall be collected from the members' desks and treated as litter.

RULES

Rule 75. Mason's Manual. In the absence of a specific rule of the House, *Mason's Manual of Legislative Procedure* shall govern the proceedings, except that in all cases where general parliamentary law provides for a rule of two-thirds, it shall mean in this House a majority of all members elected thereto.

Rule 76. Change of Rules. The rules of the House, after their adoption shall not be altered, changed, amended, suspended or interrupted, unless the same be done by a majority of the members elected to the House. No rule shall be suspended for the purpose of any action affecting the passage of a bill or resolution carrying the force of law unless the rule is suspended by a majority of the members elected to the House and by a roll call vote. Whenever a rule is suspended, no measure shall be considered under suspension except the measure or measures in whose favor the suspension was invoked, and only for that day.

HR 8 was adopted by voice vote.

Representative Stumbo moved the adoption of the following **HR 9**:

HR 9, A RESOLUTION extending an invitation to the pastors of the Frankfort churches to open sessions of the House of Representatives with prayer.

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

That the Sergeant at Arms be directed to invite the pastors of the various churches of Frankfort to attend the meetings of the House of Representatives and open the sessions thereof with prayer.

HR 9 was adopted by voice vote.

Representative Stumbo moved the adoption of the following **HR 10**:

HR 10, A RESOLUTION directing appointment of a committee to wait upon the Governor.

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

That the Speaker appoint a committee of this House to join a like committee from the Senate to wait upon the Governor and inform him that the General Assembly is prepared to receive any message he may care to deliver.

HR 10 was adopted by voice vote.

Introduction of Bills and Resolutions

Representative Stumbo moved that the reading of the prefiled bills Numbers 1 through 139 and resolutions Numbers 1 through 7 by individual sponsor, title and number be waived but be spread upon the Journal. Agreed.

HB 1, by Representatives Little and Collins: AN ACT relating to motor vehicle registration.

HB 2, by Representatives Bowling and Little: AN ACT relating to motor vehicle usage tax.

HB 3, by Representatives Johnson and Keith: AN ACT relating to jurisdiction over the Federal Correctional Institution site at Manchester, Kentucky, and declaring an emergency.

HB 4, by Representatives Bentley, Buis, French and Graham: AN ACT relating to fire protection.

HB 5, by Representative Sanders: AN ACT relating to taxation.

HB 6, by Representatives Gedling, Sanders, Maggard, Buis, Farley, Altman, Brown, Lyne, Noland, Bryant and Ford: AN ACT relating to timber.

HB 7, by Representatives Donnermeyer and Kerr: AN ACT relating to heating, ventilation, and air conditioning contractors.

HB 8, by Representative Burch: AN ACT relating to health and safety.

HB 9, by Representative Long: AN ACT relating to liens.

HB 10, by Representatives Bruce, Napier, Mullinix, Ford, Gee, Todd, Keith and Allen: AN ACT proposing to amend the Constitution of Kentucky relating to the ability of the General Assembly to punish the crime of sodomy.

HB 11, by Representative K. Harper: AN ACT relating to adoption.

HB 12, by Representative Farrow: AN ACT relating to the jurisdiction of police officers in cities of the fourth class.

HB 13, by Representative Long: AN ACT relating to revenue and taxation.

HB 14, by Representative Rapier: AN ACT relating to cemetery lots.

HB 15, by Representatives Callahan, Donnermeyer and Kerr: AN ACT relating to the jurisdiction of police officers in cities of the fourth and fifth classes.

HB 16, by Representatives Riner, Wayne, Hatcher, P. Clark, L. Clark, Shacklette, Gray, Butler, Burch, Northup, Stengel, DeWeese, Riggs, Lile, Yates, Ackerson and Heleringer: AN ACT relating to railroads.

HB 17, by Representative Butler: AN ACT relating to school buses.

HB 18, by Representatives Farrow and Arnold: AN ACT relating to tobacco.

HB 19, by Representative Callahan: AN ACT relating to motor vehicle registration.

HB 20, by Representative Rasche: AN ACT relating to property taxation.

HB 21, by Representative Callahan: AN ACT relating to the jurisdiction of police officers in cities of the fourth and fifth classes.

HB 22, by Representative Maggard: AN ACT relating to the execution of persons sentenced to death.

HB 23, by Representative Kerr: AN ACT relating to crimes and punishments.

HB 24, by Representative L. Clark: AN ACT relating to appointments to boards and commissions.

HB 25, by Representative Graham: AN ACT relating to the removal of cornea or corneal tissue in a coroner's case.

HB 26, by Representative Mason: AN ACT relating to an early retirement program and declaring an emergency.

HB 27, by Representatives Stumbo, Bentley and Collins: AN ACT relating to horse racing.

HB 28, by Representative Gray: AN ACT relating to health.

HB 29, by Representative Clarke: AN ACT relating to medical decisions.

HB 30, by Representatives Wayne, Clarke and Morris: AN ACT relating to campaign finance.

HB 31, by Representatives Sanders and Brown: AN ACT relating to property taxes.

HB 32, by Representative French: AN ACT relating to insurance.

HB 33, by Representative Coleman: AN ACT relating to the Council on Higher Education.

HB 34, by Representative Wayne: AN ACT relating to enforcement of the Kentucky Building Code.

HB 35, by Representative Zimmerman: AN ACT relating to school employees.

HB 36, by Representative Morris: AN ACT relating to the provision of medical and related care and treatment.

HB 37, by Representative L. Clark: AN ACT relating to revenue and taxation.

HB 38, by Representatives Callahan and Donnermeyer: AN ACT relating to taxation and declaring an emergency.

HB 39, by Representatives Yates, P. Clark, Lyne and Northup: AN ACT relating to jails.

HB 40, by Representative Little: AN ACT relating to motor vehicles.

HB 41, by Representative Lee: AN ACT relating to motor carriers.

HB 42, by Representative Altman: AN ACT relating to motor vehicle registration plates.

HB 43, by Representative Yates: AN ACT relating to boiler inspection fees.

HB 44, by Representative Ridley: AN ACT relating to property tax administration.

HB 45, by Representative Gray: AN ACT relating to donations for free public libraries.

HB 46, by Representatives Scorsone, Crenshaw and Trapp: AN ACT relating to superintendent screening committees, and declaring an emergency.

HB 47, by Representative Sanders: AN ACT relating to motor carriers.

HB 48, by Representative Donnermeyer: AN ACT relating to state policy on geographic information systems.

HB 49, by Representatives Rasche and Curd: AN ACT relating to superintendents.

HB 50, by Representatives Rasche and Curd: AN ACT relating to classified employees.

HB 51, by Representative Curd: AN ACT relating to speech-language pathology.

HB 52, by Representative Donnermeyer: AN ACT relating to the Capital Projects and Bond Oversight Committee.

HB 53, by Representative Burch: AN ACT relating to children.

HB 54, by Representatives Scorsone, Burch and Long: AN ACT relating to health care services.

HB 55, by Representative Lindsay: AN ACT proposing an amendment to the Constitution of Kentucky relating to the qualifications of members of the Kentucky General Assembly and members of the United States Congress elected from Kentucky.

HB 56, by Representative Donnermeyer: AN ACT relating to information resources management.

HB 57, by Representative Mullinix: AN ACT relating to congressional districts and declaring an emergency.

HB 58, by Representative Lindsay: AN ACT relating to deputy sheriff merit training programs.

HB 59, by Representative Burch: AN ACT relating to prohibiting the use of corporal physical discipline or punishment on children in out-of-home placement.

HB 60, by Representative Sanders: AN ACT relating to economic development.

HB 61, by Representative Lindsay: AN ACT relating to insurance rates.

HB 62, by Representative Callahan: AN ACT relating to the Commission on Fire Protection Personnel Standards and Education.

HB 63, by Representative Zimmerman: AN ACT relating to motor vehicle operator's licenses.

HB 64, by Representative Donnermeyer: AN ACT relating to open records of public agencies.

HB 65, by Representative Moberly: AN ACT relating to school-based decision making.

HB 66, by Representative Moberly: AN ACT relating to school-based decision making.

HB 67, by Representative Moberly: AN ACT relating to textbooks.

HB 68, by Representative Moberly: AN ACT relating to education.

HB 69, by Representative Gray: AN ACT relating to minority representation.

HB 70, by Representative Gray: AN ACT relating to motor vehicle insurance.

HB 71, by Representative Rapier: AN ACT relating to motor vehicle insurance.

HB 72, by Representative L. Clark: AN ACT relating to state financial administration.

HB 73, by Representatives Wayne, Noland and Donnermeyer: AN ACT relating to housing.

HB 74, by Representative Lear: AN ACT relating to economic assistance for local governments.

HB 75, by Representative Long: AN ACT relating to motor fuels.

HB 76, by Representative Long: AN ACT relating to the taxation and regulation of cigarettes.

HB 77, by Representative Long: AN ACT relating to taxation.

HB 78, by Representative Long: AN ACT relating to revenue and taxation.

HB 79, by Representative Long: AN ACT relating to abandoned property.

HB 80, by Representative Long: AN ACT relating to revenue and taxation.

HB 81, by Representative Long: AN ACT relating to property tax.

HB 82, by Representative Long: AN ACT relating to property taxation.

HB 83, by Representative Long: AN ACT relating to revenue and taxation.

HB 84, by Representative Long: AN ACT relating to property tax administration.

HB 85, by Representative Long: AN ACT relating to state depositories.

HB 86, by Representative Arnold: AN ACT relating to cooperative extension service programs.

HB 87, by Representative Burch: AN ACT relating to disease control.

HB 88, by Representative Bowling: AN ACT relating to state lease of property.

HB 89, by Representative Bowling: AN ACT relating to crimes and punishments.

HB 90, by Representatives Graham and Sanders: AN ACT relating to transfers of motor vehicles.

HB 91, by Representative Coleman: AN ACT relating to school councils.

HB 92, by Representative Arnold: AN ACT relating to fire departments.

HB 93, by Representative Bowling: AN ACT relating to lease of property for state use.

HB 94, by Representative Bowling: AN ACT relating to crimes and punishments.

HB 95, by Representative Mason: AN ACT relating to prosecution of crimes.

HB 96, by Representative Damron: AN ACT relating to sexual offenders.

HB 97, by Representative Stumbo: AN ACT relating to the Commissioner of Education.

HB 98, by Representative Bowling: AN ACT relating to energy efficiency in government buildings.

HB 99, by Representative Long: AN ACT relating to revenue and taxation.

HB 100, by Representative Long: AN ACT relating to alcohol beverage licenses.

HB 101, by Representative Mason: AN ACT relating to education of students.

HB 102, by Representative Damron: AN ACT relating to the creation of an Office of Health Care Accountability.

HB 103, by Representative Long: AN ACT relating to revenue and taxation.

HB 104, by Representative Long: AN ACT relating to property tax administration.

HB 105, by Representative Long: AN ACT relating to corporation taxation.

HB 106, by Representative Long: AN ACT relating to sales and use tax.

HB 107, by Representative Long: AN ACT relating to income tax and declaring an emergency.

HB 108, by Representative Bowling: AN ACT relating to the granting of visitation rights to grandparents.

HB 109, by Representative Mason: AN ACT relating to medical treatment for children.

HB 110, by Representative Damron: AN ACT relating to child day-care.

HB 111, by Representative Bowling: AN ACT relating to crimes and punishments.

HB 112, by Representative Bowling: AN ACT relating to reporting of specified incidents.

HB 113, by Representative Noland: AN ACT relating to property taxation.

HB 114, by Representative Bowling: AN ACT relating to sale of real property.

HB 115, by Representative Damron: AN ACT relating to sexual misconduct by professionals.

HB 116, by Representative Long: AN ACT relating to sales and use tax.

HB 117, by Representative Donnermeyer: AN ACT relating to the protection of unborn children.

HB 118, by Representative Donnermeyer: AN ACT proposing amendments to Section 36 of the Constitution of Kentucky relating to legislative sessions.

HB 119, by Representative Lindsay: AN ACT relating to zoning map amendments.

HB 120, by Representative Altman: AN ACT relating to legislative agents and their employers.

HB 121, by Representative Long: AN ACT relating to revenue and taxation.

HB 122, by Representative Long: AN ACT relating to amusement machines and declaring an emergency.

HB 123, by Representative L. Clark: AN ACT relating to the duties of the mayor in cities of the first class.

HB 124, by Representative Mason: AN ACT proposing an amendment to Section 19 of the Constitution of Kentucky relating to contracts.

HB 125, by Representative Hancock: AN ACT relating to operating records of motorists.

HB 126, by Representative Ridley: AN ACT relating to cable television.

HB 127, by Representative Coleman: AN ACT relating to health care reform.

HB 128, by Representative Bentley: AN ACT relating to the state tree of Kentucky.

HB 129, by Representative Damron: AN ACT relating to revenue and taxation and declaring an emergency.

HB 130, by Representatives Coleman and Graham: AN ACT relating to criminal matters.

HB 131, by Representatives Graham and French: AN ACT relating to schools.

HB 132, by Representative Mason: AN ACT relating to insurance.

HB 133, by Representative Riggs: AN ACT relating to the regulation of voting.

HB 134, by Representative Riggs: AN ACT relating to candidate nomination filing papers.

HB 135, by Representatives Graham and Coleman: AN ACT relating to the quality of motor fuels and declaring an emergency.

HB 136, by Representative L. Clark: AN ACT relating to automobile dealer license plates.

HB 137, by Representative Buis: AN ACT relating to emergency medical services.

HB 138, by Representative Ridley: AN ACT relating to crimes and punishments.

HB 139, by Representatives Graham and French: AN ACT relating to school employees.

HR 1, by Representative Wayne: A RESOLUTION petitioning the House of Representatives of the United States Congress and the Department of Housing and Urban Development of the United States to simplify the application procedures and requirements for obtaining funds from affordable housing programs.

HCR 2, by Representatives Ballard, Zimmerman, Riggs, Yates, Morris, Napier, Bentley, Maggard and Turner: A CONCURRENT RESOLUTION requesting and petitioning the Congress of the United States to propose for submission to the states an amendment to the United States Constitution to prohibit the physical desecration of the American flag.

HJR 3, by Representatives Trapp, Scorsone, Palumbo and Lear: A JOINT RESOLUTION recognizing the Kentucky Aviation Hall of Fame, Inc. as the official Aviation Hall of Fame of Kentucky.

HCR 4, by Representatives Ballard, Maggard, Bruce, Morris, Bentley, Turner, Napier and Zimmerman: A CONCURRENT RESOLUTION requesting the Legislative Research Commission to reestablish the Subcommittee on Veterans' Affairs.

HJR 5, by Representative Rapier: A JOINT RESOLUTION designating Bernheim Arboretum and Research Forest the official arboretum of the Commonwealth of Kentucky.

HJR 6, by Representative Bowling: A JOINT RESOLUTION designating the first Sunday of June and the six days thereafter National Garden Week.

HJR 7, by Representative Zimmerman: A JOINT RESOLUTION directing the Governor of the Commonwealth of Kentucky to submit a written certification to the United States Secretary of Transportation that the Kentucky General Assembly has determined that the State enactment of the "Drug Offender's Driving Privileges Suspension Act of 1990" is not required in order to be in compliance with that of Federal Public Law 101-516.

HB 140, by Representatives Farrow and McElroy: AN ACT relating to ratite birds.

HB 141, by Representative Farrow: AN ACT relating to motor vehicle accidents.

HB 142, by Representatives Farley, Lile, Gee, Ford and Buis: AN ACT relating to individual income tax and declaring an emergency.

HB 143, by Representatives Farley, Buis, Gee and Ford: AN ACT relating to inheritance and estate taxes.

HB 144, by Representative Heleringer: AN ACT relating to motor vehicles usage tax.

HB 145, by Representative Heleringer: AN ACT relating to midwifery and making an appropriation therefor.

HB 146, by Representative K. Harper: AN ACT proposing an amendment to Section 32 of the Constitution of Kentucky relating to the qualifications of members of the Kentucky General Assembly.

HB 147, by Representative Hatcher: AN ACT relating to crimes and punishments.

HB 148, by Representative Long: AN ACT relating to campaign finance.

HB 149, by Representative Long: AN ACT relating to local government leasing of property.

HB 150, by Representative Donnermeyer: AN ACT relating to nonprofit corporations.

HB 151, by Representative Burch: AN ACT relating to child abuse.

HB 152, by Representative Burch: AN ACT relating to the State Interagency Council for Services to Children with an Emotional Disability.

HB 153, by Representative Gray: AN ACT relating to donations for public libraries.

HB 154, by Representative Curd: AN ACT relating to higher education.

HB 155, by Representative Donnermeyer: AN ACT relating to motor vehicles.

HCR 11, by Representative Donnermeyer: A CONCURRENT RESOLUTION requesting the Legislative Program Review and Investigation Committee to study nonprofit corporation laws.

Motions, Petitions and Communications

Representative Stumbo announced the following Committee on Committee changes:

Agriculture and Small Business: Chair: Representative Mark Farrow; **Vice Chair:** Representatives Royce Adams, June Lyne, Sam McElroy, and Richard Sanders, Jr.; **Members:** Representatives Adrian Arnold, Jeffrey Buis, Jack Coleman, Kenny French, Donnie Gedling, Walter Gee, Drew Graham, Thomas Kerr, Ray Mullinix, Jon David Reinhardt, Donna Shacklette, Billy Ray Smith, and Richard Turner.

Appropriations and Revenue: Chair: Representative Marshall Long; **Vice Chair:** Representatives Jim Callahan, Charles Geveden, and Bob Heleringer; **Members:** Representatives Rocky Adkins, Joe Barrows, Russell Bentley, Mark Brown, Larry Clark, Danny Ford, Leonard Gray, Hank Hancock, Ken Harper, Porter Hatcher, Jr., Jim LeMaster, Paul Mason, Harry Moberly, Clarence Noland, Anne Northup, Ruth Ann Palumbo, Kenny Rapier, Ernesto Scorsone, Richard Turner, and Pete Worthington.

Banking and Insurance: Chair: Representative Billy Ray Smith; **Vice Chair:** Representatives Ray Altman, Eddie Ballard, and Steven Riggs; **Members:** Representatives Jon Ackerson, James Bruce, Stanton Cave, Herbie Deskins, Mark Farrow, Elbert Hampton, Porter Hatcher, Jr., Louis Johnson, Richard Lewis, Ramsey Morris, Stephen Nunn, Frank Rasche, Dorsey Ridley, Rex Smith, David Stengel, and Mark Treesh.

Business Organizations and Professions: Chair: Representative Jim Yates; **Vice Chair:** Representatives Jon Ackerson, Denver Butler, Robert Damron, and Porter Hatcher, Jr.; **Members:** Representatives Woody Allen, Tom Burch, Jim Callahan, Larry Clark, Bill Donnermeyer, Leonard Gray, Stephen Keith, Bill Lear, Bill Lile, Ruth Ann Palumbo, Jon David Reinhardt, Donna Shacklette, and Charles Walton.

Cities: Chair: Representative Bill Donnermeyer; **Vice Chair:** Representatives Jim Callahan, Bob DeWeese, and Jim LeMaster; **Members:** Representatives Louis Johnson, Clarence Noland, Charles Walton, and Jim Wayne.

Counties and Special Districts: Chair: Representative Adrian Arnold; **Vice Chair:** Representatives Danny Ford, Donnie Gedling, and June Lyne; **Members:** Representatives Royce Adams, Ray Altman, Russell Bentley, Kaye Bondurant, Jeffrey Buis, Mark Farrow, Kenny French, Walter Gee, Drew Graham, Elbert Hampton, Hank Hancock, Sam McElroy, Steven Riggs, Billy Ray Smith, and Mark Treesh.

Economic Development: Chair: Representative Bill Lear; **Vice Chair:** Representatives Donald Farley, Jim Maggard, and John Will Stacy; **Members:** Representatives Kaye Bondurant, Jo Elizabeth Bryant, Jack Coleman, Jesse Crenshaw, Robert Damron, Gross Lindsay, June Lyne, Lonnie Napier, Fred Nesler, Anne Northup, Tom Riner, Donna Shacklette, Tommy Todd, Leslie Trapp, Charles Walton, and Jim Yates.

Education: Chair: Representative Freed Curd; **Vice Chair:** Representatives Bill Lile, Frank Rasche, and Tom Riner; **Members:** Representatives Joe Barrows, Russell Bentley, Jo Elizabeth Bryant, Jack Coleman, Stephen Keith, Thomas Kerr, Richard Lewis, Clayton Little, Harry Moberly, Anne Northup, Kenny Rapier, Jody Richards, Ernesto Scorsone, Leslie Trapp, and James Zimmerman.

Elections and Constitutional Amendments: Chair: Representative Paul Clark; **Vice Chair:** Representative Gross Lindsay; **Members:** Representatives James Bruce, Larry Clark, Freed Curd, Bob DeWeese, Leonard Gray, Thomas Jensen, and Jody Richards.

Health and Welfare: Chair: Representative Tom Burch; **Vice Chair:** Representatives Jesse Crenshaw, Paul Mason, and Tommy Todd; **Members:** Representatives Stanton Cave, Paul Clark, Robert Damron, Bob DeWeese, Bill Donnermeyer, Bob Heleringer, Ramsey Morris, Stephen Nunn, Ruth Ann Palumbo, Tom Riner, and Ernesto Scorsone.

Judiciary: Chair: Representative Louis Johnson; **Vice Chair:** Representatives Stanton Cave, Charles Geveden, and Thomas Kerr; **Members:** Representatives Jon Ackerson, Michael Bowling, Jeffrey Buis, Jesse Crenshaw, Herbie Deskins, Danny Ford, Bob Heleringer, Richard Lewis, Gross Lindsay, Frank Rasche, Stephen Riggs, and David Stengel.

Labor and Industry: Chair: Representative Ron Cyrus; **Vice Chair:** Representatives Jo Elizabeth Bryant, Denver Butler, and Charles Nelson; **Members:** Representatives Rocky Adkins, Mark Brown, Paul Clark, Hubert Collins, Donald Farley, Walter Gee, Thomas Jensen, Clayton Little, Fred Nesler, Stephen Nunn, Mark Treesh, and Jim Wayne.

Natural Resources and Environment: Chair: Representative Herbie Deskins; **Vice Chair:** Representatives Woody Allen, Mark Brown, and Jim Maggard; **Members:** Representatives Rocky Adkins, Adrian Arnold, Hubert Collins, Donald Farley, Richard Fox, Thomas Jensen, Jim LeMaster, Jimmie Lee, Bill Lile, Paul Mason, Sam McElroy, Harry Moberly, Charles

Nelson, Clarence Noland, Dorsey Ridley, Rex Smith, and Richard Turner.

State Government: Chair: Representative Ramsey Morris; **Vice Chair:** Representatives Eddie Ballard, James Bruce, and Ray Mullinix; **Members:** Representatives Joe Barrows, Donnie Gedling, Charles Geveden, Ken Harper, Bill Lear, Jimmie Lee, Lonnie Napier, Kenny Rapier, Jon David Reinhardt, Jody Richards, John Will Stacy, Tommy Todd, Jim Wayne, Pete Worthington, Jim Yates, and James Zimmerman.

Tourism Development and Energy: Chair: Representative Rex Smith; **Vice Chair:** Representatives Richard Fox, Ken Harper, and Charles Nelson; **Members:** Representatives Royce Adams, Woody Allen, Eddie Ballard, Kaye Bondurant, Michael Bowling, Ron Cyrus, Drew Graham, Elbert Hampton, Richard Sanders, Jr., David Stengel, Leslie Trapp, and James Zimmerman.

Transportation: Chair: Representative Clayton Little; **Vice Chair:** Representatives Hubert Collins; Kenny French, Stephen Keith, and Dorsey Ridley; **Members:** Representatives Ray Altman, Michael Bowling, Denver Butler, Freed Curd, Ron Cyrus, Richard Fox, Hank Hancock, Jimmie Lee, Jim Maggard, Paul Mason, Ray Mullinix, Lonnie Napier, Fred Nesler, Richard Sanders, Jr., John Will Stacy, and Pete Worthington.

Representative Stumbo announced the tentative meeting schedule for the House of Representatives as follows: Mondays, 4:00 p.m.; Tuesdays, Wednesdays and Thursdays, 2:00 p.m.; and Fridays, 9:00 a.m.

Announcements

The Clerk announced the following meetings:

Majority Caucus, 12 noon, January 5, 1994, Willis Room

Chairmen of Caucuses, 9:00 a.m., January 5, 1994, Willis Room

Health and Welfare, 10:00 a.m., January 6, 1994, Room 129

Natural Resources and Environment, 3:00 p.m., January 10, 1994

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Wednesday, January 5, 1994.

On the roll call the vote was **Yeas 77**--Ackerson, Adams, Adkins, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Brown, Buis, Butler, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, Deskins, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gee, Graham, Gray, Hampton, Hancock, K. Harper, Hatcher, Jensen, Johnson, Kerr, Lear, Lee, Lewis, Lindsay, Little, Lyne, Mason, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Northup, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riggs, Riner, Sanders, Scorsone, Shacklette, B. Smith, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 2**--LeMaster, Lile.

The motion to adjourn was adopted.

HB 181, by Representative Morris: AN ACT relating to sales and use tax.

HB 182, by Representatives Graham and Arnold: AN ACT relating to teachers' retirement.

HB 183, by Representative McElroy: AN ACT relating to the Kentucky Judicial Form Retirement System.

HB 184, by Representative McElroy: AN ACT relating to motor vehicles.

HB 185, by Representative Arnold: AN ACT relating to local government data collection.

HB 186, by Representative Arnold: AN ACT relating to water and sewer services.

HB 187, by Representative Moberly: AN ACT relating to the primary program.

HR 12, by Representative Damron: A RESOLUTION memorializing former Representative Robert L. Gullette, Sr., of Jessamine County.

HJR 13, by Representatives Collins, Stumbo, Deskins, Mason, Little, Altman, French, Fox, Nesler, Stacy, McElroy, Gedling, Bowling, Bruce and Nelson: A JOINT RESOLUTION directing the secretary of the Transportation Cabinet to designate United States Route 23, "The Country Music Highway".

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Agriculture and Small Business: **HB 140, HB 18, HB 6, HB 135**

Appropriations and Revenue: **HB 142, HB 143, HB 145, HB 13, HB 20, HB 5, HB 75, HB 76, HB 77, HB 78, HB 79, HB 80, HB 81, HB 82, HB 83, HB 44, HB 84, HB 99, HB 100, HB 103, HB 104, HB 105, HB 106, HB 107, HB 113, HB 116, HB 121, HB 122, HB 129, HB 31, HB 37, HB 38, HB 85**

Banking and Insurance: **HB 61, HB 70, HB 71, HB 132, HB 32**

Business Organizations and Professions: **HB 150, HCR 11, HB 27, HB 8, HB 7, HB 43**

Cities: **HB 153, HB 21, HB 12, HB 15, HB 73, HB 123, HB 34**

Counties and Special Districts: **HB 62, HB 4, HB 86, HB 92, HB 119, HB 39, HB 45, HB 58, HB 149**

Economic Development: **HB 60, HB 74**

Education: **HB 154, HB 67, HB 68, HB 69, HB 91, HB 97, HB 101, HB 115, HB 131, HB 139, HB 66, HB 65, HB 33, HB 35, HB 50, HB 51, HB 49, HB 46**

Elections and Constitutional Amendments: **HB 148, HB 30, HB 124, HB 134, HB 133, HB 10, HB 118, HB 55, HB 146, HCR 2**

Health and Welfare: **HB 151, HB 152, HB 117, HB 53, HB 28, HB 29, HB 25, HB 87, HB 95, HB 96, HB 102, HB 110, HB 54, HB 127, HB 59, HB 137, HB 109**

Judiciary: **HB 141, HB 147, HB 23, HB 22, HB 9, HB 11, HB 14, HB 3, HB 89, HB 94, HB 108, HB 111, HB 112, HB 114, HB 130, HB 138, HB 36**

State Government: **HB 56, HB 26, HB 24, HB 88, HB 93, HB 98, HB 120, HB 128, HB 57, HB 64, HB 52, HB 72, HB 48, HJR 3, HCR 4, HJR 5, HJR 6**

Tourism and Energy: **HB 126**

Transportation: **HB 144, HB 155, HB 63, HB 16, HB 17, HB 19, HB 1, HB 2, HB 136, HB 40, HB 47, HB 42, HB 125, HJR 7, HB 41**

Motions, Petitions and Communications

Representative Stumbo moved that the three day posting requirement be waived on the following bills passed by interim Committees: **HB 17, HB 1, HB 2, HB 3, HB 4, HB 19, HB 33, HB 35, HB 41, HB 50, HB 73, HB 49, HB 74**, and **HB 51**. Agreed.

Representative Lindsay moved that the rules be suspended to introduce guests. Agreed.

Representative Graham moved that **HB 90** be withdrawn. Agreed.

Representative Sanders moved that he be withdrawn as co-sponsor of **HB 90**. Agreed.

Representative L. Clark moved the adoption of the following **Legislative Citation No. 6**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in loving memory of Joseph Paul Blair. The House of Representatives joins Representative Larry Clark in expressing its deepest sympathy to The Blair Family.

Representative Long moved the adoption of the following **Legislative Citation No. 7**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in honor of John M. Berry, Jr. The House of Representatives joins Representative Marshall Long in wishing the former State Senator John M. Berry, Jr., a speedy recovery.

Representative Geveden moved the adoption of the following **Legislative Citation No. 1**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to Jimmy Wray for receiving the highest degree of membership awarded by the National FFA Organization The American FFA Degree. The entire membership extends its very best wishes on this memorable occasion and expresses the hope for continued good fortune.

Representative Stumbo moved that the rules be suspended to introduce guests. Agreed.

Representative Stumbo informed the committee Chairs that the three day posting requirement waived applies only to interim bills acted favorably upon by committees.

Representative Maggard moved that the rules be suspended to allow co-sponsors. Agreed.

The following members filed requests to have their names added as co-sponsors: **HB 4**, Representative Lee; **HB 132**, Representative Bentley; **HB 17** and **HB 41**, Representative Nesler.

Announcements

The Clerk announced the following meetings:

Majority Caucus, 12 Noon, January 6, 1994

Jefferson County delegation, 10:00 a.m., January 6, 1994, Room 125

Western Kentucky Caucus, 8:00 a.m., January 6, 1994

State Government, 11:00 a.m., January 6, 1994, Room 149

Labor and Industry, January 6, 1994, canceled

Judiciary, January 6, 1994, canceled

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Thursday, January 6, 1994.

On the roll call the vote was **Yeas 86**--Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bruce, Bryant, Buis, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Harper, Jensen, Johnson, Keith, Kerr, Lear, Lee, Lindsay, Long, Lyne, Maggard, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riggs, Riner, Sanders, Scorsone, Shacklette, B. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 3** --Heleringer, LeMaster, Lile

The motion to adjourn was adopted.

THURSDAY, JANUARY 6, 1994

THIRD LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend K. L. Moore, First Baptist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Deskins, Little and Stumbo.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of January 5, 1994 be dispensed with and the same approved. Agreed.

Representative Harper moved that the rules be suspended to introduce guests, to grant floor privileges to the Covington Catholic High School Football team, and to act upon a Legislative Citation. Agreed.

Representative Harper moved the adoption of the following **Legislative Citation No. 4**.

The House of Representatives of the Commonwealth of Kentucky hereby applauds your effort and offers its sincerest congratulations to Covington Catholic High School Football Team for your victorious football season. Your contributions have been outstanding, and you have brought a great deal of recognition to your school and your community. The House of Representatives joins with Representative Ken Harper in honoring you on winning the 1993 Class AAA Football Championship and wishes you every success in the future.

On the roll call the vote was **Yeas 86**--Ackerson, Adams, Adkins, Allen, Altman, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bruce, Bryant, Buis, Burch, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Crenshaw, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Heleringer, Jensen, Johnson, Keith, Kerr, Lee, LeMaster, Lewis, Lile, Lindsay, Little, Long, Lyne, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Richards, Ridley, Riggs, Riner, Sanders, Scorsone, Shacklette, B. Smith, R. Smith, Stengel, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 0**.

Legislative Citation No. 4 was adopted.

Representative Harper moved that the rules be suspended to introduce guests, grant floor privileges to the Beechwood High School Football team and to act upon a Legislative Citation. Agreed.

Representative Harper moved the adoption of the following **Legislative Citation No. 3**.

The House of Representatives of the Commonwealth of Kentucky hereby applauds your effort and offers its sincerest congratulations to Beechwood High School Football Team for your victorious football season. Your contributions have been outstanding, and you have brought a great deal of recognition to your school and your community. The House of Representatives joins with Representative Ken Harper in honoring you on winning the 1993 Class A Football Championship and wishes you every success in the future.

On the roll call the vote was **Yeas 86**--Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley,, Bowling, Brown, Bruce, Bryant, Buis, Burch, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Heleringer, Jensen, Johnson, Keith, Kerr, Lee, LeMaster, Lile, Lindsay, Long, Lyne, Maggard, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riggs, Riner, Sanders, Scorsone, Shacklette, R. Smith, Stacy, Stengel, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Zimmerman. **Nays 0**.

Legislative Citation No. 3 was adopted.

Introduction of Bills and Resolutions

HB 188, by Representative Nunn: AN ACT relating to the collection of data.

HB 189, by Representative Nunn: AN ACT relating to family care homes.

HB 190, by Representatives Nunn, Burch, DeWeese, Scorsone, Palumbo, Heleringer and Crenshaw: AN ACT relating to the Kentucky Multidisciplinary Commission on Child Sexual Abuse.

HB 191, by Representative Johnson: AN ACT relating to children.

HB 192, by Representative McElroy: AN ACT relating to pharmacy services.

HB 193, by Representative Lear: AN ACT relating to motor vehicles.

HB 194, by Representative Nunn: AN ACT relating to grandparent visitation.

HB 195, by Representative Burch: AN ACT relating to limiting the access of local citizen review boards to the records for foster parents.

HB 196, by Representatives Lear, LeMaster and Harper: AN ACT relating to inheritance and estate taxes.

HB 197, by Representative Geveden: AN ACT relating to crimes and punishments.

HB 198, by Representative Bowling: AN ACT relating to motor vehicle operators.

HB 199, by Representative Bowling: AN ACT relating to motor vehicle usage tax.

HB 200, by Representative Riggs: AN ACT relating to disabilities and the disabled.

HB 201, by Representatives Bryant, Bowling, Noland, Lyne and Maggard: AN ACT relating to special license plates.

HB 202, by Representative Riggs: AN ACT relating to counties.

HB 203, by Representative Lewis: AN ACT relating to employee benefits.

HB 204, by Representative Geveden: AN ACT relating to the Kentucky Unified Juvenile Code.

HB 205, by Representative Geveden: AN ACT relating to the Kentucky Unified Juvenile Code.

HB 206, by Representatives Donnermeyer, Callahan, Butler, Shacklette, L. Clark, Damron, Yates, Harper, Kerr, Reinhardt, Burch, Walton, Ackerson, Gray and Hatcher: AN ACT relating to charitable gaming, making an appropriation, and declaring an emergency.

HB 207, by Representatives Lear, Burch, Long, Mason and Donnermeyer: AN ACT relating to the treatment of the mentally ill, and making an appropriation therefor.

HB 208, by Representative Ridley: AN ACT relating to vehicles.

HR 14, by Representative Bowling: A RESOLUTION driving under the influence.

HR 15, by Representatives Riggs and Zimmerman: A RESOLUTION relating to state government's policies on the closing of state offices due to inclement weather.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Appropriations and Revenue: **HB 157, HB 159, HB 171, HB 181**

Banking and Insurance: **HB 177**

Business Organizations and Professions: **HB 163**

Cities: **HB 178**

Counties and Special Districts: **HB 165, HB 186**

Education: **HB 169, HB 176, HB 187, HB 182**

Elections and Constitutional Amendments: **HB 156, HB 172**

Judiciary: **HB 158, HB 161, HB 162, HB 164, HB 173, HB 179, HB 183, HB 160**

Natural Resources and Environment: **HB 174**

State Government: **HB 166, HB 167, HB 175, HB 180, HB 185**

Tourism Development and Energy: **HB 168**

Transportation: **HJR 13, HB 170, HB 184**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Appropriations and Revenue: **HB 13, HB 75, HB 79, HB 80, HB 81, HB 83 HB 84, HB 99, HB 100, HB 103, HB 104, HB 105, HB 106, HB 107, HB 116, HB 121, HB 122**

Counties and Special Districts: **HB 4, HB 39, HB 45, HB 58, HB 62, HB 86, HB 92, HB 119**

Agriculture and Small Business: **HB 6, HB 18, HB 135, HB 140**

Banking and Insurance: **HB 32, HB 71**

Cities: **HB 12, HB 15, HB 21, HB 34, HB 123**

Motions, Petitions and Communications

Speaker Pro Tem Clark assumed the Chair.

Representative Clarke moved the adoption of the following **Legislative Citation No. 9**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in loving memory of Judge Harold J. Stumbo. The House of Representatives joins Speaker Joe Clarke in expressing its deepest sympathy to The Stumbo Family for the loss of your affectionate husband and loving father. Judge Harold J. Stumbo, shall be remembered as a dedicated family member, valued friend, and respected member of the judiciary.

Roll call to show co-sponsors of **Legislative Citation No. 9** is as follows:

Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bruce, Bryant, Buis, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Heleringer, Jensen, Johnson, Keith, Kerr, Lear, Lee, LeMaster, Lewis, Lile, Lindsay, Little, Long, Lyne, Maggard, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riggs, Riner, Sanders, Scorsone, Shacklette, B. Smith, R. Smith, Stacy, Stengel, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman.

Speaker Clarke resumed the Chair.

Representative Gray moved that **HB 70** be withdrawn. Agreed.

Representative Jensen moved the adoption of the following **Legislative Citation No. 8**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in loving memory of E. G. Curry. The House of Representatives joins Representative Tom Jensen in expressing its deepest sympathy to The Curry Family.

Representative Bowling moved the adoption of the following **HR 14**:

HR 14, A RESOLUTION relating to driving under the influence.

WHEREAS, many news media reporters and editors refer regularly to "drunk driving" in stories relating to violations of KRS Chapter 189A; and

WHEREAS, "drunk driving" is not the proper term to utilize and is misleading, causing one to think only of violations involving alcoholic beverages; and

WHEREAS, the proper term is "operating a motor vehicle while under the influence," and "influence" includes not only the influence of alcoholic beverages but also includes "any other substance which may impair one's driving ability;" and

WHEREAS, other substances which may impair one's driving ability can include drugs, controlled substances, glue sniffing, and prescription medications; and

WHEREAS, the law prohibits the use of these other substances singly, in combination with each other, or in combination with alcoholic beverages if the result is an impairment in driving ability; and

WHEREAS, this inaccurate reporting causes drivers, the general public, and the courts to minimize the importance of driving under the influence of these other substances which may impair one's driving ability.

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. That the news media, in reporting on cases of a violation of KRS Chapter 189A relating to "driving under the influence" are urged to report the offense properly and identify when possible, the other substance which is alleged to have impaired one's driving ability, either singly, in combination with another substance, or in combination with alcohol, as well as cases involving alcoholic beverages.

HR 14 was adopted by voice vote.

Announcements

The Clerk announced the following meetings:

All House members, upon adjournment, Room 129

Appropriations and Revenue, 10:00 a.m., Tuesday, January 11, 1994

Banking and Insurance, 10:00 a.m., Thursday, January 13, 1994, Room 149

Banking and Insurance, Tuesday, January 11, 1994, canceled

Adjournment

Representative Stumbo moved that the House adjourn until 9:00 a.m., Friday, January 7, 1994.

On the roll call the vote was **Yeas 82**--Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Brown, Bruce, Bryant, Buis, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Graham, Gray, Hampton, Harper, Hatcher, Jensen, Johnson, Keith, Kerr, Lear, Lewis, Lindsay, Long, Lyne, Maggard, Mason, McElroy, Moberly, Morris, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riner, Scorsone, Shacklette, B. Smith, R. Smith, Stacy, Stengel, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 4**--Heleringer, LeMaster, Lile, Riggs.

The motion to adjourn was adopted.

FRIDAY, JANUARY 7, 1994

FOURTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Father Theodore Keller, Church of the Good Shepherd, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Bowling, Deskins, Farrow, Fox, Geveden, Heleringer, Johnson, Lear, Little, Rasche, Ridley, B. Smith and Stumbo.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of January 6, 1994 be dispensed with and the same approved. Agreed.

Representative Hancock moved that the rules be suspended to introduce guests and grant floor privileges to his daughters. Agreed.

Introduction of Bills and Resolutions

HB 209, by Representatives Bentley, Mason and Maggard: AN ACT relating to school facilities.

HB 210, by Representatives Ford and Altman: AN ACT relating to crimes and punishments.

HB 211, by Representative Bentley: AN ACT relating to professional development for educators.

HB 212, by Representative Lindsay: AN ACT relating to education.

HB 213, by Representatives Butler, L. Clark, Shacklette, Yates, P. Clark, Gray, Wayne, Stengel, Riner, Callahan, Riggs, Rasche and Donnermeyer: AN ACT relating to reporting of specified incidents.

HB 214, by Representative Donnermeyer: AN ACT relating to emergency medical services personnel.

HB 215, by Representatives Lewis and Lear: AN ACT relating to safety.

HB 216, by Representative Bentley: AN ACT relating to school councils.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Appropriations and Revenue: **HB 196, HB 199**

Business Organizations and Professions: **HB 206**

Counties and Special Districts: **HB 202**

Education: **HB 203**

Health and Welfare: **HB 188, HB 189, HB 190, HB 192, HB 195, HB 200, HB 207**

Judiciary: **HB 191, HB 194, HB 197, HB 204, HB 205**

Transportation: **HB 193, HB 198, HB 201, HB 208**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Tourism Development and Energy: **HB 126**

Education: **HB 65, HB 67, HB 68**

Business Organizations and Professions: **HB 7, HB 43, HB 206**

Health and Welfare: **HB 53, HB 59, HB 87, HB 151**

Motions, Petitions and Communications

Representative Riggs moved the adoption of **HR 15.**

Representative Rapier inquired if the motion to adopt **HR 15** was out of order since the House Rules require that resolutions be sent to a committee.

The Speaker ruled that the motion to adopt **HR 15** was out of order.

Representative Burch moved that the rules be suspended to post a bill for Committee consideration. Agreed.

The following Bill has been posted for Committee consideration:

Health and Welfare: **HB 152**

Representative Nesler moved that the rules be suspended to introduce guests. Agreed.

Representative Maggard moved that the rules be suspended to allow co-sponsors. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills: **HB 7, HB 35, HB 39, HB 69, HB 117, HB 123, HB 133, HB 147**, Representative Heleringer; **HB 117**, Representative Callahan and Johnson; **HB 206**, Representative Wayne.

Representative Donnermeyer moved that the rules be suspended to introduce a guest and to grant floor privileges to Dr. Phillip Sharp, Nobel prize winner. Agreed.

Representative Adams moved that the rules be suspended to act upon a Legislative Citation and to allow Dr. Phillip Sharp to address the House of Representatives. Agreed.

Representative Adams moved the adoption of the following **Legislative Citation No. 10**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to Dr. Phillip A. Sharp in recognition of receiving the Nobel Prize in Medicine. The entire membership extends its very best wishes on this memorable occasion and expresses the hope for continued success in advancing the research necessary for the eradication of pestilence and disease.

Dr. Sharp briefly addressed the House of Representatives.

Adjournment

Representative Stumbo moved that the House adjourn until 4:00 p.m., Monday, January 10, 1994.

On the roll call the vote was **Yeas 79**--Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Brown, Bruce, Bryant, Buis, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Ford, French, Gedling, Gee, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Jensen, Keith, Kerr, Lee, LeMaster, Lewis, Lindsay, Long, Lyne, Maggard, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Reinhardt, Richards, Riggs, Riner, Sanders, Scorsone, Shacklette, R. Smith, Stacy, Stengel, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 3**--Buis, LeMaster, Maggard.

The motion to adjourn was adopted.

MONDAY, JANUARY 10, 1994

FIFTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend Mark Hopper, First Baptist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Deskins, DeWeese, Ford, Keith, Little, Reinhardt, and B. Smith.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of January 7, 1994 be dispensed with and the same approved. Agreed.

Introduction of Bills and Resolutions

HB 217, by Representative Cyrus: AN ACT relating to tow trucks.

HB 218, by Representative LeMaster: AN ACT relating to the Kentucky Nature and Wildlife Fund.

HB 219, by Representative LeMaster: AN ACT proposing amendments to Sections 170, 171, and 181 of the Constitution of Kentucky relating to taxation.

HB 220, by Representative LeMaster: AN ACT relating to railroads.

HB 221, by Representative Brown: AN ACT relating to the Kentucky Nature and Wildlife Fund.

HB 222, by Representatives Shacklette, L. Clark, Stengel, P. Clark, Palumbo, Donnermeyer, Bondurant, Riggs, Butler, Crenshaw, Brown, Gedling, Zimmerman and Bruce: AN ACT relating to commerce and trade.

HB 223, by Representatives Palumbo, Shacklette, Nunn and Mason: AN ACT relating to investigation of child sexual abuse by multidisciplinary teams.

HB 224, by Representative Geveden: AN ACT relating to the Kentucky Unified Juvenile Code.

HB 225, by Representative Cyrus: AN ACT relating to damaged motor vehicles.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolution:

Counties and Special Districts: **HB 214**

Education: **HB 209, HB 211, HB 212, HB 216**

Health and Welfare: **HB 215**

Judiciary: **HB 210, HB 213**

State Government: **HR 15**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bill has been posted for Committee consideration:

Appropriations and Revenue: **HB 85**

Motions, Petitions and Communications

Representative Mason moved that the rules be suspended to introduce guests. Agreed.

Representative Palumbo moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Palumbo moved the adoption of the following **Legislative Citation No. 11**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to Representative Donna Shacklette in recognition of her Birthday. Through her efforts, many Kentuckians enjoy a better quality of life and a brighter future. The entire membership joins Rep. June Lyne, Rep. Ann Northup, Rep. Jo Elizabeth Bryant, Rep. Kaye Bondurant and Rep. Ruth Ann Palumbo in extending its very best wishes and warmest birthday greetings on this memorable occasion.

Roll call to show co-sponsors of **Legislative Citation No. 11** is as follows:

Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Bentley, Bondurant, Bowling, Brown, Bruce, Bryant, Buis, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, Donnermeyer, Farley, Farrow, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Jensen, Johnson, Kerr, Lee, LeMaster, Lewis, Lile, Lindsay, Long, Lyne, Maggard, Mason, McElroy, Moberly, Morris, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Richards, Ridley, Riggs, Riner, Sanders, Scorsone, R. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates.

Announcements

The Clerk announced the following meetings:

Health and Welfare, 8:00 a.m., January 11, 1994

Appropriations and Revenue, 10:00 a.m., January 11, 1994

Program Review and Investigations, upon adjournment

Agriculture and Small Business, 9:00 a.m., January 11, 1994, Room 125

Counties and Special Districts, 12 Noon, January 11, 1994

Budget Review Subcommittee on Economic Development, 10:00 a.m., January 13, 1994, Room 125

Cities, 8:30 a.m., January 12, 1994

Workers' Compensation briefing upon adjournment, January 11, 1994

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Tuesday, January 11, 1994.

On the roll call the vote was **Yeas 81**--Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bruce, Bryant, Buis, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, Donnermeyer, Farley, Farrow, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Jensen, Johnson, Kerr, Lee, Lindsay, Lyne, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Richards, Riggs, Riner, Sanders, Scorsone, Shacklette, R. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 2**--LeMaster, Lile.

The motion to adjourn was adopted.

TUESDAY, JANUARY 11, 1994

SIXTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend Chuck Ellestad, Church of the Ascension, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Heleringer and B. Smith.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of January 10, 1994 be dispensed with and the same approved. Agreed.

Introduction of Bills and Resolutions

HB 226, by Representative Ridley: AN ACT relating to state correctional officers.

HB 227, by Representative Lindsay: AN ACT relating to sales and use tax.

HB 228, by Representative Hancock: AN ACT proposing an amendment to Section 230 of the Constitution of Kentucky relating to the financing of various modes of transportation.

HB 229, by Representative Gedling: AN ACT relating to retirement.

HB 230, by Representatives Bentley, Mason and Maggard: AN ACT relating to teachers' retirement.

HB 231, by Representative L. Clark: AN ACT relating to crimes and punishments.

HB 232, by Representative L. Clark: AN ACT relating to health matters.

HB 233, by Representative Wayne: AN ACT relating to teacher certification.

HB 234, by Representative Wayne: AN ACT relating to loans of the Kentucky Housing Corporation.

HR 16, by Representative Bruce: A RESOLUTION concerning the sponsorship of a statewide spelling bee.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Agriculture and Small Business: **HB 218, HB 221**

Business Organizations and Professions: **HB 222**

Cities: **HB 220**

Elections and Constitutional Amendments: **HB 219**

Health and Welfare: **HB 223**

Judiciary: **HB 224**

Transportation: **HB 217, HB 225**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Judiciary: **HB 14, HB 114, HB 162, HB 160, HB 191, HB 164**

Cities: **HB 178, HB 153**

Health and Welfare: **HB 95, HB 96, HB 190, HB 207, HB 215**

Report of Committees

The Committee on Agriculture and Small Business reported **HB 140** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 140, AN ACT relating to ratite birds.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

(1) "Ratite" means members of a family of birds which have no keel and cannot fly. It includes ostriches, emus, rheas, kiwis, and cassowaries.

(2) Ratites are raised for the purpose of producing feathers, meat, hide, animal by-products, and breeding stock.

(3) Raising ratites is agricultural production and an agricultural pursuit.

(4) Ratites and their products are farm products and livestock for purposes of financial transactions and collateral.

(5) Ratites are livestock and are not wild animals for purposes of hunting and wildlife laws.

SECTION 2. A NEW SECTION OF KRS CHAPTER 257 IS CREATED TO READ AS FOLLOWS:

The Board of Agriculture shall promulgate administrative regulations relating to the health of, and disease control in, ratites.

The Committee on Counties and Special Districts reported **HB 4**, **HB 58** and **HB 62**, with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 4, AN ACT relating to fire protection.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

As used in this Act, unless the context requires otherwise:

(1) "Commission" means the Commission on Fire Protection Personnel Standards and Education, attached to the state fire marshal's office in the Department of Housing, Buildings and Construction.

(2) "Fire department" includes all of the officers, firefighters, and clerical and maintenance employees, whether paid or volunteer.

(3) "Full-time paid firefighter" means an individual who receives a minimum salary of eight thousand dollars ($8,000) annually, and who works a minimum of two thousand and eighty (2,080) hours per year as an employee of a fire department recognized by the fire commission.

(4) "Paid fire department" means a fire department recognized by the commission, of which at least fifty percent (50%) of its firefighters are full-time paid firefighters.

(5) "Volunteer fire department" means a fire department with a minimum of twelve (12) members and a chief, at least one (1) operational fire apparatus or one (1) on order, with fewer than fifty percent (50%) of its firefighters being full-time paid firefighters.

SECTION 2. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

(1) The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to create a program for recognition and annual certification of volunteer fire departments. The criteria for recognition and certification shall be consistent with the provisions of KRS 95A.262.

(2) In order to be recognized and certified, a volunteer fire department shall be organized pursuant to KRS 75.010, KRS 67.083, KRS Chapter 95, or KRS Chapter 273.

(3) Volunteer fire departments existing on the effective date of this Act which are receiving volunteer fire department aid pursuant to KRS 95A.262(2) shall have until July 1, 1995, to comply with regulations promulgated pursuant to subsection (1) of this section in order for their aid to continue. Volunteer fire departments created after the effective date of this Act shall comply with the criteria of these regulations in a manner consistent with the time requirements specified in KRS 95A.262(2).

SECTION 3. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

(1) The commission shall recognize all fire departments which comply with the provisions of Section 2 of this Act and regulations promulgated in compliance therewith. Applications for recognition shall be made on forms provided by the commission. The department shall attach to the application an accurate map and a written description which delineates the boundaries of the area served by the department. The map and description shall also be filed with the county clerk of the county in which the department is located. If the boundaries extend into two (2) or more

counties, the map and description shall be filed with the county clerk in each county in which a part of the department's service area is located.

(2) The boundaries between two (2) or more departments created pursuant to KRS Chapter 273 may be altered if the departments enter into a written agreement establishing the boundaries, and if a majority of the property owners in the affected area approve the new boundaries. A new map and written description of the altered boundaries shall be filed with the commission and with the county clerks in the affected counties.

SECTION 4. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

(1) Each recognized and certified fire department created pursuant to KRS Chapter 273 shall send a copy of its annual report as required by KRS 273.3671 to the commission at the time the report is filed with the Secretary of State.

(2) The governing body of each recognized and certified volunteer fire department created pursuant to KRS Chapter 273 which, for the year in question, receives from all sources or expends for all purposes less than one hundred thousand dollars ($100,000) shall prepare a financial statement and submit it to the commission by July 31 of each year.

(3) The governing body of each recognized and certified volunteer fire department created pursuant to KRS Chapter 273 which, for the year in question, receives from all sources or expends for all purposes one hundred thousand dollars ($100,000) or more shall prepare a financial statement and shall employ an independent certified public accountant or contract with the Auditor of Public Accounts to perform a review of the financial statement, and shall submit the reviewed statement to the commission by July 31 of each year.

SECTION 5. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

(1) Only fire departments recognized and certified by the commission shall be eligible to receive volunteer fire department aid pursuant to KRS 95A.262(2), to receive low interest loans pursuant to KRS 95A.262(14), or to participate in the Professional Firefighters Foundation Program, pursuant to KRS 95A.200 to 95A.290.

(2) A fire department created pursuant to KRS Chapter 273 which has been recognized and certified by the commission shall have the following rights and responsibilities.

(a) Designation as the only fire department authorized to protect property within its geographic area as filed with the commission and the county clerk, but the department may seek the assistance of other departments, and may make reciprocal aid contracts pursuant to KRS 75.050;

(b) Authority to secure water immediately for purposes of fighting a fire from any source, public or private. Upon request, the department shall compensate the owner in a reasonable amount for water used within six (6) months of use; and

(c) All rights identified in the Kentucky Revised Statutes for fire departments.

(3) The officers and firefighters, whether paid or unpaid, of each fire department created pursuant to KRS Chapter 273 and recognized and certified by the commission shall select a chief. The appointment of the chief shall be subject to the approval of the governing board of the department. The chief shall establish a chain of command within the department. The chief, or the highest person available in the chain of command if the chief cannot be present, shall, subject to all state statutes as applicable, have the following rights and responsibilities:

(a) Authority to order the immediate evacuation of areas endangered by fire, a hazardous materials incident, or other impending disaster that constitutes a threat to life or property;

(b) Authority to be in charge of all fire ground operations at the scene of a fire or other emergency;

(c) Control of all department personnel while on duty; and

(d) Control of all equipment of the department.

(4) The chief of each fire department created pursuant to KRS Chapter 273 and recognized and certified by the commission shall ensure that members of the department receive necessary training and perform necessary actions to maintain recognition and certification of the department by the commission.

SECTION 6. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

(1) A fire department which collects membership charges or subscriber fees for combatting fires or serving in other emergencies shall base its annual fee or charge on the level of protection offered.

(2) A fire department that responds to a fire or other emergency on the property of nonmember or nonsubscriber may charge the following fees for services rendered:

(a) Up to five hundred dollars ($500) for single family residential units; utility occupancies of two thousand (2,000) or fewer square feet; assembly and business occupancies having a capacity which does not exceed one hundred (100) persons; equipment; vehicles; and grass or woods fires; and

(b) Up to one thousand dollars ($1,000) for multi family residential units; assembly and business occupancies having a capacity exceeding one hundred (100) persons; storage occupancies; utility occupancies of more

than two thousand (2,000) square feet; and all industrial, educational, or institutional occupancies.

(3) For the purposes of paragraphs (2)(a) and (2)(b) of this section, the meaning of assembly, business, industrial, educational, and institutional occupancies shall be as defined in KRS 198B.010. The meaning of storage and utility occupancies shall be as defined in the Kentucky Building Code, sections 310.1 and 311.1 respectively, promulgated pursuant to KRS 198B.050.

(4) The fire department shall determine charges for responding to emergencies not covered in paragraphs (2)(a) and (2)(b) of this section, including response to high hazard occupancies as defined in KRS 198B.010. The department shall make a written description of its determinations available to interested parties upon request.

(5) Property owned by the Commonwealth of Kentucky and the federal government shall be exempt from charges.

(6) If more than one (1) department responds to a fire or other emergency, the fee shall be paid to the department which is authorized to protect the property pursuant to Section 5(2)(a) of this Act.

(7) A fire department shall respond within its jurisdiction to all fires and to other emergencies for which it is responsible as set forth in its mission statement. A copy of each fire department mission statement shall be filed with the commission. A new department shall file its statement when it is incorporated. A department in existence on the effective date of this Act shall file its mission statement by July 1, 1995. A copy of the mission statement shall be posted in a conspicuous location in each station of the department, and shall be filed with the county clerk of each county in which the department has jurisdiction pursuant to Section 5(2)(a) of this Act. The mission statement shall remain in effect until amended, and filed and posted by the fire department in the locations as required by this subsection.

SECTION 7. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

(1) If a property owner who is not a member or subscriber of the fire department which charges membership or subscriber fees experiences a fire, incident, or emergency that the department responds to, he may provide his insurance company with the billing statement from the fire department.

(2) All insurance companies paying a claim pursuant to subsection one (1) of this section shall make payment of the stated charge for service in the following manner:

(a) The insurance company may make the check or draft payable to both the affected property owner and the affected fire department; or

(b) The insurance company may make the check or draft payable solely to the affected fire department.

(3) If an insurance company makes a claim check or draft payable both to the property owner and the fire department, the property owner shall make payment to the fire department within thirty (30) days of receipt of the check or draft. If the claim check or draft is not sufficient to cover the charge levied by the fire department, the property owner shall be responsible for payment of the balance to the fire department.

(4) A property owner who is not a member or subscriber of the fire department who does not have fire insurance coverage shall be fully responsible for payment of all charges levied by a fire department for services rendered in response to a fire, incident, or emergency within thirty (30) days of the date of the response by the department. Payment to the fire department shall be in full, unless a written agreement has been reached between the fire department and the property owner to establish a payment schedule to satisfy all charges to the property owner.

(5) If payment for services rendered has not been received within sixty (60) days from the date of response, and if a payment schedule has not been established, a fire department may proceed in small claims court or in other appropriate court action to recover from the property owner all fees associated with the response, including attorney fees and court costs. If the court finds in favor of the fire department and the property owner fails to pay on the judgment, the fire department may attach a lien on the affected property until the indebtedness has been satisfied.

SECTION 8. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

Nothing is this Act shall be construed to conflict with or supersede the authority of the Natural Resources and the Environmental Protection Cabinet, pursuant to the provisions of KRS Chapter 149, over management of forestry areas, and KRS Chapter 224, over management of hazardous wastes, nor the authority of the Division of Disaster and Emergency Services, pursuant to KRS Chapter 39, over response to disasters and emergencies.

Section 9. KRS 95A.262 is amended to read as follows:

(1) The Commission on Fire Protection Personnel Standards and Education shall, in cooperation with the Cabinet for Human Resources, develop and implement a continuing program to inoculate every paid and volunteer firefighter in Kentucky against hepatitis B. The program shall be funded from revenues allocated to the Firefighters Foundation Program fund pursuant to KRS 136.392 and 42.190. Any fire department which has inoculated its personnel during the period of July 1, 1991 to July 14, 1992, shall be reimbursed from these revenues for its costs incurred up to the amount allowed by the Cabinet for Human Resources for hepatitis B inoculations.

(2) Except as provided in subsection (3) of this section and KRS 61.316, the Commission on Fire Protection Personnel Standards and Education shall allot on an annual basis a share of the funds accruing to and appropriated for volunteer

fire department aid to volunteer fire departments in cities of all classes, fire protection districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083, and ***volunteer fire departments created as nonprofit corporations pursuant to KRS Chapter 273***[~~all other organized volunteer fire departments recognized by the Department of Housing, Buildings and Construction as fire departments operated and maintained on a nonprofit basis in the interest of the health, safety, prosperity, and security of the inhabitants of the Commonwealth~~]. The commission shall allot five thousand dollars ($5,000) annually to each qualifying department. Any qualifying department which fails to participate satisfactorily in the Kentucky fire incident reporting system as described in KRS 304.13-380 shall forfeit annually five hundred dollars ($500) of its allotment. The commission shall recommend to the commissioner of the Department of Housing, Buildings and Construction the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A to define satisfactory participation in the Kentucky fire incident reporting system. Administrative regulations for determining qualifications shall be based on the number of both paid firefighters and volunteer firemen within a volunteer fire department, the amount of equipment, housing facilities available, and such other matters or standards as will best effect the purposes of the volunteer fire department aid law. A qualifying department shall include at least twelve (12) firefighters, a chief, and at least one (1) operational fire apparatus or one (1) on order. Fifty percent (50%) of the firefighters shall have completed at least one half (1/2) of one hundred fifty (150) training hours toward certification within the first six (6) months of the first year of the department's application for certification, and there shall be a plan to complete the one hundred fifty (150) training hours within the second year. These personnel, equipment, and training requirements shall not be made more stringent by the promulgation of administrative regulations. No allotment shall exceed the total value of the funds, equipment, lands, and buildings made available to the local fire units from any source whatever for the year in which the allotment is made. A portion of the funds provided for above may be used to purchase group or blanket health insurance and shall be used to workers' compensation insurance, and the remaining funds shall be distributed as set forth in this section.

(3) There shall be allotted two hundred thousand dollars ($200,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund that shall be allocated each fiscal year of the biennium to the firefighters training center fund, which is hereby created and established, for the purposes of constructing new or upgrading existing training centers for firefighters. If any moneys in the training center fund remain uncommitted, unobligated, or unexpended at the close of the first fiscal year of the biennium, then such moneys shall be carried forward to the second fiscal year of the biennium, and shall be reallocated to and for the use of the training center fund, in addition to the second fiscal year's allocation of two hundred thousand dollars ($200,000). Prior to funding any project pursuant to this subsection, a proposed project shall be approved by the Commission on Fire Protection Personnel Standards and Education as provided in subsection (4) of this section and shall comply with state laws applicable to capital construction projects.

(4) Applications for funding low-interest loans and firefighters training centers shall be submitted to the Commission on Fire Protection Personnel Standards and Education for their recommendation, approval, disapproval, or modification. The commission shall review applications periodically, and shall, subject to funds available, recommend which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.

(5) Any department or entity eligible for and receiving funding pursuant to this section shall have a minimum of fifty percent (50%) of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.

(6) Upon the written request of any department, the Commission on Fire Protection Personnel Standards and Education shall make available a certified training program in a county of which such department is located.

(7) The amount of reimbursement for any given year for costs incurred by the department for administering these funds, including, but not limited to the expenses and costs of commission operations, shall be determined by the commission and shall not exceed five percent (5%) of the total amount of moneys accruing to the Firefighters Foundation Program fund which are allotted for the purposes specified in this section during any fiscal year.

(8) The commission shall withhold from the general distribution of funds under subsection (2) of this section an amount which it deems sufficient to reimburse volunteer fire departments for equipment lost or damaged beyond repair due to hazardous material incidents.

(9) Moneys withheld pursuant to subsection (8) of this section shall be distributed only under the following terms and conditions:

- (a) A volunteer fire department has lost or damaged beyond repair items of personal protective clothing or equipment due to that equipment having been lost or damaged as a result of an incident in which a hazardous material (as defined in any state or federal statute or regulation) was the causative agent of the loss;
- (b) The volunteer fire department has made application in writing to the commission for reimbursement in a manner approved by the commission and the loss and the circumstances thereof have been verified by the commission;
- (c) The loss of or damage to the equipment has not been reimbursed by the person responsible for the hazardous materials incident or by any other person;
- (d) The commission has determined that the volunteer fire department does not have the fiscal resources to replace the equipment;

(e) The commission has determined that the equipment sought to be replaced is immediately necessary to protect the lives of the volunteer firefighters of the fire department;

(f) The fire department has agreed in writing to subrogate all claims for and rights to reimbursement for the lost or damaged equipment to the Commonwealth to the extent that the Commonwealth provides reimbursement to the department; and

(g) The department has shown to the satisfaction of the commission that it has made reasonable attempts to secure reimbursement for its losses from the person responsible for the hazardous materials incident and has been unsuccessful in the effort.

(10) ***If***[~~In the event that~~] a volunteer fire department has met all of the requirements of subsection (9) of this section***,*** the commission may authorize a reimbursement of equipment losses not exceeding ten thousand dollars ($10,000) or the actual amount of the loss, whichever is less.

(11) Moneys which have been withheld during any fiscal year which remain unexpended at the end of the fiscal year shall be distributed in the normal manner required by subsection (2) of this section during the following fiscal year.

(12) No volunteer fire department may receive funding for equipment losses more than once during any fiscal year.

(13) The commission shall make reasonable efforts to secure reimbursement from the responsible party for any moneys awarded to a fire department pursuant to this section.

(14) There shall be allotted each year of the 1992-93 biennium one million dollars ($1,000,000), and each year of the 1994-95, 1996-97, 1998-99, and 2000-01 bienniums one million dollars ($1,000,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund for the purpose of creating a revolving low-interest loan fund, which shall thereafter be self-sufficient and derive its operating revenues from principal and interest payments. The commission, in accordance with the procedures in subsection (4) of this section, may make low-interest loans, and the interest thereon shall not exceed three percent (3%) annually or the amount needed to sustain operating expenses of the loan fund, whichever is less, to volunteer fire departments for the purposes of major equipment purchases and facility construction. Loans shall be made to departments which achieve the training standards necessary to qualify for volunteer fire department aid allotted pursuant to subsection (2) of this section, and which do not have other sources of funds at rates which are favorable given their financial resources. The proceeds of loan payments shall be returned to the loan fund for the purpose of providing future loans. If a department does not make scheduled loan payments, the commission may withhold any grants payable to the department pursuant to subsection (2) of this section until the department is current on its payments. Money in the low-interest loan fund shall be used only for the purposes specified in this subsection. Any funds remaining in the fund at the end of a fiscal year shall be carried forward to the next fiscal year for the purposes of the fund.

Section 10. KRS 75.100 is amended to read as follows:

As used in KRS 75.100 to 75.260, unless the context requires otherwise:

(1) "Chairman" means the chairman of the board of trustees of a fire protection district organized under the provisions of KRS 75.010 to 75.080, or the chairman of the governing board of a volunteer fire department.

(2) "Fire protection district" means fire districts organized under KRS ***75.010 to 75.080***[~~Chapter 75~~].

(3) "Board" means the board of trustees of a fire protection district organized under KRS ***75.010 to 75.080***[~~Chapter 75~~] and the governing board of a volunteer fire department.

(4) "Fire department" means the officers, firefighters and clerical or maintenance employees, including the chief and assistant chief of the department.

(5) "Chief" means the chief of the fire department of a fire protection department organized under KRS ***75.010 to 75.080***[~~Chapter 75~~] and of a volunteer fire department.

(6) "Employees" means all persons employed by the board of trustees of a fire protection district organized under KRS ***75.010 to 75.080***[~~Chapter 75~~] and of a volunteer fire department.

(7) "Member" shall include the chief and all officers and employees of a fire department, a fire protection district or of a volunteer fire department.

(8) "Salary" means any compensation received for services.

(9) "Suspension" means the separation of an employee from the service for a temporary or fixed period of time, by his appointing authority, as a disciplinary measure.

(10) "Dismissal" means the discharge of an employee by lawful authority.

(11) "Trustees" means the board of trustees of a fire protection district and of a volunteer fire department.

HB 58, AN ACT relating to deputy sheriff merit training programs.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 70.263 is amended to read as follows:

(1) Each person serving as a deputy sheriff on the effective date of an ordinance that creates a deputy sheriff merit board for the county in which he serves shall, within one (1) year following the effective date of that ordinance, successfully complete at least four hundred (400) hours of training approved by the Kentucky Law Enforcement Council.

(2) Each person appointed as a deputy sheriff in a county that has adopted a deputy sheriff merit board before the date of his appointment shall, within one (1) year following the appointment, successfully complete at least four hundred (400) hours of training approved by the Kentucky Law Enforcement Council.

(3) ***A deputy sheriff whose official duty is to provide security service to the courts, and who is compensated pursuant to KRS 64.092, shall, the provisions of subsections (1) and (2) of this section notwithstanding, satisfy the training requirements for employment if he completes law enforcement training which the Circuit Judge or the Chief Circuit Judge, if there be one, certifies to the sheriff as acceptable. If the training was not received prior to the effective date of the ordinance creating the deputy sheriff merit board, in the case of a deputy sheriff serving when the ordinance was passed, or prior to appointment in the case of a deputy sheriff appointed after the effective date of the ordinance, then it shall be received within one (1) year following the effective date of the ordinance or the date of appointment, as the case may be.***

(4) A person failing to meet the requirements of this section shall forfeit his position as deputy sheriff immediately upon the expiration of the applicable one (1) year time limit.

HB 62, AN ACT relating to the Commission on Fire Protection Personnel Standards and Education.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 95A.030 is amended to read as follows:

~~[The commission shall elect a chairman, vice chairman and secretary from among the appointed members]~~ At its first meeting~~[, and thereafter at its first meeting]~~ succeeding new appointments***, the commission shall elect a chairman, vice-chairman, and secretary from among the appointed members*** to fill regular terms. ***Nine (9)*** ~~[Five (5)]~~ members shall constitute a quorum. ~~[The governor shall summon the commission to its first meeting.]~~

Section 2. KRS 95A.050 is amended to read as follows:

In carrying out its duties and responsibilities, the commission shall have the following additional duties:

(1) To meet at ~~[such]~~ times and places in the State of Kentucky ~~[as]~~ it deems proper.~~[;]~~ Meetings shall be called by the chairman upon his own motion, or upon the written request of ***nine (9)*** ~~[five (5)]~~ members;

(2) To contract with other agencies, public or private, or persons, ~~[as]~~ it deems necessary for the rendition and affording of ***the*** ~~[such]~~ services, facilities, studies, and reports ~~[as]~~ it may require to cooperate with city, county, state, and federal agencies in training programs; ***and***

(3) To recommend to the commissioner of housing, buildings, and construction for promulgation reasonable ~~[rules and]~~ regulations relating to fire protection personnel.

The Committee Amendment No. 1 to **HB 62** is as follows:

On page 1, line 5, by deleting "***Nine (9)***", and by substituting therefor "***A majority of the***";

and on page 1, line 13, by deleting "***nine (9)***", and by substituting therefor "***a majority of the***".

The Committee on Health and Welfare reported **HB 53** and **HB 152** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 53, AN ACT relating to children.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly finds and declares that the Commonwealth of Kentucky must make a major investment in the future by making a major commitment of resources to address the comprehensive needs of its children.

(2) It is the intent of the General Assembly to commit the resources of the Commonwealth to assure that each child enjoys certain rights including, but not limited to the following:

(a) The right to protection from abuse, neglect, and exploitation;

(b) The right to a permanent and stable home;

(c) The right to a safe and nurturing environment which will preserve a sense of personal dignity and integrity;

(d) The right to adequate nutrition, shelter, and clothing;

(e) The right to effective treatment to address physical, social, and emotional needs, regardless of geographical location;

(f) The right to equal opportunity and access to quality and effective education, which will meet the individual needs of each child, and to recreation, and to other community resources to develop individual abilities;

(g) The right to access to preventive health and social services; and

(h) The right to an independent, trained advocate, when intervention is necessary, and a skilled guardian or caretaker in a safe environment when alternative placement is necessary.

(3) This section may be cited as the Kentucky Children's Bill of Rights.

HB 152, AN ACT relating to the State Interagency Council for Services to Children with an Emotional Disability.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 194.120 is amended to read as follows:

The Commission for Health Economics Control in Kentucky***,*** ~~[and]~~ the Commission for Handicapped Children***, and the State Interagency Council for Services to Children with an Emotional Disability*** shall be the only statutory bodies attached to the cabinet that shall have the authority to issue administrative regulations. No other corporate body or instrumentality of the Commonwealth, advisory committee, interstate compact, or other statutory body, presently or hereinafter attached to the cabinet, shall issue administrative regulations, but shall operate only in an advisory capacity.

Section 2. KRS 200.505 is amended to read as follows:

(1) There is hereby created a State Interagency Council for Services to Children with an Emotional Disability. This council shall be composed of a designee of the State Department of Education and of the following members who shall serve by virtue of their positions: the commissioner of the Department for Mental Health and Mental Retardation Services, the commissioner of the Department for Social Services, the commissioner of the Department for Health Services, the commissioner of the Department of Medicaid Services, and the executive director of the Administrative Offices of the Courts or their designees. One (1) parent of a child with an emotional disability, who is a consumer of state funded services for children with an emotional disability shall be chosen by the Juvenile Justice Commission to serve as a member of the council. The chairman of the council shall be designated by the Governor and shall establish procedures for the council's internal procedures.

(2) The State Interagency Council for Services to Children with an Emotional Disability shall:

(a) Consider issues and make recommendations annually to the Governor and the Legislative Research Commission regarding the provision of services for children with an emotional disability;

(b) Direct each regional interagency council to coordinate services to children with an emotional disability and identify factors contributing to a lack of coordination;

(c) Develop a form to be signed by the parent or other legal guardian of a child referred for services to any interagency council for children with an emotional disability. The form shall enable the agencies involved with the child to share information about the child as necessary to identify and provide services for the child.

(d) Review service and treatment plans for children for whom such reviews are requested, and provide such advice and assistance as the state council determines to be necessary to meet the needs of children with an emotional disability referred by regional councils;

(e) Assess the effectiveness of regional councils in meeting the service needs of children with an emotional disability;

(f) Establish a uniform grievance procedure for the state, to be implemented by each regional interagency council. Appeals may be initiated by the child, parent, guardian, person exercising custodial control or supervision, or other authorized representative about matters relating to the interagency service plan for the child or the denial of services by the regional interagency council;

(g) Meet at least monthly and maintain records of meetings, except that records that identify individual children shall only be disclosed as provided by law;

(h) Adopt interagency agreements as necessary for coordinating services to children with an emotional disability by the agencies represented in the state council; and

(i) Develop services to meet the needs of children with an emotional disability.

(3) The State Interagency Council for Services to Children with an Emotional Disability may promulgate administrative regulations necessary to comply with the requirements of KRS 200.501 to 200.509.

The Committee on Appropriations and Revenue reported **HB 75, HB 79,** with Committee Amendment attached thereto,

HB 80, with Committee Amendment attached thereto, **HB 81** with Committee Amendment attached thereto, **HB 84, HB 99, HB 103, HB 106, HB 121** and **HB 122** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 75, AN ACT relating to motor fuels.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 138.358 is amended to read as follows:

(1) Any special fuels dealer who delivers special fuels, on which the tax imposed by KRS 138.220 has been paid, into a tank having no dispensing outlet and used exclusively to heat a personal residence, shall be entitled to claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer obtains from the purchaser and retains in his files a signed and dated statement from the purchaser certifying that the fuel will be used exclusively to heat the personal residence to which it is delivered. No person so certifying shall use the special fuel for any other purpose. Special fuel delivered into a tank having no dispensing outlet and used exclusively to heat a commercial building shall be subject to refund pursuant to KRS 138.351 to 138.355. The Revenue Cabinet may require dealers claiming the credit authorized herein to submit information required by the cabinet to reasonably protect the revenues of the Commonwealth.

(2) Any special fuels dealer who ***sells*** [~~delivers~~] special fuels, on which the tax imposed by KRS 138.220 has been paid, ***exclusively*** [~~into a storage tank~~] for the purpose of operating or propelling stationary engines or tractors for agricultural purposes, shall be entitled to claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer obtains from the purchaser and retains in his files a signed and dated statement from the purchaser certifying that the fuel will be used exclusively for the purpose of operating or propelling stationary engines or tractors for agricultural purposes. No person so certifying shall use the special fuels for any other purpose. ***Sales made from a retail filling station do not qualify for the credit.*** The Revenue Cabinet may require dealers claiming the credit authorized herein to submit information required by the cabinet to reasonably protect the revenues of the Commonwealth.

(3) Any special fuels dealer who delivers special fuels, on which the tax imposed by KRS 138.220 has been paid, into a nonhighway use storage tank of a resident nonprofit religious, charitable, or educational organization or state or local governmental agency which has qualified for exemption from Kentucky sales and use tax pursuant to KRS 139.470(7) or 139.495 shall be entitled to claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer obtains from the purchaser and retains in his files a signed and dated statement certifying the purchaser's sales and use tax purchase exemption authorization issued pursuant to KRS Chapter 139. No organization or agency so certifying shall use or allow the use of any nonhighway special fuel so acquired for any purpose other than fueling unlicensed vehicles or equipment for nonhighway purposes. The Revenue Cabinet may require dealers claiming the credit authorized herein to submit information required by the cabinet to reasonably protect the revenues of the Commonwealth.

HB 79, AN ACT relating to abandoned property.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 393.020 is amended to read as follows:

If any property having a situs in this state has been devised or bequeathed to any person and is not claimed by that person or by his heirs, distributees, or devisees within ***five (5)*** [~~eight (8)~~] years after the death of the testator, or if the owner of any property having a situs in this state dies without heirs or distributees entitled to it and without disposing of it by will, it shall vest in the state, subject to all legal and equitable demands. [~~Also,~~] Any property abandoned by the owner, except a perfect title to a corporeal hereditament, shall vest in the state, subject to all legal and equitable demands. Any property that vests in the state under this section shall be liquidated, and the proceeds, less costs, fees, and expenses incidental to all legal proceedings of the liquidation shall be paid to the cabinet.

Section 2. KRS 393.040 is amended to read as follows:

If any devisee or legatee, or his heir, devisee, or distributee, has failed for ***five (5)*** [~~eight (8)~~] years to claim his legacy or devise, the personal representative of the testator, or other person possessing it shall, after deducting the legal liabilities thereon, pay and deliver it[~~,~~] and the net profits from it to the cabinet.

Section 3. KRS 393.050 is amended to read as follows:

When a person owning any property having a situs in this state is not known to be living for ***five (5)*** [~~seven (7)~~] successive years, and neither he nor his heirs, devisees or distributees can be located or proved to have been living for ***five (5)*** [~~seven (7)~~] successive years, he shall be presumed to have died without heirs, devisees, or distributees, and his property shall be liquidated and the proceeds, less costs incident to the liquidation and any legal proceedings[~~,~~] and the liabilities which have been properly claimed and approved against it, shall be paid to the cabinet.

Section 4. KRS 393.060 is amended to read as follows:

The following property held or owing by a banking or financial organization is presumed abandoned:

(1) Any deposit (legal, beneficial, equitable, or otherwise) payable on demand in any bank or trust company in this state, together with the interest thereon, unless the owner has within ***five (5)*** [~~ten (10)~~] years:

(a) Negotiated in writing with the bank or trust company concerning it;

(b) Been credited with interest on the passbook or certificate of deposit on his request;

(c) Had a transfer, disposition of interest, or other transaction noted of record in the books or records of the bank or trust company; or

(d) Increased or decreased the amount of the deposit;

(2) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and traveler's checks, that [~~with the exception of traveler's checks~~] has been outstanding for more than ***five (5)*** [~~ten (10)~~] years from the date it was payable, or from the date of its issuance if payable on demand, [~~or, in the case of traveler's checks that has been outstanding for more than fifteen (15) years from the date of its issuance~~] unless the owner has within ***five (5)*** [~~ten (10)~~] years [~~or within fifteen (15) years in the case of traveler's checks~~] corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization;

(3) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than ***five (5)*** [~~ten (10)~~] years from the date on which the lease or rental period expired.

Section 5. KRS 393.062 is amended to read as follows:

(1) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than ***five (5)*** [~~seven (7)~~] years after the moneys became due and payable as established from the records of the corporation under any contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds [~~thereof~~] are deemed to be due and payable if ***the*** [~~such~~] policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding ***five (5)*** [~~seven (7)~~] years, (a) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (b) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

(2) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of ***the*** [~~such~~] person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of corporation.

Section 6. KRS 393.064 is amended to read as follows:

Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment, or principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within ***five (5)*** [~~seven (7)~~] years after the date prescribed for payment or delivery, is presumed abandoned if:

(1) It is held or owing by a business association organized under the laws of or created in this state; or

(2) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

Section 7. KRS 393.066 is amended to read as follows:

All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within ***five (5)*** [~~seven (7)~~] years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(1) If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or

(2) If it is held by a business association doing business in this state, or any agent or fiduciary acting for or under contract with a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state;

or

(3) If it is held in this state by any other person.

Section 8. KRS 393.070 is amended to read as follows:

Any deposit (legal, beneficial, equitable, or otherwise) other than those payable on demand in any bank or trust company in this state, together with the interest thereon shall be presumed abandoned unless the owner has, within ***the five (5)*** [~~twenty-five (25) successive~~] years ***immediately prior to*** [~~next preceding~~] the date [~~as of which~~] reports are required by KRS 393.110:

(1) Negotiated in writing with the bank or trust company concerning it;

(2) Been credited with interest on the passbook or certificate of deposit on his request;

(3) Had a transfer, disposition of interest, or other transaction noted of record in the books or records of the bank or trust company; or

(4) Increased or decreased the amount of the deposit.

Section 9. KRS 393.080 is amended to read as follows:

The following funds held or owing are presumed abandoned:

(1) Any deposit of money, stocks, bonds, or other credits made to secure payment for services rendered or to be rendered, or to guarantee the performance of services or duties, or to protect against damage or harm, and the increments thereof, unless claimed by the person entitled thereto within ***five (5)*** [~~seven (7)~~] years after the occurrence of the event that would obligate the holder or depository to return it or its equivalent.

(2) Any sum which a public utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than ***five (5)*** [~~seven (7)~~] years after the date it became payable in accordance with the final determination or order providing for the refund.

Section 10. KRS 393.090 is amended to read as follows:

Except as otherwise provided in KRS 393.010, all intangible property, not otherwise covered by this chapter, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state by any person and has remained unclaimed by the owner for more than ***five (5)*** [~~seven (7)~~] years after it became payable or distributable is presumed abandoned.

Section 11. KRS 393.110 is amended to read as follows:

(1) Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the cabinet with respect to the property annually as of July 1. The report shall be filed in the office of the cabinet on or before ***August*** [~~September~~] 1 of each year for the preceding July 1. The report shall include:

   (a) Except with respect to travelers' checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of ***one hundred*** [~~twenty-five~~] dollars ***($100)*** [~~($25)~~] or more presumed abandoned under this chapter and in the case of unclaimed funds of life insurance corporations the full name of the insured or annuitant and his last known address according to the records of the life insurance corporation;

   (b) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under ***one hundred*** [~~twenty-five~~] dollars ***($100)*** [~~($25)~~] each may be reported in the aggregate. The holder of abandoned property shall maintain its records for a period of five (5) years from the date of its report for items reported in the aggregate. If the owner of property reported in the aggregate makes a valid claim therefor within five (5) years, the holder shall refund the property and deduct the amount refunded from the next report due to the cabinet;

   (c) The date when the property became payable, demandable, or returnable, and the date of the last known transaction with the owner with respect to the property if readily available; and

   (d) Any other information which the cabinet prescribes by administrative regulations necessary for the administration of this chapter. The report shall be made in duplicate; the original shall be retained by the cabinet, and the copy shall be mailed to the sheriff of the county where the property is located or held. It shall be the duty of the sheriff to post for not less than twenty (20) consecutive days ***the*** [~~said~~] copy on the courthouse door or the courthouse bulletin board, and also to publish ***the*** [~~said~~] copy pursuant to KRS Chapter 424; except the sheriff shall not be required to publish any item with a fair cash value of ***one hundred*** [~~twenty-five~~] dollars ***($100)*** [~~($25)~~] or less. The list shall be published within thirty (30) days of its receipt by the sheriff and this publication shall constitute compliance with the requirements of KRS Chapter 424. The cost of the publication shall be paid by the state. The sheriff shall immediately certify in writing to the cabinet the dates when the list was posted and published. The list shall be posted and published as required on or before October 1 of the year when it is made, and ***the*** [~~such~~] posting and publishing shall be constructive notice to all interested parties.

(2) Within sixty (60) days after the receipt of the report required by subsection (1) of this section, the cabinet shall mail

notice to each person having an address listed ***in the report*** [~~therein~~] who appears to be entitled to property presumed abandoned under this chapter; except the cabinet shall not be required to mail a notice to any person whose name appears on the abandoned property list where the fair cash value of the property is ***one hundred*** [~~twenty-five~~] dollars ***($100)*** [~~($25)~~] or less. The notice shall contain:

(a) A statement that according to a report filed with the cabinet properties are being held to which the addressee appears entitled;

(b) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder; and

(c) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the cabinet to whom all further claims must be directed.

(3) Any person who has made a report of any estate or property presumed abandoned, as required by this chapter, shall, ***by January 1*** [~~between November 1 and November 15~~] of each year, turn over to the cabinet all property so reported; but if the person making the report or the owner of the property shall certify to the cabinet that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exist or never did exist, or shall report the existence of any fact or circumstance which has a substantial tendency to rebut ***that*** [~~such~~] presumption, then, the person reporting or holding the property shall not be required to turn the property over to the cabinet except on order of court. If a person files an action in court claiming any property which has been reported under the provisions of this chapter, the person reporting or holding ***the*** [~~such~~] property shall be under no duty while ***the*** [~~any such~~] action is pending to turn the property over to the cabinet, but shall have the duty of notifying the cabinet of the pendency of ***the*** [~~such~~] action.

(4) The person reporting or holding the property or any claimant ***of it*** [~~thereof~~] shall always have the right to a judicial determination of his rights under this chapter and nothing ***in this chapter*** [~~therein~~] shall be construed otherwise***.***[~~; and~~] The Commonwealth may institute an action to recover ***the*** [~~such~~] property [~~as is~~] presumed abandoned***,*** whether it has been reported or not***,*** and may include in one (1) petition all such property within the jurisdiction of the court in which the action is brought ***if*** [~~provided~~] the property of different persons is set out in separate paragraphs.

Section 12. KRS 393.140 is amended to read as follows:

(1) Any person claiming an interest in any property paid or surrendered to the state in accordance with KRS 393.020 to 393.050 who was not actually served with notice, and who did not appear, and whose claim was not considered during the action or at the proceedings that resulted in its payment to the state, may, within five (5) years after the judgment, file his claim to ***the property*** [~~it~~] with the cabinet.

(2) Any person claiming an interest in any estate or property paid or surrendered to the state in accordance with KRS 393.060 to 393.120, that was not subsequently adjudged under the procedure set out in KRS 393.230 to have been actually abandoned, or owned by a decedent who had no heir, distributee, devisee***,*** or other person entitled under the laws of this state relating to wills, descent***,*** and distribution to take the legal or equitable title, may file his claim to it at any time after it was paid to this state.

(3) ***Any claimant that is an heir or a relative to the original owner*** [~~The claimant~~] shall, within fifteen (15) days after filing any claim permitted under this section in excess of ***one hundred*** [~~twenty-five~~] dollars ***($100)*** [~~($25)~~], publish notice of the claim pursuant to KRS Chapter 424 in the county in which the property was held before being transferred to the state. If the claim is for ***one hundred*** [~~twenty-five~~] dollars ***($100)*** [~~($25)~~] or less, the claimant shall post at the courthouse door and three (3) other conspicuous places in that county, and shall file proof of publication or posted notice with the cabinet. No [~~such~~] claim shall be allowed until fifteen (15) days after proof of the notice is received by the ***cabinet*** [~~department at its offices in Frankfort~~].

Section 13. KRS 393.150 is amended to read as follows:

The ***secretary*** [~~commissioner~~] shall consider any claim or defense permitted to be filed before the cabinet and hear evidence concerning it. If the claimant establishes his claim, the ***secretary*** [~~commissioner~~] shall, when the time for appeal or further legal procedure has expired, authorize payment to him of a sum equal to the amount paid into the State Treasury in compliance with this chapter. The decision shall be in writing and shall state the substance of the evidence heard by the ***secretary*** [~~commissioner~~], if a transcript is not kept. The decision shall be a matter of public record.

Section 14. KRS 393.250 is amended to read as follows:

(1) Any necessary expense required to be paid by the state in administering and enforcing this chapter shall be paid out of ***the abandoned property receipts*** [~~appropriations made to the cabinet~~].

(2) The county attorney shall act as agent of the cabinet for the collection of all judgments recovered in actions prosecuted by him under this chapter. He shall promptly remit the judgment recovered to the cabinet with ***the*** [~~such~~] information relating thereto as the cabinet requires.

The Committee Amendment No. 1 to **HB 79** is as follows:

On page 3, line 26, at the beginning of the line before "Any" by adding the following: "***Except as provided in KRS 272.291***"; and

On page 5, line 18, after the "(2)" by adding the following: "***Except as provided in KRS 272.291,***".

HB 80, AN ACT relating to revenue and taxation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section the term "electronic fund transfer" means an electronic data processing medium that takes the place of a paper check for debiting or crediting an account and of which a permanent record is made.

(2) Notwithstanding any statutory provisions to the contrary, the cabinet may require all taxpayers, whose average monthly liability for the tax imposed under KRS Chapter 139 or whose average monthly liability for the tax required to be withheld under KRS 141.310 exceeds twenty-five thousand dollars ($25,000), to remit that tax by electronic fund transfer. The transfer shall be made on or before the date the tax is due and the cabinet may permit the filing of the tax return following the date of the tax payment.

Section 2. KRS 131.180 is amended to read as follows:

The provisions of this section shall be known as the "Uniform Civil Penalty Act." Penalties to be assessed in accordance with this section shall apply as follows unless otherwise provided by law:

(1) Any taxpayer who files any return or report after the due date prescribed ***for filing*** [~~therefor~~] or the due date as extended by the cabinet shall, unless it is shown to the satisfaction of the cabinet that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the total tax due for each thirty (30) days or fraction thereof that the report or return is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the total tax due; however, [~~in no case shall~~] the penalty ***shall not*** be less than ten dollars ($10).

(2) Any taxpayer who fails to withhold or collect any tax as required by law, fails to pay the tax computed due on a return or report on or before the due date prescribed ***for it*** [~~therefor~~] or the due date as extended by the cabinet or, excluding underpayments determined pursuant to subsections (2) and (3) of KRS 141.990, fails to have timely paid at least seventy-five percent (75%) of the tax determined due by the cabinet shall, unless it is shown to the satisfaction of the cabinet that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the tax not withheld, collected, or timely paid for each thirty (30) days or fraction thereof that the withholding, collection, or payment is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the tax not timely withheld, collected, or paid; however, [~~in no case shall~~] the penalty ***shall not*** be less than ten dollars ($10).

(3) Any taxpayer who fails to pay any installment of estimated tax by the time prescribed in KRS 141.044 and 141.305 or who, pursuant to subsections (2) or (3) of KRS 141.990, is determined to have a declaration underpayment shall, unless it is shown to the satisfaction of the cabinet that ***the*** [~~such~~] failure or underpayment is due to reasonable cause, pay a penalty equal to ten percent (10%) of the amount of ***the*** [~~such~~] underpayment or late payment; however, [~~in no case shall~~] the penalty ***shall not*** be less than twenty-five dollars ($25).

(4) If any taxpayer fails or refuses to make and file a report or return or furnish any information requested in writing by the cabinet, the cabinet may make an estimate of the tax due from any information in its possession, assess the tax at not more than twice the amount estimated to be due, and add a penalty equal to five percent (5%) of the tax assessed for each thirty (30) days or fraction thereof that the return or report is not filed. The total penalty levied pursuant to this subsection shall not exceed fifty percent (50%) of the tax assessed; however, [~~in no case shall~~] the penalty ***shall not*** be less than twenty-five dollars ($25).

(5) If any taxpayer fails or refuses to pay within forty-five (45) days of the due date any tax assessed by the cabinet[~~,~~] which is not protested in accordance with KRS 131.110, there shall be added a penalty equal to two percent (2%) of the unpaid tax for each thirty (30) days or fraction thereof that the tax is final due and owing but not paid.

(6) Any taxpayer who fails to obtain any identification number, permit, license, or other document of authority from the cabinet within the time required by law shall, unless it is shown to the satisfaction of the cabinet that the failure is due to reasonable cause, pay a penalty equal to ten percent (10%) of any cost or fee required to be paid for ***the*** [~~such~~] identification number, permit, license, or other document of authority; however, [~~in no case shall~~] the penalty ***shall not*** be less than fifty dollars ($50).

(7) If any tax assessed by the cabinet is the result of negligence by a taxpayer or other person, a penalty equal to ten percent (10%) of the tax so assessed shall be paid by the taxpayer or other person who was negligent.

(8) If any tax assessed by the cabinet is the result of fraud committed by the taxpayer or other person, a penalty equal to fifty percent (50%) of the tax so assessed shall be paid by the taxpayer or other person who committed fraud.

(9) If any check tendered to the cabinet is not paid when presented to the drawee bank for payment, there shall be paid as a penalty by the taxpayer who tendered the check, upon notice and demand of the cabinet, an amount equal to ten percent (10%) of the check. The penalty under this section shall not be less than ten dollars ($10) nor more than one hundred

dollars ($100). If the taxpayer who tendered the check shows to the cabinet's satisfaction that the failure to honor payment of the check resulted from error by parties other than the taxpayer, the cabinet shall waive the penalty.

(10) Any person who fails to make any tax report or return or pay any tax within the time***, or in the manner*** required by law, for which a specific civil penalty is not provided by law, shall pay a penalty as provided in this section, with interest from the date due at the tax interest rate as defined in KRS 131.010(6).

(11) The penalties levied pursuant to subsection (5) of this section shall apply to any tax assessment protested pursuant to KRS 131.110 to the extent that any appeal of the assessment or portion ***of it*** [~~thereof~~] is ruled by the Kentucky Board of Tax Appeals or, if appealed ***from*** [~~therefrom~~], the court of last resort, as not protested, appealed, or pursued in good faith by the taxpayer.

(12) Nothing in this section shall be construed to prevent the assessment or collection of more than one (1) of the penalties levied under this section or any other civil or criminal penalty provided for violation of the law for which penalties are imposed.

(13) All penalties levied pursuant to this section shall be assessed, collected, and paid in the same manner as taxes. Any corporate officer or other person who becomes liable for payment of any tax assessed by the cabinet shall likewise be liable for all penalties and interest applicable thereto.

The Committee Amendment No. 1 to **HB 80** is as follows:

On page 4, after line 13, by adding the following:

"Section 3. The provisions of this Act shall apply to taxable periods beginning after December 31, 1994."

HB 81, AN ACT relating to property tax.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 132.487 is amended to read as follows:

(1) The cabinet shall develop and administer a centralized ad valorem tax system for all motor vehicles as defined in KRS 186.010. This system shall be designed to allow the collection of state, county, city, urban-county government, school, and special taxing district ad valorem taxes due on each motor vehicle at the time of registration of the motor vehicle by the party charged with issuing ***the*** [~~such~~] registration. The cabinet shall supervise and instruct the property valuation administrators and other officials with respect to their duties in relation to this system.

(2) Except as otherwise provided by law, the tax rate levied by the state, counties, schools, cities, and special tax districts on motor vehicles shall not exceed the rate that could have been levied on motor vehicles by the district on the January 1, 1983 assessments. All counties, schools, cities, and special taxing districts proposing to levy an ad valorem tax on motor vehicles shall submit to the cabinet on or before October 1 of the year preceding the assessment date, the tax rate to be levied against valuations as of that assessment date. ***Any district that fails to timely submit the tax rate shall receive the rate in effect for the prior year.***

(3) The compensating tax rate and maximum possible tax rate allowable for counties, schools, cities, and special taxing districts on property other than motor vehicles for the 1984 and subsequent tax periods shall be calculated excluding all valuations of and tax revenues from motor vehicles from the base amounts used in arriving at these general rates.

(4) The Transportation Cabinet shall provide access to all records of motor vehicle registrations to the cabinet and the property valuation administrators as necessary to prepare and maintain a complete tax roll of motor vehicles throughout each year.

(5) The property valuation administrator shall, subject to the direction, instruction, and supervision of the cabinet, have responsibility for assessing all motor vehicles other than those assessed under KRS Chapter 136 as part of public service companies. The cabinet may provide standard valuation guidelines for use in valuation of motor vehicles.

(6) The property valuation administrator shall provide to the cabinet by December 1 of each year a recapitulation of motor vehicles to be assessed as of January 1 of the next year.

(7) Procedures for protest, appeal, and correction of erroneous assessments shall be the same for motor vehicles as for other properties subject to ad valorem taxes.

Section 2. KRS 134.230 is amended to read as follows:

[~~(1) The sheriff shall, before he qualifies and before he assumes the duties of the office for the first time, enter into bond with surety for the faithful performance of his duties as revenue collector. This bond shall cover liability to account, as provided by law, for all charges of taxes made against him, and for all money received by him as revenue collector from the date he assumes the duties of the office to and including July 31 of the same year. He shall enter into bond with surety thereafter before or as of August 1 of each succeeding year of the term of his office, except that the expiration date of the bond for the last year in the term shall be to and including March 15 when the sheriff is not running for reelection or if the sheriff has opposition in the election. If a sheriff has no opposition when seeking reelection, the bond for the last~~

~~year in the term shall run from August 1 through July 31. The county judge/executive shall hold a hearing at any time the sheriff may request for the purpose of executing bond.~~

~~(2) The county judge/executive, except in case of a corporate surety, shall judge the sufficiency of the surety, and sureties shall not be taken who are not jointly worth, subject to execution after the payment of all their debts and liabilities, a sum equal to the aggregate amount of state tax receipts that will probably be received by the sheriff during the year or period succeeding the execution of the bond. If a corporate surety bond is offered, it shall be for a sum not less than the largest amount of state tax receipts that the sheriff will probably have in his possession at any one time. The county judge/executive, with the approval of the Revenue Cabinet, shall determine the amount of the corporate surety bond and judge of the sufficiency of the surety.~~

~~(3)~~] The county judge/executive may require the sheriff to ***enter into*** [~~give additional~~] bond, with good surety to be approved by the county judge/executive, when the county judge/executive deems it necessary in the interest of the state or county.

SECTION 3. A NEW SECTION OF KRS CHAPTER 132 IS CREATED TO READ AS FOLLOWS:

(1) A taxing district that does not elect to attempt to set a rate that will produce more than four percent (4%) in additional revenue, exclusive of revenue from new property as defined in KRS 132.010, over the amount of revenue produced by the compensating tax rate as defined in KRS 132.010 shall establish a final tax rate within forty-five (45) days of the cabinet's certification of the county's property tax roll. Any taxing district that fails to meet this deadline shall be required to use the compensating tax rate for that year's property tax bills.

(2) A taxing district that elects to attempt to set a rate that will produce more than four percent (4%) in additional revenue, exclusive of revenue from new property as defined in KRS 132.010, over the amount of revenue produced by the compensating tax rate as defined in KRS 132.010 shall follow the provisions of KRS 132.017.

Section 4. The provisions of Sections 1 and 3 of this Act shall be effective for property assessed on or after January 1, 1995.

The Committee Amendment No. 1 to **HB 81** is as follows:

On page 3, line 6, after the word "The" and before the word "may" by inserting "***fiscal court***" and by bracketing and striking through the words "county judge/executive": and

On page 3, line 7, after the phrase "approved by the" and before the word "when" by inserting "***fiscal court***" and by bracketing and striking through the words "county judge/executive"; and

On page 3, line 7, after the last "the" by inserting "***fiscal court***" and by inserting an opening bracket and striking through the word "county"; and

On page 3, line 8, at the beginning of the sentence, by striking through the words "judge/executive" and inserting a closing bracket thereafter.

HB 84, AN ACT relating to property tax administration.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 132 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall value and assess unmined coal, oil, and gas reserves, and any other mineral or energy resources which are owned, leased, or otherwise controlled separately from the surface real property. Unmined coal, oil, and gas reserves and other mineral or energy resources shall in all cases be valued and assessed by the Revenue Cabinet as a distinct interest in real property, separate and apart from the surface real estate.

(2) Each owner or lessee of property assessed under subsection (1) of this section shall annually, between January 1 and April 15, file a return with the cabinet in a form as the cabinet may prescribe. Other individuals or corporations having knowledge of the property defined in subsection (1) of this section gained through contracting, extracting, transporting, or similar means may also be required by the cabinet to file a return.

(3) Any property subject to assessment by the cabinet under subsection (1) of this section which has not been listed for taxation, for any year in which it is taxable, by April 15 of that year shall be deemed omitted property.

(4) After the valuation of unmined minerals or other energy sources has been finally fixed by the cabinet, the cabinet shall certify to the county clerk of each county the amount liable for county, city, or district taxation. The report shall be filed by the county clerk in his office, and shall be certified by him to the proper collecting officer of the county, city, or taxing district for collection.

(5) The notification, protest, and appeal of assessments under subsection (1) of this section shall be made pursuant to the provisions of KRS Chapter 131.

(6) The collection of tax bills generated from the assessments made under subsection (1) of this section shall be made pursuant to the provisions of KRS Chapter 134.

HB 99, AN ACT relating to revenue and taxation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 131.020 is amended to read as follows:

(1) The Revenue Cabinet shall be organized into the following functional units:

(a) Office of the Secretary. The Office of the Secretary shall include ~~[such]~~ principal assistants and personnel appointed by the secretary pursuant to KRS Chapter 12 as are necessary to enable the secretary to perform functions of his office;

(b) Department of Property Taxation. The Department of Property Taxation shall be headed by a commissioner. The functions and duties of the department shall include mapping, providing assistance to property valuation administrators, supervising the property valuation process throughout the Commonwealth, valuating the property of public service companies, and administering intangible taxes;

(c) Department of Tax Compliance. The Department of Tax Compliance shall be headed by a commissioner. The functions and duties of the department shall include recordkeeping, providing data services, conducting audits, ~~[providing liaison with federal and state agencies,]~~ rendering taxpayer assistance, collecting delinquent taxes, and providing word processing services;

(d) Department of Administrative Services. The Department of Administrative Services shall be headed by a commissioner. The functions and duties of the department shall include reviewing audits, conducting conferences, ***providing liaison with federal and state agencies,*** issuing final rulings, administering taxpayer protests, establishing ~~[Revenue]~~ cabinet tax policies, representing the ~~[Revenue]~~ cabinet in legal and administrative actions, providing management analysis, preparing publications, and providing personnel and fiscal services.

(2) The functions and duties of the ~~[Revenue]~~ cabinet shall include conducting conferences, administering taxpayer protests, and settling tax controversies on a fair and equitable basis, taking into consideration the hazards of litigation to the Commonwealth of Kentucky and the taxpayer. The mission of the ~~[Revenue]~~ cabinet shall be to afford an opportunity for taxpayers to have an independent informal review of the determinations of the audit functions of the Department of Tax Compliance and the Department of Administrative Services, and to attempt to fairly and equitably resolve tax controversies at the administrative level.

(3) The ~~[Revenue]~~ cabinet shall be organized for administrative convenience into divisions in accordance with KRS Chapter 12.

(4) The ~~[Revenue]~~ cabinet shall fully cooperate with and make information on tax receipts available to the Finance and Administration Cabinet's Office of Financial Management and Economic Analysis as necessary for the office to perform its duties.

Section 2. KRS 132.020 is amended to read as follows:

(1) An annual ad valorem tax for state purposes of thirty-one and one-half cents ($0.315) upon each one hundred dollars ($100) of value of all real property directed to be assessed for taxation, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 directed to be assessed for taxation, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all tobacco directed to be assessed for taxation, and twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of all money in hand, shares of stock, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, except as otherwise provided in subsection (2) of this section, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of unmanufactured agricultural products, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all livestock and domestic fowl, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all tangible personal property located in a foreign trade zone as designated under 19 U.S.C. Sec. 81, fifteen cents ($0.15) upon machinery of individuals or corporations actually engaged in manufacturing, fifteen cents ($0.15) upon commercial radio, television and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna, fifteen cents ($0.15) upon property which has been certified as a pollution control facility as defined in KRS 224.01-300, one-tenth of one cent ($0.001) upon property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390, twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043, and forty-five cents ($0.45) upon each one hundred dollars ($100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed except as provided in subsection (2) of this section and KRS 132.030, 132.050, 132.200, 136.270, 136.300, 136.320, and other sections providing a different tax rate for particular property.

(2) An annual ad valorem tax for state purposes of one and one-half cents ($0.015) upon each one hundred dollars ($100) of value shall be paid upon the following classes of intangible personal properties, when ***the*** [~~such~~] intangible personal properties have not acquired a taxable situs without this state:

(a) Accounts receivable, notes, bonds, credits, nondomestic bank deposits, and any other intangible property rights arising out of or created in the course of regular and continuing business transactions substantially performed outside this state;

(b) Patents, trademarks, copyrights, and licensing or royalty agreements[~~,~~] relating ***to these*** [~~thereto~~]; and

(c) Shares of capital stock of any affiliated company as defined in subsection (3) of this section and notes, bonds, accounts receivable, and all other intercompany intangible personal property due from ***the*** [~~such~~] company.

(3) "Affiliated company" shall mean a parent corporation or subsidiary corporation, and any corporation principally engaged in business outside the United States in which the owner or the person assessed directly or indirectly owns or controls not less than ten percent (10%) of the outstanding voting stock.

(4) With respect to the intangible properties taxed pursuant to subsection (2) of this section, no other ad valorem tax shall be levied by the state or any county, city, school, or other taxing district on ***the*** [~~such~~] intangible properties, or directly or indirectly against the owner [~~with respect thereto~~].

(5) Thirty cents ($0.30) of the thirty-one and one-half cents ($0.315) state tax rate on real property and thirty cents ($0.30) of the forty-five cents ($0.45) state tax on tangible personalty subject to local taxation shall be considered as local school district tax levies for purposes of computing any direct payments of state or federal funds to said districts as replacement for ad valorem taxes lost on property acquired by a governmental agency. Should the equivalency ever be less than thirty cents ($0.30), as certified by the Department of Education, the direct payments shall be reduced proportionately.

(6) The provisions of subsection (1) of this section notwithstanding, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that ***the*** [~~such~~] increase exceeds the preceding year's assessment by more than four percent (4%). In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.

(7) By July 1 each year, the [~~Revenue~~] cabinet shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (5) of this section and certify the rate to the county clerks for their use in preparing the tax bills. ***If*** [~~In the event~~] the assessments for all counties have not been certified by July 1, the cabinet shall, when ***either*** real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth ***have been determined to be acceptable by the cabinet, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year*** have been ***determined to be acceptable by the cabinet*** [~~certified~~], make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.

(8) ***If*** [~~In the event that~~] the tax rate set by the cabinet as provided in subsection (6) of this section produces more than a four percent (4%) increase in real property tax revenues, the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.

(9) Effective on or after January 1, 1990, an ad valorem tax for state purposes of five cents ($0.05) upon each one hundred dollars ($100) of value shall be paid upon goods held for sale in the regular course of business and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business.

(10) An ad valorem tax for state purposes of ten cents ($0.10) per one hundred dollars ($100) of assessed value shall be paid on the operating property of railroads or railway companies that operate solely within the Commonwealth.

Section 3. KRS 132.385 is amended to read as follows:

(1) The [~~Revenue~~] cabinet shall develop and administer a program for the purpose of providing education and training in the technical, legal, and administrative aspects of property tax administration for property valuation administrators, deputy property valuation administrators, and [~~Revenue~~] cabinet employees. Courses may be created and taught by [~~Revenue~~] cabinet personnel or the cabinet may adopt specific courses offered by appropriate professional organizations.

(2) The [~~Revenue~~] cabinet shall develop and administer, in cooperation with the property valuation administrators, a certification program for property valuation administrators, deputy property valuation administrators, and [~~Revenue~~] cabinet employees. A professional designation, "certified Kentucky assessor" (CKA), shall be awarded to those individuals successfully meeting the standards established by this program. Minimum requirements shall include one hundred twenty (120) hours of classroom instruction, passage of subject matter examinations, and three (3) years of experience in Kentucky property tax administration. An advanced designation, "senior Kentucky assessor" (SKA), shall be awarded to those individuals successfully completing an additional ninety (90) hours of classroom instruction, passage of subject matter examinations, and an additional two (2) years of experience in Kentucky property tax administration. ***Correspondence course credit administered by the cabinet may be substituted for no more than thirty (30) hours of the one hundred twenty (120) hours required for the "certified Kentucky assessor" (CKA) designation, and for no***

more than fifteen (15) hours of the additional ninety (90) hours required for the "senior Kentucky assessor" (SKA) designation.

Section 4. KRS 134.430 is amended to read as follows:

(1) All personal property owned by a delinquent taxpayer shall be subject to distraint, and all property owned by him shall be subject to levy and sale by the proper collecting officer at any time from February 1 after the tax claim becomes delinquent until the tax claim is barred by limitations, unless otherwise provided by law.

(2) When any taxpayer becomes delinquent in the payment of a tax bill covering any property assessed by the property valuation administrator***,*** [~~or~~] the county board of assessment appeals, ***the cabinet,*** or any omitted property irrespective of by whom assessed, the sheriff shall first distrain a sufficient quantity of the delinquent's personal property in the county to pay the tax claim, and a necessary part of this property shall be sold as under execution for cash. For failure to first distrain and sell personal property, the sheriff shall be liable for the tax claim represented by the tax bill, but receipt of a quietus for the tax bill shall preclude [~~such~~] liability. Neglect on the part of the sheriff to first distrain and sell personal property shall not affect the validity of the sale of the tax claim, or the lien or the rights of any purchaser [~~thereof~~]. If personal property sufficient to satisfy the tax claim cannot be found in the county, the sheriff shall sell so much of the personal property as is found and enter proper credit on the tax bill.

(3) If no personal property is found, or the amount found is insufficient, a notation to that effect shall be entered on the tax bill. The sheriff shall, after entering this notation on the tax bill, advertise and offer for sale the tax claims of the state, county, and other taxing districts, if there is any real property subject to the lien provided in subsection (1) of KRS 134.420.

(4) No sheriff shall knowingly sell a tax claim on the same tract of land more than once for the same tax.

Section 5. KRS 134.490 is amended to read as follows:

(1) If a private person is the owner of a certificate of delinquency, he may, after the expiration of the one (1) year period provided in KRS 134.470:

(a) Institute an action against the delinquent taxpayer to collect the amount of the certificate, and any other certificates subsequently issued to the same owner against the same delinquent, and shall have all the remedies available for the enforcement of a debt; or

(b) Institute an action to enforce the lien provided in subsection (1) of KRS 134.420, represented by the certificate that is more than one (1) year of age, and those certificates subsequently held by the same owner against the same delinquent or property; or

(c) Institute one (1) action including both types of actions mentioned in paragraphs (a) and (b) of this subsection, and ***the*** [~~such~~] joinder of actions shall not be defeated ***if*** [~~in the event~~] the delinquent taxpayer has disposed of any property covered by the lien, but the purchaser of the property shall be made a defendant if the judgment is to affect his interest in the property, and as between them the delinquent taxpayer shall be responsible.

(2) If the state, county or a taxing district is the owner of a certificate of delinquency, it shall have, after the expiration of the one (1) year period provided in KRS 134.470, in addition to the remedies mentioned in subsection (1) of this section, the right to distrain and sell any property owned by the delinquent, including that on which the lien provided in subsection (1) of KRS 134.420 has attached. Any property sold under distraint proceedings shall be sold in the same manner as provided in KRS 134.430 and 134.440, except that the exercise of the power shall be vested in the county attorney. The county attorney may designate the property subject to distraint and require the sheriff to take [~~the~~] custody [~~thereof~~] if he deems custody of the property necessary. If the sheriff fails to perform this duty, he shall not be entitled to his six percent (6%) fee provided in KRS 134.440.

(3) If property is sold pursuant to a judgment of foreclosure, it shall [~~not~~] be appraised ***pursuant to the provisions of KRS 426.520*** [~~as in other foreclosure proceedings~~] and there shall be ***a*** [~~no~~] right of redemption [~~except~~] as provided in KRS ***426.530*** [~~134.510~~]. If there is no purchaser at a foreclosure sale, the master commissioner shall make a deed to the person or persons shown by record to be the owner of the certificate or certificates of delinquency, and they shall have a pro rata interest [~~therein~~] in accordance with the amount of their respective certificates.

Section 6. KRS 137.170 is amended to read as follows:

(1) Every person engaged in the business of conducting a race meeting at which live horse races are run for stakes, purses, or prizes, under the jurisdiction of the Kentucky Racing Commission, shall pay a ***tentative*** license tax to the state, as provided in subsection (2) of this section.

(2) Any race track for any year commencing December 1 and ending the following November 30 for the days upon which races are actually conducted for any stake, purse, or prize, shall pay a license tax based on the average daily mutuel handle for the preceding year as follows:

Average Daily Mutuel Handle	License Tax
0 - $250,000	$ 175
$250,001 - $450,000	$ 500

$450,001 - $700,000	$1,000
$700,001 - $800,000	$1,500
$800,001 - $900,000	$2,000
$900,001 and above	$2,500

(3) As used in subsection (2) of this section the term "daily mutuel handle" shall [~~be understood to~~] mean the total gross amount of money bet or wagered by a race track's patrons by means of pari-mutuel, combination, or French pools on live races conducted by the track.

Section 7. KRS 137.180 is amended to read as follows:

(1) Each person engaged in the business of conducting a race track shall, on or before thirty (30) days following the close of each duly licensed race meeting, furnish the Revenue Cabinet a verified report of the number of days on which races were conducted on that race track during the race meeting, together with a statement of its daily mutuel handle for each day during the meeting, and at the same time pay to the state the tentatively correct amount of the license tax apparently due it pursuant to KRS 137.170.

(2) On or before December 31 in each year, each person engaged in the business of conducting a race track shall file a final report with the Revenue Cabinet giving in summary form a recapitulation of the information furnished by the previous tentative reports filed during the year, computing the final license tax due the state for the year ending November 30 and showing the amount of ***tentative*** license tax actually paid during the year. Any balance of license tax due the state as shown on the final report shall be paid at the same time as the filing [~~thereof~~]. Any overpayment in license tax disclosed by the final report shall, at the option of the taxpayer, be promptly refunded by the state or credited against the license tax to be due from the taxpayer in the following year.

(3) Any person who violates any provision of this section or KRS 137.170 shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180 and interest at the tax interest rate as defined in KRS 131.010(6) upon the unpaid amount from the date prescribed for its payment until payment is actually made to the cabinet.

Section 8. KRS 138.205 is amended to read as follows:

(1) Any licensee under KRS 138.195 who violates any provision of KRS 138.130 to 138.205, or any ***administrative*** regulation promulgated ***under them*** [~~thereunder~~], shall become indebted to the Commonwealth in the sum of five hundred dollars ($500) for each violation. ***The*** [~~Such~~] civil penalty may be collected by action in the Franklin Circuit Court.

(2) Any manufacturer who fails to keep written records, and submit reports [~~thereof~~] to the cabinet, as required by the provisions of subsection (10) of KRS 138.195, shall become indebted to the Commonwealth in the sum of one thousand dollars ($1,000) for each violation. ***The*** [~~Such~~] penalty may be enforced by action of the Franklin Circuit Court.

(3) Any manufacturer doing business within this state without having complied with the provisions of KRS Chapter 271B as to designation of process agent shall, by so doing of business, be deemed to have made the Secretary of State its agent for the service of process in any civil action instituted in the Franklin Circuit Court for the recovery of the penalty [~~provided herein~~]. In any [~~such~~] action, the complaint shall set forth the post office address of the home office of the manufacturer.

(4) Any nonresident person licensed under the provisions of KRS 138.195 shall, at the time of application for [~~such~~] license, designate some resident of this state as a process agent for the purpose of service of civil process in any civil action originating in any court of this Commonwealth, and service upon ***the*** [~~such~~] person so designated shall be sufficient to bring ***the*** [~~such~~] nonresident person before any court of this Commonwealth for all purposes.

(5) ***Any person acting in the capacity of a licensee under the provisions of KRS 138.130 to 138.205 without having secured a license as provided in KRS 138.195 shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180 and interest at the tax interest rate as defined in KRS 131.010(6) from the date due until the date of payment*** [~~If any person shall act in the capacity of a licensee under the provisions of KRS 138.130 to 138.205 without having secured a license as provided in KRS 138.195, he shall, in addition to the payment of the fee for such a license, pay a penalty equivalent to twenty percent (20%) of such fee~~].

Section 9. KRS 138.310 is amended to read as follows:

(1) No person shall refine, produce, distill, manufacture, blend, compound, receive, use, sell, transport, store, or distribute any gasoline or special fuel upon which the tax due has not been paid or assumed or engage in the sale, storage or transportation of any gasoline or special fuel within this state upon which the tax has not been paid unless he is the holder of an uncanceled license issued by the Revenue Cabinet to engage in the business.

(2) Any transporter, other than a regularly licensed gasoline or special fuel dealer, transporting gasoline or special fuel by motor vehicle shall have plainly painted ***on the vehicle*** [~~thereon~~] the name, address, and permit number of ***the*** [~~such~~] transporter.

(3) Any person who engages in the business of refining, producing, distilling, manufacturing, blending, compounding, receiving, using, selling, transporting, storing, or distributing gasoline or special fuel in this state as a dealer, storage operator***,*** or transporter without holding an uncanceled license to engage in that business, or who without the license,

refines, produces, distills, manufacturers, blends, compounds, receives, uses, sells, transports, stores, or distributes any gasoline or special fuel upon which the tax imposed by KRS 138.220 has not been reported and paid, shall ***be subject to the uniform civil penalties imposed pursuant to KRS 131.180 and interest at the tax interest rate as defined in KRS 131.010(6) from the date due until the date of payment*** ~~[pay a penalty equal to twenty percent (20%) of the amount of the tax on the gasoline or special fuel so refined, produced, distilled, manufactured, blended, compounded, received, used, sold, transported, stored, or distributed]~~.

Section 10. KRS 138.342 is amended to read as follows:

(1) Applications for refund pursuant to KRS 138.341 shall be made to the ~~[Revenue]~~ cabinet on a calendar quarter or calendar year basis on forms and in the manner prescribed by it for the refund of tax paid on aviation motor fuel used during the calendar quarter or calendar year. No refund claim shall be filed more than ninety (90) days after the close of the calendar year during or in which the tax refundable purchases were made. Each application for a refund shall show the number of gallons of aviation motor fuel purchased during the preceding month; the date and quantity of each purchase; the vendor from whom the fuel was purchased; the number of gallons on which refund is claimed; and other information the ~~[Revenue]~~ cabinet may require.

(2) The ~~[Revenue]~~ cabinet shall audit the application and make other investigation it deems necessary to determine whether it constitutes a proper claim. When the ~~[Revenue]~~ cabinet is satisfied that a refund is proper, it shall authorize the tax paid to be refunded as other refunds are made and the amount refunded shall be deducted from current motor fuel tax receipts. ***The tax shall be refunded with interest at the tax interest rate as defined in KRS 131.010(6).***

(3) When the ~~[Revenue]~~ cabinet finds that an application for a refund contains a false or fraudulent statement or that a refund has been fraudulently obtained, the ~~[Revenue]~~ cabinet shall refuse to grant any refunds to the person making the false or fraudulent statement or fraudulently obtaining a refund for a period of two (2) years from the date of the finding.

Section 11. KRS 138.344 is amended to read as follows:

(1) Except as otherwise provided in KRS 138.220 to 138.500, any person who shall purchase gasoline or special fuel, on which the tax as imposed by KRS 138.220 has been paid, for the purpose of operating or propelling stationary engines or tractors for agricultural purposes, or who shall purchase special fuels, on which the tax as imposed by KRS 138.220 has been paid, for consumption in unlicensed vehicles or equipment for nonhighway purposes shall be reimbursed for the tax so paid on the gasoline or special fuel. No refund shall be authorized unless applications ~~[therefor]~~ and all necessary information are filed with the ~~[Revenue]~~ cabinet on a calendar quarter or calendar year basis on forms and in the manner prescribed by it for refund of the tax paid on the fuel. ~~[No refund claim shall be filed more than ninety (90) days after the close of the calendar year during or in which the tax refundable purchases were made.]~~ No refund shall be authorized for any individual purchase of less than fifty (50) gallons. In lieu of the tax refund procedure herein, the tax on special fuels for operating or propelling stationary engines or tractors for agricultural purposes may be credited by the dealer to the purchaser as provided in KRS 138.358. The dealer and the purchases shall be subject to the same rules, conditions and responsibilities as provided in KRS 138.344 to 138.355.

(2) The information to be required from the permit holder, by the ~~[Revenue]~~ cabinet, in order that the refund may be allowed, shall be as follows:

(a) Name and address of permit holder .... permit number .....

(b) Total number of gallons purchased .... and total purchase price ..... (Invoices to be attached to refund application.)

(c) Total number of gallons used on highways .....

(d) Total number of gallons on which refund is claimed ..... (Line b minus line c.)

(e) ~~[Such]~~ Other information as the cabinet may require to reasonably protect the revenues of the Commonwealth.

Section 12. KRS 138.353 is amended to read as follows:

If any excise taxes on gasoline or special fuel be erroneously refunded, the cabinet shall ***issue an assessment for the amount erroneously refunded. The refund error shall be assessed, collected, and paid in the same manner as if it were a deficiency***~~[advise the payee by certified mail, return receipt requested of the erroneous refund. If the payee fails to reimburse the Commonwealth within fifteen (15) days after the receipt of the letter, an action may be instituted by the cabinet in the Franklin Circuit Court and the cabinet shall recover from the payee the amount of the erroneous refund plus a penalty of twenty percent (20%)]~~.

Section 13. KRS 138.445 is amended to read as follows:

(1) Except as provided in KRS 138.240(2) (e), any person who buys any liquid fuel for the purpose of dispensing it directly into fuel tanks installed in or attached to watercraft, for the purpose of operating or propelling watercraft, shall be reimbursed for the tax paid by him pursuant to the provisions of KRS 138.220 to 138.340 upon presenting to the ~~[Revenue]~~ cabinet an application accompanied by the original invoices showing the payment of the purchases, including the liquid fuel tax ~~[thereon]~~. The application shall set forth the total amount of the liquid fuel purchased and used by the applicant in the operation or propulsion of watercraft.

(2) (a) When liquid fuel on which the tax has been paid pursuant to the provisions of KRS 138.220 to 138.340 has been used for the purpose of operating any watercraft and was delivered directly to the fuel tanks installed in or

attached to the watercraft, the purchaser of the liquid fuel so used shall be reimbursed for the tax paid. No tax shall be refunded except that paid upon the fuel used exclusively in watercraft motors; and

(b) No person shall be entitled to a refund hereunder unless he shall have first filed with the ~~[Revenue]~~ cabinet a bond with approved surety in the amount of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) to be determined by the ~~[Revenue]~~ cabinet and upon the payment to the Commonwealth of any refunds to which he was not entitled.

(3) All refund claims authorized by this section shall be filed with the ~~[Revenue]~~ cabinet on a calendar quarter or calendar year basis on forms and in the manner prescribed by it for refund of the tax paid on the fuel. ~~[No refund claim shall be filed more than ninety (90) days after the close of the calendar year during or within which the liquid fuel shall have been purchased as shown by the invoice.]~~ If the application for refund is mailed to the ~~[Revenue]~~ cabinet, the date of mailing as shown by the postmark shall be taken as the time and date of filing with the cabinet.

(4) Refunds shall be made only on gasoline and special fuels purchased by locations designated by the ~~[Revenue]~~ cabinet. ***The tax shall be refunded with interest at the tax interest rate as defined in KRS 131.010(6).***

Section 14. KRS 138.446 is amended to read as follows:

(1) City and suburban bus companies and taxicab companies operating under a certificate of convenience and necessity issued pursuant to KRS Chapter 281, holders of a nonprofit bus certificate as provided by KRS 281.619, and senior citizen programs which utilize Title III funds of the Older Americans Act in the provision of transportation services shall be entitled to a refund of seven-ninths (7/9) of the amount of KRS Chapter 138 taxes paid on motor fuels used in their regularly scheduled operations in Kentucky.

(2) No person shall be entitled to a refund ***pursuant to this section*** ~~[hereunder]~~ unless he shall have first filed with the ~~[Revenue]~~ cabinet a bond issued by a surety company authorized to do business in Kentucky in an amount of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) to be determined by the ~~[Revenue]~~ cabinet, conditioned upon faithful compliance with this section and upon the payment to the Commonwealth of any refunds to which he was not entitled.

(3) Applications for refund shall be filed with the ~~[Revenue]~~ cabinet on a calendar quarter or calendar year basis on forms and in the manner prescribed by it for refund of tax paid on motor fuel used by buses or taxicabs. ~~[No refund claim shall be filed more than ninety (90) days after the close of the calendar year during or in which the tax refundable purchases were made.]~~ Each application for a refund shall show the number of gallons of motor fuel purchased during the quarter for use in buses or taxicabs; the date and quantity of each purchase; the vendor from whom the fuel was purchased; the number of gallons on which refund is claimed; and other information the ~~[Revenue]~~ cabinet may require. Invoices shall be attached to applications from taxicab companies.

(4) The cabinet may require any gasoline dealer or any dealer's authorized agent to identify gasoline sold by him for taxicab use by adding ~~[thereto]~~ any chemical or substance, which shall be furnished by the cabinet and used in the manner as prescribed by the cabinet. The cabinet also may require that the dealer keep a complete record of all the gasoline sold by him, which records shall give the date of each sale, the number of gallons sold, the name of the person to whom sold, and the sale price.

(5) The ~~[Revenue]~~ cabinet shall audit the application and make ***any*** ~~[such]~~ other investigation ~~[as]~~ it deems necessary to determine whether it constitutes a proper claim. When the ~~[Revenue]~~ cabinet is satisfied that a refund is proper, it shall authorize seven-ninths (7/9) of the amount of the tax paid to be refunded as other refunds are made and the amount refunded shall be deducted from current motor fuel tax receipts. ***The tax shall be refunded with interest at the tax interest rate as defined in KRS 131.010(6).***

(6) When the ~~[Revenue]~~ cabinet finds that an application for a refund contains a false or fraudulent statement or that a refund has been fraudulently obtained, the ~~[Revenue]~~ cabinet shall refuse to grant any refunds to the person making the false or fraudulent statement or fraudulently obtaining a refund for a period of two (2) years from the date of the findings.

(7) The ~~[Revenue]~~ cabinet may prescribe, ***promulgate*** ~~[adopt]~~ and enforce ***administrative*** regulations relating to the administration and enforcement ***of this section*** ~~[thereof]~~.

(8) The refund provided ***for in this section*** ~~[herein]~~ shall be effective on motor fuel purchased ***on or after*** July 1, 1978~~[, and thereafter]~~.

Section 15. KRS 138.460 is amended to read as follows:

(1) On and after July 1, 1990, a tax levied upon its retail price at the rate of six percent (6%) shall be paid on the use in this state of every motor vehicle, except those exempted by KRS 138.470, at the time and in the manner provided in this section. In the case of trucks of gross weight in excess of ten thousand (10,000) pounds, the tax shall be levied upon ninety percent (90%) of the retail price of the vehicle.

(2) The tax shall be collected by the county clerk or other officer with whom the vehicle is required to be registered:

(a) When he collects the registration fee for registering and licensing a motor vehicle the first time it is offered for registration in this state;

(b) Or upon the transfer of ownership of any motor vehicle previously registered in this state.

(3) The tax collected by the county clerk under this section shall be reported and remitted to the Revenue Cabinet on forms provided by the cabinet and on ***those*** [~~such~~] forms as the cabinet may prescribe. The county clerk shall for his services in collecting the tax be entitled to retain an amount equal to three percent (3%) of the tax collected and accounted for.

(4) No county clerk or other officer shall register or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is then being offered for registration for the first time, or transfer the ownership of any motor vehicle previously registered in this state, unless the owner or his agent pays the tax levied under this section in addition to the transfer, registration, and license fees.

(5) When a ***person*** [~~resident of this state~~] offers a motor vehicle for registration for the first time in this state which was registered in another state that levied a tax substantially identical to the tax levied under this section, ***the*** [~~such~~] person shall be entitled to receive a credit against the tax imposed by this section equal to the amount of tax paid to the other state. No credit shall be given under this subsection for taxes paid in another state if that state does not grant similar credit for substantially identical taxes paid in this state.

(6) No county clerk or other officer shall register or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is then being offered for registration for the first time, unless the seller or his agent delivers to the county clerk or other officer a certified or photostat copy of the manufacturer's price label for passenger cars or a certified or photostat copy of the itemized billing to the customer in the case of all other motor vehicles; and the clerk shall attach the certified or photostat copy to the copy of the certificate of registration and ownership mailed to the cabinet.

(7) Notwithstanding the provisions of KRS 138.450(4), in no case shall the tax be less than five dollars ($5) upon first registration of or any transfer of ownership of a motor vehicle in this state, except where such vehicle is exempt from tax under KRS 138.470.

(8) Where a motor vehicle is sold by a dealer in this state and the purchaser returns the vehicle for any reason to the same dealer within sixty (60) days for a vehicle replacement or a refund of the purchase price, the purchaser shall be entitled to a refund of the amount of usage tax received by the Revenue Cabinet as a result of the registration of the returned vehicle. In the case of a new motor vehicle, the registration of the returned vehicle shall be canceled and the vehicle shall be considered to have not been previously registered in Kentucky when resold by the dealer.

(9) When a manufacturer refunds the retail purchase price or replaces a new motor vehicle for the original purchaser within ninety (90) days because of malfunction or defect, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the Revenue Cabinet as a result of the first registration. No person shall be entitled to a refund unless he shall have filed with the Revenue Cabinet a report from the manufacturer identifying the vehicle that was replaced and stating the date of replacement.

(10) Notwithstanding the time limitations of subsections (8) and (9) of this section, when a dealer or manufacturer refunds the retail purchase price or replaces a motor vehicle for the purchaser as a result of formal arbitration or litigation, or, in the case of a manufacturer, because ordered to do so by a dispute resolution system established under KRS 367.865 or 16 C.F.R. 703, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the Revenue Cabinet as a result of the registration. No person shall be entitled to a refund unless he shall have filed with the Revenue Cabinet a report from the dealer or manufacturer identifying the vehicle that was replaced.

Section 16. KRS 139.185 is amended to read as follows:

Notwithstanding any other provisions of this chapter to the contrary, the president, vice president, secretary, treasurer or any other person holding any equivalent corporate office of any corporation subject to the provisions of this chapter shall be personally and individually liable, both jointly and severally, for the taxes imposed under this chapter, and neither the corporate dissolution nor withdrawal of the corporation from the state nor the cessation of holding any corporate office shall discharge the foregoing liability of any [~~such~~] person. The personal and individual liability shall apply to each and every person holding the corporate office at the time the taxes become or became due. No person will be personally and individually liable pursuant to this section who had no authority in the management of the business or financial affairs of the corporation at the time that the taxes imposed by this chapter become or became due. Taxes as used in this section shall include interest accrued [~~thereon~~] at the rate provided by KRS 139.650 and all applicable penalties imposed under this chapter and all applicable penalties and fees imposed under KRS ***131.180,*** 131.410 to 131.445 and 131.990.

Section 17. KRS 139.485 is amended to read as follows:

(1) Except as otherwise provided, the terms "sale at retail," "retail sale," "use," "storage," and "consumption" as used in this chapter shall not include the sale, use, storage or consumption of food for human consumption.

(2) The term "food" as used in subsection (1) of this section shall include:

(a) Cereals and cereal products;

(b) Milk and milk products;

(c) Meat and meat products;

(d) Fish and fish products;

(e) Eggs and egg products;

(f) Vegetables and vegetable products;

(g) Fruit and fruit products, including fruit juices;

(h) Sugar, sugar products and sugar substitutes; other than candy, confectionery and chewing gum;

(i) Coffee and coffee substitutes;

(j) Tea, cocoa and cocoa products; other than candy and confectionery;

(k) Spices, condiments, and salt;

(l) Oleomargarine.

(3) The term "food" as used in subsection (1) of this section shall not include:

(a) Candy, confectionery and chewing gum;

(b) Spirituous, malt, or vinous liquors;

(c) Cocktail mixes;

(d) Soft drinks, sodas, and similar beverages;

(e) Medicines, tonics, vitamins, and other dietary supplements;

(f) Water, mineral water, carbonated water and ice;

(g) Pet foods;

(h) Meals served on or off the premises of the retailer;

(i) Food furnished, prepared, or served for consumption at tables, chairs, or counters, or from trays, glasses, dishes, or other tableware provided by the retailer;

(j) Food sold by retailers who ordinarily sell for consumption on or near the premises of the retailer even though ***the*** [~~such~~] food is sold on a "take out" or "to go" order and is actually bagged, packaged, or wrapped and taken from the premises of the retailer;

(k) Food sold through vending machines;

(l) Food sold by street vendors***; and***

(m) Food sold through nonmechanical self-service vending systems.

Section 18. KRS 140.151 is amended to read as follows:

(1) Notwithstanding any other provision of this chapter to the contrary, when a distributive share of a Class A beneficiary in an estate consists of a farm or other closely held business or interest [~~therein~~], the beneficiary of ***the*** [~~such~~] interest may elect to pay the inheritance tax as finally determined for the beneficiary in five (5) equal installments with the first installment due at the time the return is filed and with succeeding payments due in annual installments beginning one (1) year after the return is filed. Deferment of tax under this section shall be subject to the following conditions:

(a) The net tax due from the qualifying beneficiary's distributive share must exceed five thousand dollars ($5,000).

(b) The interest in the farm or other closely held business must be at least seventy-five percent (75%) of the beneficiary's total distributive share.

(c) In the case of disposition of any interest in the farm or closely held business by the qualifying beneficiary, the balance of the tax will immediately become due.

(2) For purposes of this chapter a farm is defined as real and tangible personal property actively and primarily used for farming activities.

(3) For purposes of this chapter, an interest in a closely held business includes:

(a) Any interest as a proprietor in a business carried on as a proprietorship;

(b) Any interest in a trade, business or corporation with no more than ten (10) partners or stockholders.

(4) The portion of the tax deferred under this section shall be charged with interest at ***the tax interest rate as defined in KRS 131.010(6)*** [~~eight percent (8%) per annum~~], commencing eighteen (18) months after the date of death.

(5) When the beneficiary elects to pay the tax on his share as provided in this section, ***the*** [~~such~~] election must be made in writing and signed by the beneficiary and must be filed with the Revenue Cabinet at the time of filing the tax return for the decedent's estate under KRS 140.160(2). The filing of the election together with payment of the first installment shall relieve the personal representative or trustee of the estate from further liability for the tax payments deferred under this section and the bond requirements of KRS 140.210, subject to the final approval by the revenue cabinet of all other taxes due under this chapter.

(6) A beneficiary electing to defer the payment of taxes under this section shall be personally liable for the amount of deferred taxes until paid. The amount of taxes deferred under this section shall be and remain a lien upon all real and personal property used in the operation of the farm or closely held business, excluding livestock, crops, and inventory produced or held for current sale, until all the deferred taxes, together with interest and penalties [~~thereon~~] have been paid. This lien may be recorded and enforced as other liens on similar property are recorded and enforced.

(7) The period of limitations for actions to enforce the collection of taxes imposed by this chapter as provided by KRS 140.160(3) shall be suspended for the period of time for deferred payment granted by this section.

Section 19. KRS 140.991 is amended to read as follows:

Any personal representative or other person who violates any of the provisions of KRS Chapter ***140*** [~~149~~] shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180.

Section 20. KRS 143.085 is amended to read as follows:

Notwithstanding any other provisions of this chapter to the contrary, the president, vice president, secretary, treasurer, or any other person holding any equivalent corporate office of any corporation subject to the provisions of this chapter shall be personally and individually liable, both jointly and severally, for the taxes imposed under this chapter, and neither the corporate dissolution nor withdrawal of the corporation from the state nor the cessation of holding any corporate office shall discharge the foregoing liability of any [~~such~~] person. The personal and individual liability shall apply to each and every person holding corporate office at the time the taxes become or became due. No person will be personally and individually liable pursuant to this section who had no authority in the management of the business or financial affairs of the corporation at the time that the taxes imposed by this chapter become or became due. Taxes as used in this section include interest accrued [~~thereon~~] at the rate provided by KRS 143.080, and all applicable penalties imposed under this chapter, and all applicable penalties and fees imposed under KRS ***131.180,*** 131.410 to 131.445, and 131.990.

Section 21. KRS 131.370 is amended to read as follows:

(1) Any party aggrieved by any final order, decision, or determination of the Kentucky Board of Tax Appeals, except on appeals from a county board of assessment appeals, may appeal on any question of law to the Franklin Circuit Court or to the Circuit Court of the county in which the party aggrieved resides or conducts his place of business. Any final orders entered on the rulings of a county board of assessment appeals may be appealed in like manner to the Circuit Court of the county in which the appeal originated. All parties to the proceedings before the Board of Tax Appeals shall be made parties to the proceedings on appeal.

(2) A notice of appeal shall be filed with the Board of Tax Appeals within thirty (30) days after any final order, decision, or determination by the board. Within thirty (30) days thereafter, a statement of appeal shall be filed with the appropriate Circuit Court together with the certified record of the Kentucky Board of Tax Appeals. The statement of appeal shall substantially conform to that required to be filed in the Kentucky Supreme Court. The appeal shall be docketed by the Circuit Court clerk upon the filing of the statement of appeal and the Kentucky Board of Tax Appeals' certified record.

(3) If the appeal is from an order sustaining a tax assessment, collection of the tax may be stayed by the filing of a supersedeas bond in the manner directed by the Rules of Civil Procedure, or by payment of the tax as provided in KRS ***134.580*** [~~134.580(1)~~].

(4) No new or additional evidence may be introduced in the Circuit Court except as to the fraud or misconduct of some person engaged in the administration of the revenue laws and affecting the order, ruling or award, but the court shall otherwise hear the cause upon the record as certified by the board and shall dispose of the cause in summary manner, its review being limited to determining whether or not:

 (a) The board acted without or in excess of its powers;

 (b) The order, decision, or award was procured by fraud;

 (c) The order, decision, or award is not in conformity to the law; and

 (d) If findings of fact are in issue, whether the findings of fact support the order, decision, or award.

(5) The court shall enter judgment affirming, modifying, or remanding the order in its discretion. The court may, before judgment, upon the showing of sufficient cause, remand the entire matter to the board for further consideration.

(6) Any party may appeal to the Court of Appeals as provided by the Rules of Civil Procedure.

HB 103, AN ACT relating to revenue and taxation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 131.071 is amended to read as follows:

(1) There is hereby created and established within the Revenue Cabinet an Office of Taxpayer Ombudsman to be staffed with a taxpayers' rights advocate and such other support personnel as may be deemed necessary to carry out the spirit and the specific purposes of KRS 131.041 to 131.081. For administrative and budgetary purposes, the Office of Taxpayer Ombudsman shall be attached to the Office of the Secretary of Revenue.

(2) The taxpayer ombudsman shall be a person with ***either*** no less than ***five (5)*** [~~ten (10)~~] years of tax administration experience at a supervisory or management level ***or no less than ten (10) years of tax administration experience with at least five (5) years of experience working directly in the Office of Taxpayer Ombudsman. The taxpayer ombudsman shall possess*** [~~and who possesses~~] a broad general knowledge of the tax laws, regulations, systems, and procedures administered or utilized by the cabinet.

(3) The taxpayer ombudsman shall:

(a) Coordinate the resolution of taxpayer complaints and problems if so requested by a taxpayer or his representative.

(b) Provide recommendations to the cabinet for new or revised informational publications and recommend taxpayer and cabinet employee education programs needed to reduce or eliminate errors or improve voluntary taxpayer compliance.

(c) Provide recommendations to the cabinet for simplification or other improvements needed in tax laws, regulations, forms, systems, and procedures to promote better understanding and voluntary compliance by taxpayers.

(d) At least annually, on or before October 1, prepare and submit a report to the secretary of the Revenue Cabinet summarizing the activities of the Office of Taxpayer Ombudsman during the immediately preceding fiscal year describing any recommendations made pursuant to paragraphs (b) and (c) of this subsection, including the progress in implementing such recommendations, and providing such other information as the taxpayer ombudsman deems appropriate relating to the rights of Kentucky taxpayers.

HB 106, AN ACT relating to sales and use tax.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 139.730 is amended to read as follows:

In the administration of the ***sales and*** use tax, the cabinet may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property, the storage, use, or other consumption of which is subject to the tax. The report shall be filed at the time specified by the cabinet and shall contain such information as the cabinet may require.

HB 121, AN ACT relating to revenue and taxation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 141.180 is amended to read as follows:

(1) Every individual, except as otherwise provided in this section, having for the taxable year an adjusted gross income which exceeds five thousand dollars ($5,000), if single, or if married and not living with husband or wife and every married individual living with husband or wife whose adjusted gross income combined with the adjusted gross income of his or her spouse exceeds five thousand dollars ($5,000) shall make to the cabinet a return stating specifically the items which he claims as deductions and tax credits allowed by this chapter.

(2) Any individual who is blind or who has attained the age of sixty-five (65) before the close of his taxable year shall be required to make a return only if he has for the taxable year an adjusted gross income which exceeds five thousand dollars ($5,000). Every married individual living with husband or wife shall, if both spouses have attained the age of sixty-five (65), be required to make a return if the combined adjusted gross income of both spouses exceeds five thousand four hundred dollars ($5,400). If the individual is unable to make his own return, the return shall be made by a duly authorized agent.

(3) Any individual, who is both sixty-five (65) or over and blind before the close of the taxable year, shall make a return if he has for the taxable year an adjusted gross income which exceeds five thousand dollars ($5,000).

(4) Notwithstanding any other provision of this section, an individual, having for the taxable year gross income from self-employment of five thousand dollars ($5,000) or more, shall make a return.

(5) Any nonresident individual with gross income from Kentucky sources and a total gross income of five thousand dollars ($5,000) or over shall make a return.

(6) A husband and wife not living together shall make separate returns. A husband and wife living together may make a joint return, or may make separate returns. However, in the event separate returns are made, neither spouse shall report income nor claim deductions properly attributable to the other.

(7) ***Notwithstanding any other provisions of KRS Chapters 131 and 141, a husband or a wife who is jointly and severally liable for taxes levied under KRS 141.020, applicable penalties, and interest shall be relieved of liability for tax, interest, penalties and other amounts if:***

(a) The spouse has been relieved of liability for federal income tax, interest, penalties and other amounts for the same taxable year by the Internal Revenue Service under Section 6013(e) of the Internal Revenue Code; or

(b) It is shown that the spouse would have qualified for relief under the provisions of Section 6013(e) of the Internal Revenue Code for the same taxable year if there had been a federal income tax liability.

(8) Any relief granted pursuant to paragraphs (a) and (b) of subsection (7) of this section shall not result in a tax overpayment to the spouse requesting relief.

(9) Each individual return shall be verified by a written declaration that it is made under the penalties of perjury.

HB 122, AN ACT relating to amusement machines and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 137.410 is amended to read as follows:

Every municipal corporation of the Commonwealth ***may*** ~~[is hereby authorized and empowered to]~~ levy a tax on coin machines***.*** ***Coin machines shall include any lawful coin or token-operated machine or device which contains no element of chance and which as a result of depositing a coin, token, or other object automatically or by some mechanical operation affords music or amusement of some character with or without vending any merchandise, but in addition to any merchandise. Coin machines shall not include any bona fide merchandise vending machine in which there are no amusement features.*** ~~[as defined and provided in KRS 137.010 and 137.340 to 137.400, provided, however that]~~ Any license tax so imposed by a municipal corporation shall not exceed ***ten dollars ($10) per machine*** ~~[in amount the taxes provided for state purposes]~~, except that cities of the first class may levy taxes equal to ***twenty dollars ($20) per machine*** ~~[twice the amount of the state taxes]~~.

Section 2. KRS 137.990 is amended to read as follows:

(1) (a) Any person who engages in any business or sells or offers to sell or has on hand for the purpose of sale any article or exercises any privilege for which a license is required or imposed by KRS 137.115 before procuring the license and paying the tax shall be fined not less than twenty-five dollars ($25) nor more than two hundred dollars ($200) for each offense, unless otherwise specifically provided;

(b) Any county clerk who violates any of the provisions of KRS 137.115, or any ***administrative*** ~~[reasonable rule or]~~ regulation ***promulgated by*** ~~[of]~~ the Revenue Cabinet thereunder, shall be fined not less than fifty dollars ($50) nor more than one thousand dollars ($1,000) for each offense; and

(c) Any person who makes a false statement in securing a license under KRS 137.115 shall be deemed guilty of a misdemeanor.

(2) (a) Any person who violates any provision of KRS 137.120 to 137.160 shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180; and

(b) Any person who violates any of the provisions of KRS 137.120 to 137.160 may be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for not less than thirty (30) days nor more than six (6) months, or both.

(3) Any person who violates any of the provisions of KRS 137.170 or 137.180 shall be fined not more than one thousand dollars ($1,000) or imprisoned in the county jail not more than thirty (30) days, or both so fined and imprisoned. If the offender is a corporation, the principal officer or the officer or employee directly responsible for the violation, or both, shall be punished as provided in this subsection.

~~[(4) Whoever violates any of the provisions of KRS 137.340 to 137.400 shall, upon conviction thereof, be fined not less than twenty-five dollars ($25) nor more than five hundred dollars ($500). Whoever attaches or causes to be attached to a coin machine any fictitious evidence of tax payment purported to be issued by the cabinet, or a counterfeit thereof, shall upon conviction thereof be fined not less than one thousand dollars ($1,000), and each separate fictitious counterfeit license stamp or receipt so attached or used on a coin machine shall constitute a separate and distinct offense.]~~

Section 3. The following KRS sections are repealed:

47.011 Coin machine tax revenue to be credited to general fund.

137.010 Definitions for KRS 137.340 to 137.410.

137.340 Coin-operated music or amusement machines -- License tax -- Stamps -- Instructions -- Illegal machines -- Exceptions.

137.350 Application for license -- Statement.

137.360 Issuance of license -- Fee.

137.370 License year -- Half-year license.

137.380 Tax penalty and interest.

137.390 Administration.

137.400 Disposition of revenue.

Section 4. Whereas licenses for each year must be obtained on or before July 1, an emergency is declared to exist, and this Act shall become effective June 30, 1994.

The Committee on Business Organizations and Professions reported **HB 43** and **HB 206**, with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 43, AN ACT relating to boiler inspection fees.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 236.120 is amended to read as follows:

(1) If, upon inspection, a boiler or pressure vessel is found to comply with the ***administrative*** [~~rules and~~] regulations of the department, the owner, user, or insurance company ***of it*** [~~thereof~~] shall pay to the department the sum of ***fifteen*** [~~five~~] dollars ***($15)*** [~~($5)~~]. When the inspection is made by a special inspector, ***the*** [~~said~~] inspector shall attach the certificate fee to his report. The chief boiler inspector, or his duly authorized representative, shall issue to ***the*** [~~such~~] owner or user a certificate of inspection for the boiler or pressure vessel bearing the date of inspection and specifying the maximum pressure under which the boiler may be operated. An inspection certificate shall be valid for not more than fourteen (14) months from its date in the case of power boilers, and twenty-six (26) months in the case of low pressure steam or vapor heating boilers, hot water heating boilers***,*** or hot water supply boilers. Certificates shall be posted under glass in the room containing the boiler inspected or, in the case of a portable boiler, shall be kept in a tool box accompanying the boiler.

(2) No certificate of inspection issued for an insured boiler***,*** inspected by a special inspector***,*** shall be valid after the ***insurance on the*** boiler for which it was issued ***terminates. Boilers shall be*** [~~shall cease to be~~] insured by a company duly authorized by this state to carry ***the*** [~~such~~] insurance.

(3) The commissioner or his authorized representative may at any time suspend a certificate of inspection ***if*** [~~when~~], in his opinion, the boiler or pressure vessel for which it was issued[~~,~~] cannot be operated without menace to the public safety, or ***if*** [~~when~~] the boiler or pressure vessel is found not ***in compliance*** [~~to comply~~] with ***this chapter or*** the ***administrative*** [~~rules and~~] regulations ***of the department*** [~~provided in this chapter~~]. A special boiler inspector shall have corresponding powers with respect to suspending certificates of inspection for boilers insured by the company employing him. ***The*** [~~Such~~] suspension of a certificate of inspection shall continue in effect until ***the*** [~~such~~] boiler or pressure vessel ***conforms*** [~~shall have been made to conform~~] to ***this chapter and administrative*** [~~the rules and~~] regulations of the board, and until ***the*** [~~said~~] inspection certificate ***is*** [~~shall have been~~] reinstated.

(4) A suspended certificate of inspection shall be reissued on the recommendation of the boiler inspector or special boiler inspector who first caused the suspension or at the discretion of the chief boiler inspector.

HB 206, AN ACT relating to charitable gaming, making an appropriation, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

The General Assembly of the Commonwealth of Kentucky hereby declares that charitable gaming conducted by charitable organizations is an important method of raising funds for legitimate charitable purposes and is in the public interest. The purpose of this chapter is to comply with Constitutional requirements by establishing an effective and efficient mechanism for regulating charitable gaming which includes defining the scope of charitable gaming activities, setting standards for the conduct of charitable gaming which insure honesty and integrity, providing for means of accounting for all moneys generated through the conduct of charitable gaming, and providing for suitable penalties for violations of laws and administrative regulations. The intent of this chapter is to prevent the commercialization of charitable gaming, to prevent participation in charitable gaming by criminal and other undesirable elements, and to prevent the diversion of funds from legitimate charitable purposes. In order to carry out the purpose and intent, the provisions of this chapter and any administrative regulations promulgated in accordance with this chapter, shall be construed in the public interest and strictly enforced.

SECTION 2. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

As used in this chapter, unless the context requires otherwise:

(1) "Division" means the Division of Charitable Gaming within the Justice Cabinet;

(2) "Charitable gaming" means bingo, charity game tickets, raffles, and charity fundraising events conducted for fundraising purposes by charitable organizations licensed and regulated under the provisions of this chapter;

(3) "Charitable organization" means a nonprofit entity organized for charitable, religious, educational, literary, civic, fraternal, or patriotic purposes;

(4) "Subordinate organization" or "suborganization" means a separately organized subordinate group related to, and under the direct control of, a licensed charitable organization.

(5) "Bingo" means a specific game of chance in which participants use cards or paper sheets divided into horizontal and vertical spaces, each of which is designated by a letter and a number, and prizes are awarded on the basis of the letters and numbers on the card conforming to a predetermined and preannounced configuration of letters and numbers selected at random;

(6) "Charity game ticket" means a game of chance using a folded or banded paper ticket, or a paper card with perforated break-open tabs, the face of which is covered or otherwise hidden from view to conceal a number, letter, symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners and

shall include charity game tickets that utilize a seal card;

(7) "Seal card" means a board or placard used in conjunction with charity game tickets, that contains a seal or seals which, when removed or opened, reveal predesignated winning numbers, letters, or symbols;

(8) "Raffle" means a game of chance in which a participant buys a ticket for a chance to win a prize, with the winner to be determined by a random drawing;

(9) "Charity fundraising event" means a fundraising activity of limited duration at which games of chance approved by the division are conducted, and examples of which include fairs, festivals, carnivals, and bazaars;

(10) "Manufacturer" means a person who assembles from raw materials or subparts any charitable gaming equipment or supplies used in the conduct of charitable gaming, including a person who converts, modifies, and adds to or removes parts from, charitable gaming equipment and supplies. The term shall not include:

- *(a) Any person who services or repairs charitable gaming supplies and equipment, so long as that person replaces or repairs an incidental, malfunctioning, or nonfunctioning part with a similar or identical part; and*
- *(b) Any distributor who cuts, collates, and packages for distribution any gaming supplies and equipment purchased in bulk;*

(11) "Distributor" means a person who sells, markets, leases, or otherwise furnishes to a charitable organization charitable gaming equipment or supplies, or both, used in the conduct of charitable gaming. "Distributor" does not mean a resident printer who prints raffle tickets at the request of a licensed charitable organization;

(12) "Charitable gaming facility" means a person, including a licensed charitable organization, which owns or is a lessee of premises which are leased or otherwise made available for financial consideration to two (2) or more licensed charitable organizations for the conduct of charitable gaming;

(13) "Gross receipts" means all moneys collected or received from the conduct of charitable gaming;

(14) "Adjusted gross receipts" means gross receipts less all cash prizes or the cash value of merchandise prizes;

(15) "Net receipts" means adjusted gross receipts less all expenses, charges, fees, and deductions authorized under KRS Chapter 238;

(16) "Charitable gaming supplies and equipment" means any material, device, apparatus or paraphernalia customarily used in the conduct of charitable gaming including bingo cards and paper, charity game tickets, and other apparatus or paraphernalia used in conducting games of chance at charity fundraising events subject to regulation under this chapter. The term shall not include any material, device, apparatus, or paraphernalia incidental to the game such as pencils, daubers, playing cards, or other supplies which may be purchased from normal sources of supply;

(17) "Door prize" means a prize awarded to a person based solely upon the person's attendance at an event or the purchase of a ticket to attend an event; and

(18) "Casino-type game" means roulette, blackjack, poker, money wheel, baccarat, slot machines, pusher-type games, any dice game where the player competes against the house, and any other game of chance customarily played in a gambling casino, as identified and defined by administrative regulation of the division.

SECTION 3. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) The Division of Charitable Gaming is created as a division within the Justice Cabinet. The division shall be empowered to license and regulate the conduct of charitable gaming and to license and regulate charitable gaming organizations, facilities, manufacturers, and distributors in the Commonwealth of Kentucky in accordance with the provisions of this chapter.

(2) The Justice secretary shall employ a division director, an assistant director, and other staff as may be necessary to administer and enforce the provisions of this chapter.

(3) All division staff shall be classified and employed in accordance with applicable personnel requirements of the Department of Personnel. The division director and the assistant director shall be nonmerit employees and all other staff shall be merit employees with all rights and privileges afforded under KRS Chapter 18A.

(4) No employee of the division during his or her term of employment shall be an officer in a charitable organization that is licensed to conduct charitable gaming or be involved in the conduct of charitable gaming as a member of a licensed charitable organization. No employee of the division during his or her term of employment shall be licensed as a manufacturer, distributor, or charitable gaming facility or have a financial interest in any business that is licensed as a manufacturer, or distributor, or charitable gaming facility.

SECTION 4. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

The division is empowered to license and regulate the conduct of charitable gaming in the Commonwealth of Kentucky. In discharging this responsibility, the division shall have the following powers and duties:

(1) Licensing charitable organizations, charitable gaming facilities, manufacturers, and distributors who desire to

engage in charitable gaming;

(2) Establishing and enforcing reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities;

(3) Prescribing reasonable fees for licenses;

(4) Establishing standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for;

(5) Establishing a process for reviewing complaints and allegations of wrongdoing and for investigating complaints with merit;

(6) Taking appropriate disciplinary action and making referrals for criminal prosecution of persons who do not operate in compliance with this chapter;

(7) Collecting and depositing all fees and fines in the charitable gaming regulatory account and administering the account;

(8) Employing necessary staff, securing adequate office space, and executing other administrative and logistical matters as may be necessary to assure proper functioning of the division; and

(9) Promulgating administrative regulations, in accordance with KRS Chapter 13A, which are necessary to carry out the purposes and intent of this chapter.

SECTION 5. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) The Charitable Gaming Advisory Commission is created to be composed of seven (7) members consisting of:

(a) The secretary of the Justice Cabinet or his designee;

(b) The Attorney General or his designee;

(c) One (1) representative from the Kentucky County Clerks' Association;

(d) One (1) representative from the Kentucky Charitable Gaming Association;

(e) One (1) certified public accountant; and

(f) Two (2) members selected from the public at large.

The certified public accountant, the two (2) at-large members, and the representatives from the Kentucky County Clerks' Association and the Kentucky Charitable Gaming Association shall be appointed by the Governor. The representative from each of the two (2) associations shall be selected from a list of at least three (3) names submitted to the Governor by the respective association.

(2) Initial appointments to the commission shall be for staggered terms as follows: one (1) member for a term of one (1) year; two (2) members for a term of two (2) years; two (2) members for a term of three (3) years; and two (2) members for a term of four (4) years. Thereafter, each member shall be appointed for a term of four (4) years. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term. No member of the commission may serve more than two (2) full terms.

(3) The Charitable Gaming Advisory Commission shall provide ongoing advice and input to the division and to the General Assembly to assist in establishing effective policy for the licensing and regulation of charitable gaming.

(4) The commission shall meet quarterly or as otherwise directed by the division. Four (4) members shall constitute a quorum for conducting business. The commission shall annually elect a chairman from its membership. Members shall receive no compensation for serving on the commission, but shall be reimbursed for travel expenses for attending meetings and performing other official functions, consistent with state reimbursement policy for state employees.

SECTION 6. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) The requirement for licenses imposed in Sections 7, 8, and 12 of this Act shall become effective six (6) months from the effective date of this Act. From the effective date of this Act until that date, any person who desires to engage in an activity that requires licensure may do so if the licensure requirements are met and the activity is conducted in accordance with the provisions of this chapter.

(2) Applications for licensure and copies of charitable gaming laws and administrative regulations shall be made available through the office of the county clerk in each county.

(3) Licenses shall be issued by the division on an annual basis, except as otherwise permitted in Sections 7 and 10 of this Act. A license year may be determined by the division in any manner it deems appropriate to facilitate efficient licensing. The division shall charge an annual renewal fee not to exceed the maximum amounts established in Sections 7, 8, and 12 of this Act.

(4) The division may issue a temporary license to an applicant who has substantially met the requirements for a license whenever it finds that the processing of application for the license has been unduly delayed. A temporary license shall be valid from the date of issuance until the regular license is issued or for a period of sixty (60) days,

whichever is shorter. A temporary license shall not be renewed, except for good cause and not to exceed a total of nine (9) months in length.

(5) An applicant for any license to be issued under this chapter shall be subjected to a criminal history background check by the division with the assistance of the Kentucky State Police. The criminal history background check shall apply to any officer or director of an applicant organization; any employee or member of an applicant organization who has or may have managerial responsibilities; and, if the organization is a business entity, any individual with a ten percent (10%) or more financial interest in the business.

(6) No applicant shall be licensed if an individual associated with the applicant in a capacity listed in subsection (5) of this section has been convicted of a crime in federal court or the courts of any state, the District of Columbia, or any territory, consistent with the provisions of KRS Chapter 335B.

(7) The division may by administrative regulation require the fingerprinting of an applicant or a class of applicants, if the division determines that fingerprinting is necessary to assure the identity of an applicant or applicants. The division may charge a reasonable fee not to exceed the actual cost of fingerprinting.

(8) If a change occurs in any information submitted during the license application process, the applicant or licensee shall notify the division in writing within thirty (30) days of the date the change occurred.

SECTION 7. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) No person shall sell, offer to sell, rent, lease, or otherwise furnish charitable gaming supplies or equipment unless the person is licensed by the division as a distributor. The division shall charge a license fee not to exceed one thousand dollars ($1,000).

(2) No person shall sell, offer to sell, rent, lease, or otherwise furnish charitable gaming supplies and equipment unless the person is licensed by the division as a manufacturer. The division shall charge a license fee not to exceed five hundred dollars ($500).

(3) No person who is licensed as a charitable organization or a charitable gaming facility shall be eligible for licensure as a distributor or manufacturer. No person who is a licensed wholesaler or distributor of alcoholic beverages shall be licensed as a distributor or manufacturer. No person who is licensed as a distributor shall be licensed as a manufacturer, and no person licensed as a manufacturer shall be licensed as a distributor.

(4) An applicant for a license as a manufacturer or distributor shall apply for license on forms provided by the division and shall submit as part of the application process the following:

(a) The full name, address, date of birth, and Social Security number of the applicant;

(b) If the applicant is a corporation or other business entity, the names, addresses, dates of birth, and Social Security numbers of all officers and management personnel;

(c) The name, address, date of birth, and Social Security number of any individual who has ten percent (10%) or more financial interest in the applicant organization;

(d) Federal employer tax number;

(e) A sworn statement by the applicant or the appropriate officer that all information provided is true and that the applicant agrees to comply with the applicable provisions of this chapter and all applicable administrative regulations promulgated thereunder;

(f) The name, address, and phone number of a registered agent within the Commonwealth of Kentucky, if the applicant is not a resident; and

(g) Any other information the division deems appropriate.

(5) Each licensed manufacturer and distributor shall maintain a complete set of records as may be required by the division to document all activities related to the sale or rental of charitable gaming supplies and equipment in the Commonwealth of Kentucky. These records shall be available for inspection by the division at reasonable times, and all records shall be maintained for a minimum of three (3) years. The division may require a licensed manufacturer and distributor to report on its activity, with the content and frequency of these reports to be prescribed by administrative regulation.

(6) A distributor who does not receive payment in full from a licensed charitable organization within thirty (30) days of the delivery of charitable gaming supplies and equipment shall notify the division of the delinquency in writing in a form and manner prescribed by the division. A manufacturer who does not receive payment in full from a distributor within sixty (60) days of the delivery of charitable gaming supplies and equipment shall notify the division of the delinquency in writing in a form and manner prescribed by the division.

(7) A licensed manufacturer shall not sell charitable gaming supplies and equipment to any person not licensed as a distributor in the Commonwealth of Kentucky.

(8) A licensed distributor shall not sell charitable gaming supplies and equipment to any person not licensed as a charitable organization in the Commonwealth of Kentucky, unless the organization is exempted from licensure

under the provisions of this chapter.

(9) A licensed distributor shall not purchase charitable gaming supplies and equipment from any person not licensed as a manufacturer in the Commonwealth of Kentucky.

SECTION 8. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) Any charitable organization conducting charitable gaming in the Commonwealth of Kentucky shall be licensed by the division. A charitable organization shall be exempt from licensure requirements when conducting the following charitable gaming activities:

(a) Bingo in which the gross receipts do not exceed three hundred dollars ($300) per week and do not exceed a total of five thousand dollars ($5,000) per year;

(b) A raffle or raffles for which the gross receipts do not exceed five thousand dollars ($5,000) per year; and

(c) A charity fundraising event or events which do not involve casino-type games and the gross gaming receipts for which do not exceed five thousand dollars ($5,000) per year.

(2) Any charitable organization exempt from licensure under subsection (1) of this section, shall notify the division in writing of its intent to engage in exempt charitable gaming and the address, at which the gaming is to occur.

(3) If an organization exceeds the limit imposed by any subsection of this section it shall:

(a) Report the amount to the division; and

(b) Apply for a retroactive charitable gaming license.

(4) Upon receipt of a report and application for a retroactive charitable gaming license, the division shall make an investigation to determine if the organization is otherwise qualified to hold the license.

(5) If the division determines that the applicant is qualified, it shall issue a charitable gaming license retroactive to the date on which the exemption limit was exceeded. The retroactive charitable gaming license shall be issued in the same manner as regular charitable gaming licenses.

(6) If the division determines that the applicant is not qualified it shall deny the license and take enforcement action, if appropriate.

(7) Once a retroactive or regular gaming license is issued to an organization, that organization shall not be eligible for exempt status in the future and shall maintain a charitable gaming license if it intends to engage in charitable gaming.

(8) In order to qualify for licensure, a charitable organization shall:

(a) Possess a tax exempt status under 26 U.S.C. Sections 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered under a group ruling issued by the Internal Revenue Service under authority of those sections;

(b) Have been established and continuously operating within the Commonwealth of Kentucky for charitable purposes, other than the conduct of charitable gaming, for a period of three (3) years prior to application for licensure;

(c) Have been actively engaged in charitable activities during the three (3) years immediately prior to application for licensure and be able to demonstrate, to the satisfaction of the division, reasonable progress in accomplishing its charitable purposes during this period; and

(d) Have maintained an office or place of business or operation, other than for the conduct of charitable gaming, for one (1) year in the county in which charitable gaming is to be conducted. For the conduct of a raffle, the county in which charitable gaming is to be conducted shall be the county in which the raffle drawing is to be conducted. Any charitable organization which was registered with the county clerk to conduct charitable gaming in a county on or before March 31, 1992, shall satisfy this requirement if it maintained a place of business or operation, other than for the conduct of charitable gaming, for one year prior to application in a Kentucky county adjoining the county in which they were registered.

(9) In applying for a license, the information to be submitted shall include, but not be limited to, the following:

(a) The name and address of the charitable organization;

(b) The date of the charitable organization's establishment in the Commonwealth of Kentucky and the date of establishment in the county in which charitable gaming is to be conducted;

(c) A statement of the charitable purpose or purposes for which the organization was organized. If the charitable organization is incorporated, a copy of the articles of incorporation shall satisfy this requirement;

(d) A statement explaining the organizational structure and management of the organization. For incorporated entities, a copy of the organizations bylaws shall satisfy this requirement;

(e) A detailed accounting of the charitable activities in which the charitable organization has been engaged for the three (3) years preceding application for licensure;

(f) The names, addresses, dates of birth, and Social Security numbers of all officers of the organization;

(g) The names, addresses, dates of birth, and Social Security numbers of all employees and members of the charitable organization who will be involved in the management and supervision of charitable gaming;

(h) The address of the location at which charitable gaming will be conducted and the name and address of the owner of the property, if it is owned by a person other than the charitable organization;

(i) A copy of the letter or other legal document issued by the Internal Revenue Service to grant tax-exempt status;

(j) A statement signed by the presiding or other responsible officer of the charitable organization attesting that the information submitted in the application is true and that the organization agrees to comply with all applicable laws and administrative regulations regarding charitable gaming; and

(k) Any other information the division deems appropriate.

(10) The division may issue a limited license for a specified period of time, based on the type of charitable gaming involved and the desired duration of the activity.

(11) The division shall charge a fee for each license issued and renewed, not to exceed three hundred dollars ($300). Specific fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulations and based on type of license, type of charitable gaming, actual or projected gross receipts, or other applicable factors, or combination of factors.

SECTION 9. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) Charitable gaming shall be conducted by a licensed charitable organization at only one (1) location which shall be stated on the license. A license holder shall notify the division of its intent to change location and approval by the division shall be received by the licensee prior to the conduct of charitable gaming at a new location.

(2) All premises or facilities on which or in which charitable gaming is conducted shall meet all applicable federal, state and local code requirements relating to life safety and health.

(3) A license to conduct charitable gaming shall be prominently displayed on or in the premises where charitable gaming is conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the division, law enforcement officials, and other interested officials.

(4) Charitable gaming shall be conducted and administered solely by officers, members, and bona fide employees of a licensed charitable organization using volunteer personnel who may or may not be members of the licensed charitable organization. No person engaged in the conduct and administration of charitable gaming shall receive any compensation for services related to the charitable gaming activities. Any effort or attempt to disguise any other type of compensation shall be considered an unauthorized diversion of funds and shall be actionable under subsection (4) of Section 16 of this Act.

(5) No licensed charitable organization shall contract with, or otherwise utilize the services of, any management company or consultant in managing or conducting charitable gaming.

(6) Only one (1) subordinate organization of a licensed charitable organization may, with written approval of the parent organization, conduct charitable gaming under authority of the license of the primary organization. The subordinate organization shall, however, comply with provisions of KRS Chapter 238 and the primary organization shall be held accountable for the conduct and compliance of the subordinate organization.

(7) A licensed charitable organization shall not purchase charitable gaming supplies and equipment from any person not licensed as a distributor in the Commonwealth of Kentucky.

SECTION 10. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) A licensed charitable organization shall be limited in the conduct of bingo to one (1) day per week, for a period not to exceed five (5) consecutive hours in any twenty-four (24) hour period. Only one (1) approved subordinate organization may conduct bingo for one (1) additional day per week for a period not to exceed five (5) consecutive hours. Not more than one (1) licensed charitable organization shall conduct bingo on the same twenty-four (24) hour period, at the same location, and at the same time. No licensed charitable organization shall award prizes for bingo which exceed five thousand dollars ($5,000) cash value per twenty-four (24) hour period, including the value of door prizes. No person under the age of eighteen (18) shall be permitted to play bingo.

(2) No prize for an individual charity game ticket shall exceed five hundred ninety-nine dollars ($599) in value not including the value of cumulative or carryover prizes awarded in games using seal cards. Cumulative or carryover prizes in games utilizing seal cards shall not exceed two thousand four hundred dollars ($2,400). Information concerning rules of the particular game and prizes that are to be awarded in excess of fifty dollars ($50) in each separate package or series of packages with the same serial number and all rules governing the handling of cumulative or carryover prizes in seal card games shall be posted prominently in an area where charity game tickets are sold. A legible poster that lists prizes to be awarded, and on which prizes actually awarded are posted at the completion of the sale of each separate package shall satisfy this requirement. If seal cards are used, any unclaimed

money or prize shall return to the charitable organization. No charity game ticket shall be sold in the Commonwealth of Kentucky which does not conform to the standards for opacity, randomization, minimum information, winner protection, color, and cutting established by the division. No person under the age of eighteen (18) shall be permitted to purchase a charity game ticket.

(3) Tickets for a raffle shall be sold separately, and each ticket shall constitute a separate and equal chance to win. All raffle tickets shall be sold for the price or prices stated on the ticket, and no person shall be required to purchase more than one (1) ticket or to pay for anything other than a ticket to enter a raffle. Raffle tickets shall have a unique identifier for the ticket holder. Winners shall be drawn at random at a date, time, and place announced in advance or printed on the ticket. All prizes for a raffle shall be identified in advance of the drawing and all prizes identified shall be awarded.

(4) No licensed charitable organization shall conduct a charity fundraising event in which casino-type games are conducted, unless they have a special limited license issued by the division. Types of events which would fall into this category include casino nights, Las Vegas nights, and Monte Carlo nights. A limited license issued under this section shall not exceed twenty-four (24) hours in duration if the projected gross receipts from casino-type games are more than fifty percent (50%) of all projected gaming receipts, and shall not exceed seventy-two (72) hours if the projected gross receipts from casino-type games are less than fifty percent (50%) of all projected gaming receipts. A licensed charitable organization shall not be eligible for more than two (2) licenses per year. No person under eighteen (18) years of age shall be allowed to play or conduct any casino-type game. The division shall have broad authority to regulate the conduct of gaming authorized by a limited license issued under this subsection.

(5) Presentation of false, fraudulent, or altered identification by a minor shall be an affirmative defense in any disciplinary action or prosecution which may result from a violation of age restrictions contained in this section, if the appearance and character of the minor were such that his or her age could not be reasonably ascertained by other means.

SECTION 11. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) All gross receipts from charitable gaming shall be handled only by bona fide officers or employees of the licensed charitable organization. All adjusted gross receipts shall be deposited into a checking account devoted exclusively to charitable gaming. Payment for legitimate expenses shall be made only by checks having preprinted consecutive numbers and made payable to specific persons or organizations. The division may by administrative regulation adopt alternative reporting requirements for charitable gaming of limited scope or duration, if these requirements are sufficient to ensure accountability for all moneys handled.

(2) Accurate records and books shall be maintained by each licensed charitable organization for a period of three (3) years. Division staff shall have access to these records at reasonable times. All licensed charitable organizations shall be required to submit reports to the division at least quarterly. These reports shall include, but shall not be limited to, the following information:

(a) All gross receipts received from charitable gaming for the reporting period, classified by type of gaming activity;

(b) The amounts or values of all prizes paid out during the reporting period;

(c) The names and addresses of all persons who are winners of prizes of six hundred dollars ($600) or more;

(d) All expenses paid and the names and addresses of all persons to whom expenses were paid;

(e) All net receipts retained and the names and addresses of all charitable endeavors which received money from the net receipts; and

(f) Any other information the division deems appropriate.

(3) The subordinate organization which is authorized by the parent charitable organization to conduct charitable gaming shall comply with all provisions of this section, except it shall make its reports to the parent charitable organization and the parent charitable organization shall include the reports and bookkeeping entries of the subordinate organization with those of the parent organization. Entries shall be made and reported, however, in a manner which separately identifies parent organization earnings and activities from those of the subordinate organization.

(4) A licensed charitable organization shall not be permitted to expend amounts in excess of prevailing market rates for the following expenses:

(a) Charitable gaming supplies and equipment;

(b) Rent;

(c) Utilities;

(d) Insurance;

(e) Advertising;

(f) Janitorial services;

(g) Bookkeeping and accounting services;

(h) Security services; and

(i) Any other expenses the division may determine by administrative regulation to be legitimate.

(5) All net receipts resulting from the conduct of charitable gaming shall be utilized exclusively for purposes consistent with the charitable, religious, educational, literary, civic, fraternal, or patriotic functions and objectives for which the licensed charitable organization received and maintained federal tax-exempt status. No net receipts shall inure to the private benefit or financial gain of any individual.

SECTION 12. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) No person shall operate a charitable gaming facility unless the person is licensed under the provisions of this chapter. The division shall charge a license fee not to exceed two thousand five hundred dollars ($2,500). Charitable gaming may be conducted in a charitable gaming facility only by a licensed charitable organization in accordance with the provisions of this chapter.

(2) In the application process, an applicant for a charitable gaming facility license shall submit the following information:

(a) The address of the facility;

(b) A description of the facility to include square footage of the gaming area, capacity levels, and available parking;

(c) The names, addresses, dates of birth, and Social Security numbers of all individuals employed by or contracted with the applicant to manage the facility or provide other authorized services;

(d) The name, address, date of birth and Social Security number of any individual who has a ten percent (10%) or greater financial interest in the facility;

(e) A copy of the lease agreement used by the applicant; and

(f) Any other information the division deems appropriate.

(3) No officer, employee, or contractee of a licensed charitable gaming facility shall, with respect to a lessee:

(a) Manage or otherwise be involved in the conduct of charitable gaming;

(b) Provide bookkeeping or other accounting services related to the conduct of charitable gaming;

(c) Handle any moneys generated in the conduct of charitable gaming; or

(d) Advise a licensed charitable organization on the expenditure of net receipts.

(4) A licensed charitable gaming facility shall execute a lease agreement with each licensed charitable organization that desires to conduct charitable gaming at the facility. The lease shall specifically state the amount of rent to be charged and the goods and services to be provided. The amount of rent charged shall be reasonable and shall be based on prevailing market values in the general locality for the goods and services to be provided. Rent shall not be based in whole or in part, on a percentage of gross receipts or net proceeds derived from the conduct of charitable gaming or by reference to the number of people in attendance. The division by administrative regulation may establish standards for the determination of prevailing market values. A copy of each signed lease agreement shall be filed with the division. The provisions of this subsection shall apply to any lease agreement for a facility where charitable gaming is to be conducted, whether or not it is with a licensed charitable gaming facility.

(5) A licensed charitable gaming facility shall report at least quarterly to the division and shall provide any information concerning its operation that the division may require.

(6) A charity fundraising event at which casino-type games are played may be conducted at a licensed charitable gaming facility, but no licensed charitable gaming facility shall be permitted to hold more than one (1) such event per week or more than seven (7) per year.

SECTION 13. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) The division shall have authority to investigate allegations of wrongdoing upon complaint or upon its own volition. The division by administrative regulation shall establish procedures for receiving and investigating complaints in an expeditious manner.

(2) In carrying out its enforcement responsibilities, the division may:

(a) Inspect and examine all premises in which or on which charitable gaming is conducted or charitable gaming supplies or equipment are manufactured or distributed;

(b) Seize and remove from premises and impound charitable gaming supplies and equipment for the purposes of examination and inspection pursuant to an appropriate court order;

(c) Demand access to, inspect, and audit books and records of licensees for the purpose of determining

compliance with laws and administrative regulations relative to charitable gaming; and

(d) Conduct in-depth audits and investigations, when warranted.

(3) The division may have authority to take appropriate administrative action against any person licensed under this chapter for any violation of the provisions of this chapter or administrative regulations promulgated thereunder. The division may deny a license, suspend or revoke a license, issue a cease and desist order, place a license holder on probation, issue a letter of reprimand, or levy a fine. An administrative fine shall not exceed one thousand dollars ($1,000) for each offense. The division shall by administrative regulation classify types of offenses and the recommended administrative action. The type of action to be taken shall be based on the nature, severity, and frequency of the offense. Administrative action authorized in this section shall be in addition to any criminal penalties provided in this chapter or under other provisions of law.

(4) The division may reinstate a license which has been revoked at any time after two (2) years from the date of revocation. A license may be reinstated only upon a finding that the violations for which the license was revoked have been corrected.

(5) All departments, divisions, boards, agencies, officers, and institutions of the Commonwealth of Kentucky and all subdivisions thereof, in particular local law enforcement entities, shall cooperate with the division in carrying out its enforcement responsibilities.

(6) The division shall report any activity or action which would constitute a criminal offense, to the appropriate authorities in the county where the activity or action occurred, and to the Attorney General.

SECTION 14. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) A license holder may appeal any administrative action taken under Section 13 of this Act. A license holder shall be notified in writing of any action to be taken against him. The notification may be delivered in person or mailed by certified mail, return receipt requested, to the last known address of the license holder. The notification shall specify the charges against the license holder and advise him of his right to appeal the decision within ten (10) days of the date of receipt of the notification.

(2) Upon receipt of an appeal, the division shall schedule the matter for hearing. A hearing shall be held no less than ten (10) days and no more than thirty (30) days from the date the request for appeal is received. The division shall assign a hearing officer and notify the license holder in writing of the date, time, and place of the hearing. The license holder shall also be advised that he has the right to appear with or without counsel to present evidence in his behalf and to rebut evidence presented against him. The division may by administrative regulation prescribe procedures by which a hearing is to be conducted. A copy of any procedural regulations shall be sent to the license holder as part of the notification of hearing.

(3) Within twenty (20) days after the conclusion of a hearing, the hearing officer shall prepare and present to the secretary of justice through the division director a recommended order based on findings of fact and conclusions of law. Within thirty (30) days of receipt of the recommended order, the secretary of justice shall affirm, reject, or modify, in whole or in part, the recommended order and shall issue a final order. The final order shall be the final administrative action on the matter and a copy of the final order shall be mailed to the license holder, by certified mail, return receipt requested.

(4) Any administrative action taken under this section shall, upon appeal, be stayed until a final order is issued, with the exception of a summary suspension. The division may summarily suspend a license upon finding that continued operation of the license holder pending a hearing would constitute a clear and present danger to the public interest. A summary suspension may be stayed only by injunction of a court of competent jurisdiction.

(5) A final order may be appealed to Franklin Circuit Court within thirty (30) days of its receipt. An appeal shall be based upon the record and new evidence may be admitted only when the evidence was not known or could not reasonably have been known at the time of the hearing and the evidence has a material bearing on the outcome of the case.

SECTION 15. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) A fee is imposed on charitable gaming in the amount of one-half of one percent (0.5%) of gross receipts derived from all charitable gaming conducted by charitable organizations required to be licensed in the Commonwealth of Kentucky. Each licensed charitable organization shall remit to the division all moneys due on a quarterly basis.

(2) The charitable gaming regulatory account is hereby created as a revolving account within the agency revenue fund and under the control of the Justice Cabinet. All revenues generated from the fee levied in subsection (1) of this section, from license fees, and from administrative fines imposed by the division, shall be deposited in this account. Moneys in this account shall be expended by the division only in the administration and enforcement of provisions of this chapter. No later than July of each odd-numbered year, the division shall assess the amount of funds raised by all fees levied in this chapter and shall make recommendations to the Legislative Research Commission concerning legislative amendments to adjust fee rates as indicated by the assessment.

SECTION 16. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) Any person who willfully conducts without the required license any activity which under this chapter requires a license shall be guilty of a Class A misdemeanor.

(2) Any person who makes any materially false or misleading statement in making application for licensure or in submitting reports required under this chapter, or any person who willfully fails to maintain records or make entries required under this chapter, or any person who willfully refuses to produce for inspection any books, documents, or records required under this chapter shall be guilty of a Class A misdemeanor.

(3) Any person who engages in conduct designed to corrupt the outcome of any charitable gaming activity with purpose to defraud or knowing that he is facilitating a fraud shall be guilty of a Class A misdemeanor if the amount involved is less than three hundred dollars ($300) and a Class D felony if the amount involved is three hundred dollars ($300) or more.

(4) Any person who knowingly diverts charitable gaming funds from legitimate charitable purpose or lawful expenses allowed under this chapter to his financial benefit or the financial benefit of another person shall be guilty of a Class A misdemeanor if the amount involved is less than three hundred dollars ($300) and a Class D felony if the amount involved is three hundred dollars ($300) or more.

(5) Any person who commits a second or subsequent offense within a five (5) year period under subsection (1) or (2) of this section shall be guilty of a Class D felony.

Section 17. KRS 243.505 is amended to read as follows:

[~~In no event shall~~] The operation of a pari-mutuel system for betting, where authorized by law, ***or the conduct of charitable gaming by a charitable organization licensed and regulated under the provision of KRS Chapter 238, shall not*** constitute grounds for the revocation or suspension of any license issued under KRS Chapter 243.

Section 18. KRS 525.090 is amended to read as follows:

(1) A person is guilty of loitering when he:

(a) Loiters or remains in a public place for the purpose of gambling with cards, dice or other gambling paraphernalia, except that the provisions of this section shall not apply if the person is participating in ***licensed charitable gaming*** [~~activity~~] defined by ***Section 2 of this Act*** [~~KRS 528.010(10)~~]; or

(b) Loiters or remains in a public place for the purpose of unlawfully using a controlled substance; or

(c) Loiters or remains in or about a school, college or university building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or student or any other specific legitimate reason for being there and not having written permission from anyone authorized to grant the same; or

(d) Loiters or remains in any transportation facility, unless specifically authorized to do so, for the purpose of soliciting or engaging in any business, trade or commercial transactions involving the sale of merchandise or services.

(2) Loitering is a violation.

Section 19. KRS 528.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

(1) "Advancing gambling activity" -- A person "advances gambling activity" when, acting other than as a player, he engages in conduct that materially aids any form of gambling activity. The conduct shall include, but is not limited to, conduct directed toward the establishment of the particular game, contest, scheme, device, or activity involved; toward the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor; toward the solicitation or inducement of persons to participate therein; toward the actual conduct of the playing phases thereof; toward the arrangement of any of its financial or recording phases or toward any other phase of its operation. A person who gambles at a social game of chance on equal terms with other participants does not otherwise advance gambling activity by performing acts, without remuneration or fee, directed toward the arrangement or facilitation of the game as inviting persons to play, permitting the use of premises therefor and supplying equipment used therein.

(2) "Bookmaking" means advancing gambling activity by unlawfully accepting bets upon the outcome of future contingent events from members of the public as a business.

(3) ***(a)*** "Gambling" means staking or risking something of value upon the outcome of a contest, game, gaming scheme, or gaming device which is based upon an element of chance, in accord with an agreement or understanding that someone will receive something of value in the event of a certain outcome. A contest or game in which eligibility to participate is determined by chance and the ultimate winner is determined by skill shall not be considered to be gambling.

(b) Gambling shall not mean charitable gaming which is licensed and regulated under the provisions of KRS Chapter 238.

(4) "Gambling device" means:

(a) Any so-called slot machine or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and which when operated may deliver, as a result of the application of an element of chance, any money or property, or by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(b) Any other machine or any mechanical or other device, including but not limited to roulette wheels, gambling tables and similar devices, designed and manufactured primarily for use in connection with gambling and which when operated may deliver, as the result of the application of an element of chance, any money or property, or by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property;

(c) But, the following shall not be considered gambling devices within this definition:

1. Devices dispensing or selling combination or French pools on licensed, regular racetracks during races on said tracks.

2. Electro-mechanical pinball machines specially designed, constructed, set up, and kept to be played for amusement only. Any pinball machine shall be made to receive and react only to the deposit of coins during the course of a game. The ultimate and only award given directly or indirectly to any player for the attainment of a winning score or combination on any pinball machine shall be the right to play one (1) or more additional games immediately on the same device at no further cost. The maximum number of free games that can be won, registered, or accumulated at one (1) time in operation of any pinball machine shall not exceed thirty (30) free games. Any pinball machine shall be made to discharge accumulated free games only by reactivating the playing mechanism once for each game released. Any pinball machine shall be made and kept with no meter or system to preserve a record of free games played, awarded, or discharged. Nonetheless, a pinball machine shall be a gambling device if a person gives or promises to give money, tokens, merchandise, premiums, or property of any kind for scores, combinations, or free games obtained in playing the pinball machine in which the person has an interest as owner, operator, keeper, or otherwise.

3. Devices used in the conduct of charitable gaming.

(5) "Lottery and gift enterprise" means:

(a) A gambling scheme in which:

1. The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one (1) or more of which are to be designated the winning ones; and

2. The ultimate winner is to be determined by a drawing or by some other method based upon the element of chance; and

3. The holders of the winning chances are to receive something of value.

(b) A gift enterprise or referral sales plan which meets the elements of a lottery listed in paragraph (a) of this subsection is to be considered a lottery under this chapter.

(6) "Mutuel" or "the numbers games" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.

(7) "Player" means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct, or operation of the particular gambling activity. A person who engages in "bookmaking" as defined in subsection (2) of this section is not a "player." The status of a "player" shall be a defense to any prosecution under this chapter.

(8) "Profiting from gambling activity" -- A person "profits from gambling activity" when, other than as a player, he accepts or receives or agrees to accept or receive money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.

(9) "Something of value" means any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment, or a privilege of playing at a game or scheme without charge.

(10) "Charitable gaming" means games of chance ***conducted by charitable organizations licensed and regulated under the provisions of KRS Chapter 238***[~~, including bingo, operated by charitable or religious organizations or institutions, or fraternal societies, or associations, operating under the lodge system, the net earnings of which are devoted exclusively to religious, scientific, literary, educational, or fraternal purposes. In order to assume a charitable gaming status, the charitable or religious organization or institution, or fraternal society and the gaming activity conducted thereby shall conform to the requirements of KRS 528.130 and 528.140~~].

Section 20. The following KRS sections are repealed:

528.130 Charitable gaming.

528.140 Registration of organization conducting charitable gaming required.

528.150 Effect of failure to comply with KRS 528.010, 528.130, and 528.140 -- Fraud in registration -- Suspension or revocation of registration.

Section 21. For fiscal year 1993-94, the sum of $500,000 is appropriated from the general fund to the Justice Cabinet for deposit in the Charitable Gaming Regulatory Account to be expended for the administration and enforcement of Sections 1 to 16 of this Act. At the end of fiscal year 1994-95, the Justice Cabinet shall repay the appropriation from the unexpended and unencumbered account balance in the charitable gaming regulatory account. If this amount is not sufficient to repay the appropriation in full, the remaining amount owed shall be paid from the account balance at the end of the 1995-96 fiscal year. Repayment shall be deposited in the general fund surplus account.

Section 22. Whereas there is a need to expeditiously enact a comprehensive and effective mechanism to regulate charitable gaming in a manner which will insure the honesty and integrity of the activity, an emergency is declared to exist and this Act shall become effective upon its passage and approval by the Governor.

The Committee Substitute to **HB 206** is as follows:

HB 206, AN ACT relating to charitable gaming, making an appropriation, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

The General Assembly of the Commonwealth of Kentucky hereby declares that charitable gaming conducted by charitable organizations is an important method of raising funds for legitimate charitable purposes and is in the public interest. The purpose of this chapter is to comply with Constitutional requirements by establishing an effective and efficient mechanism for regulating charitable gaming which includes defining the scope of charitable gaming activities, setting standards for the conduct of charitable gaming which insure honesty and integrity, providing for means of accounting for all moneys generated through the conduct of charitable gaming, and providing for suitable penalties for violations of laws and administrative regulations. The intent of this chapter is to prevent the commercialization of charitable gaming, to prevent participation in charitable gaming by criminal and other undesirable elements, and to prevent the diversion of funds from legitimate charitable purposes. In order to carry out the purpose and intent, the provisions of this chapter and any administrative regulations promulgated in accordance with this chapter, shall be construed in the public interest and strictly enforced.

SECTION 2. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

As used in this chapter, unless the context requires otherwise:

(1) "Division" means the Division of Charitable Gaming within the Justice Cabinet;

(2) "Charitable gaming" means bingo, charity game tickets, raffles, and charity fundraising events conducted for fundraising purposes by charitable organizations licensed and regulated under the provisions of this chapter;

(3) "Charitable organization" means a nonprofit entity organized for charitable, religious, educational, literary, civic, fraternal, or patriotic purposes;

(4) "Subordinate organization" or "suborganization" means a separately organized subordinate group related to, and under the direct control of, a licensed charitable organization.

(5) "Bingo" means a specific game of chance in which participants use cards or paper sheets divided into horizontal and vertical spaces, each of which is designated by a letter and a number, and prizes are awarded on the basis of the letters and numbers on the card conforming to a predetermined and preannounced configuration of letters and numbers selected at random;

(6) "Charity game ticket" means a game of chance using a folded or banded paper ticket, or a paper card with perforated break-open tabs, the face of which is covered or otherwise hidden from view to conceal a number, letter, symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners and shall include charity game tickets that utilize a seal card;

(7) "Seal card" means a board or placard used in conjunction with charity game tickets, that contains a seal or seals which, when removed or opened, reveal predesignated winning numbers, letters, or symbols;

(8) "Raffle" means a game of chance in which a participant is required to purchase a ticket for a chance to win a prize, with the winner to be determined by a random drawing;

(9) "Charity fundraising event" means a fundraising activity of limited duration at which games of chance approved by the division are conducted, and examples of which include fairs, festivals, carnivals, and bazaars;

(10) "Manufacturer" means a person who assembles from raw materials or subparts any charitable gaming equipment or supplies used in the conduct of charitable gaming, including a person who converts, modifies, and adds to or

removes parts from, charitable gaming equipment and supplies. The term shall not include:

(a) Any person who services or repairs charitable gaming supplies and equipment, so long as that person replaces or repairs an incidental, malfunctioning, or nonfunctioning part with a similar or identical part; and

(b) Any distributor who cuts, collates, and packages for distribution any gaming supplies and equipment purchased in bulk;

(11) "Distributor" means a person who sells, markets, leases, or otherwise furnishes to a charitable organization charitable gaming equipment or supplies, or both, used in the conduct of charitable gaming. "Distributor" does not mean a resident printer who prints raffle tickets at the request of a licensed charitable organization;

(12) "Charitable gaming facility" means a person, including a licensed charitable organization, which owns or is a lessee of premises which are leased or otherwise made available for financial consideration to two (2) or more licensed charitable organizations for the conduct of charitable gaming;

(13) "Gross receipts" means all moneys collected or received from the conduct of charitable gaming;

(14) "Adjusted gross receipts" means gross receipts less all cash prizes or the cash value of merchandise prizes;

(15) "Net receipts" means adjusted gross receipts less all expenses, charges, fees, and deductions authorized under KRS Chapter 238;

(16) "Charitable gaming supplies and equipment" means any material, device, apparatus or paraphernalia customarily used in the conduct of charitable gaming including bingo cards and paper, charity game tickets, and other apparatus or paraphernalia used in conducting games of chance at charity fundraising events subject to regulation under this chapter. The term shall not include any material, device, apparatus, or paraphernalia incidental to the game such as pencils, daubers, playing cards, or other supplies which may be purchased from normal sources of supply;

(17) "Door prize" means a prize awarded to a person based solely upon the person's attendance at an event or the purchase of a ticket to attend an event; and

(18) "Casino-type game" means roulette, blackjack, poker, money wheel, baccarat, slot machines, pusher-type games, any dice game where the player competes against the house, and any other game of chance customarily played in a gambling casino, as identified and defined by administrative regulation of the division.

SECTION 3. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) The Division of Charitable Gaming is created as a division within the Justice Cabinet. The division shall be empowered to license and regulate the conduct of charitable gaming and to license and regulate charitable gaming organizations, facilities, manufacturers, and distributors in the Commonwealth of Kentucky in accordance with the provisions of this chapter.

(2) The Justice secretary shall employ a division director, an assistant director, and other staff as may be necessary to administer and enforce the provisions of this chapter.

(3) All division staff shall be classified and employed in accordance with applicable personnel requirements of the Department of Personnel. The division director and the assistant director shall be nonmerit employees and all other staff shall be merit employees with all rights and privileges afforded under KRS Chapter 18A.

(4) No employee of the division during his or her term of employment shall be an officer in a charitable organization that is licensed to conduct charitable gaming or be involved in the conduct of charitable gaming as a member of a licensed charitable organization. No employee of the division during his or her term of employment shall be licensed as a manufacturer, distributor, or charitable gaming facility or have a financial interest in any business that is licensed as a manufacturer, or distributor, or charitable gaming facility.

SECTION 4. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

The division is empowered to license and regulate the conduct of charitable gaming in the Commonwealth of Kentucky. In discharging this responsibility, the division shall have the following powers and duties:

(1) Licensing charitable organizations, charitable gaming facilities, manufacturers, and distributors who desire to engage in charitable gaming;

(2) Establishing and enforcing reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities;

(3) Prescribing reasonable fees for licenses;

(4) Establishing standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for;

(5) Establishing a process for reviewing complaints and allegations of wrongdoing and for investigating complaints with merit;

(6) Taking appropriate disciplinary action and making referrals for criminal prosecution of persons who do not operate

in compliance with this chapter;

(7) Collecting and depositing all fees and fines in the charitable gaming regulatory account and administering the account;

(8) Employing necessary staff, securing adequate office space, and executing other administrative and logistical matters as may be necessary to assure proper functioning of the division; and

(9) Promulgating administrative regulations, in accordance with KRS Chapter 13A, which are necessary to carry out the purposes and intent of this chapter.

SECTION 5. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) The Charitable Gaming Advisory Commission is created to be composed of seven (7) members consisting of:

(a) The secretary of the Justice Cabinet or his designee;

(b) The Attorney General or his designee;

(c) One (1) representative from the Kentucky County Clerks' Association;

(d) One (1) representative from the Kentucky Charitable Gaming Association;

(e) One (1) certified public accountant; and

(f) Two (2) members selected from the public at large.

The certified public accountant, the two (2) at-large members, and the representatives from the Kentucky County Clerks' Association and the Kentucky Charitable Gaming Association shall be appointed by the Governor. The representative from each of the two (2) associations shall be selected from a list of at least three (3) names submitted to the Governor by the respective association.

(2) Initial appointments to the commission shall be for staggered terms as follows: one (1) member for a term of one (1) year; two (2) members for a term of two (2) years; two (2) members for a term of three (3) years; and two (2) members for a term of four (4) years. Thereafter, each member shall be appointed for a term of four (4) years. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term. No member of the commission may serve more than two (2) full terms.

(3) The Charitable Gaming Advisory Commission shall provide ongoing advice and input to the division and to the General Assembly to assist in establishing effective policy for the licensing and regulation of charitable gaming.

(4) The commission shall meet quarterly or as otherwise directed by the division. Four (4) members shall constitute a quorum for conducting business. The commission shall annually elect a chairman from its membership. Members shall receive no compensation for serving on the commission, but shall be reimbursed for travel expenses for attending meetings and performing other official functions, consistent with state reimbursement policy for state employees.

SECTION 6. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) The requirement for licenses imposed in Sections 7, 8, and 12 of this Act shall become effective six (6) months from the effective date of this Act. From the effective date of this Act until that date, any person who desires to engage in an activity that requires licensure may do so if the licensure requirements are met and the activity is conducted in accordance with the provisions of this chapter.

(2) Applications for licensure and copies of charitable gaming laws and administrative regulations shall be made available through the office of the county clerk in each county.

(3) Licenses shall be issued by the division on an annual basis, except as otherwise permitted in Sections 7 and 10 of this Act. A license year may be determined by the division in any manner it deems appropriate to facilitate efficient licensing. The division shall charge an annual renewal fee not to exceed the maximum amounts established in Sections 7, 8, and 12 of this Act.

(4) The division may issue a temporary license to an applicant who has substantially met the requirements for a license whenever it finds that the processing of application for the license has been unduly delayed. A temporary license shall be valid from the date of issuance until the regular license is issued or for a period of sixty (60) days, whichever is shorter. A temporary license shall not be renewed, except for good cause and not to exceed a total of nine (9) months in length.

(5) An applicant for any license to be issued under this chapter shall be subjected to a criminal history background check by the division with the assistance of the Kentucky State Police. The criminal history background check shall apply to any officer or director of an applicant organization; any employee or member of an applicant organization who has or may have managerial responsibilities; and, if the organization is a business entity, any individual with a ten percent (10%) or more financial interest in the business.

(6) No applicant shall be licensed if an individual associated with the applicant in a capacity listed in subsection (5) of this section has been convicted of a crime in federal court or the courts of any state, the District of Columbia, or any

territory, consistent with the provisions of KRS Chapter 335B.

(7) The division may by administrative regulation require the fingerprinting of an applicant or a class of applicants, if the division determines that fingerprinting is necessary to assure the identity of an applicant or applicants. The division may charge a reasonable fee not to exceed the actual cost of fingerprinting.

(8) If a change occurs in any information submitted during the license application process, the applicant or licensee shall notify the division in writing within thirty (30) days of the date the change occurred.

SECTION 7. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) No person shall sell, offer to sell, rent, lease, or otherwise furnish charitable gaming supplies or equipment unless the person is licensed by the division as a distributor. The division shall charge a license fee not to exceed one thousand dollars ($1,000).

(2) No person shall sell, offer to sell, rent, lease, or otherwise furnish charitable gaming supplies and equipment unless the person is licensed by the division as a manufacturer. The division shall charge a license fee not to exceed five hundred dollars ($500).

(3) No person who is licensed as a charitable organization or a charitable gaming facility shall be eligible for licensure as a distributor or manufacturer. No person who is a licensed wholesaler or distributor of alcoholic beverages shall be licensed as a distributor or manufacturer. No person who is licensed as a distributor shall be licensed as a manufacturer, and no person licensed as a manufacturer shall be licensed as a distributor.

(4) An applicant for a license as a manufacturer or distributor shall apply for license on forms provided by the division and shall submit as part of the application process the following:

(a) The full name, address, date of birth, and Social Security number of the applicant;

(b) If the applicant is a corporation or other business entity, the names, addresses, dates of birth, and Social Security numbers of all officers and management personnel;

(c) The name, address, date of birth, and Social Security number of any individual who has ten percent (10%) or more financial interest in the applicant organization;

(d) Federal employer tax number;

(e) A sworn statement by the applicant or the appropriate officer that all information provided is true and that the applicant agrees to comply with the applicable provisions of this chapter and all applicable administrative regulations promulgated thereunder;

(f) The name, address, and phone number of a registered agent within the Commonwealth of Kentucky, if the applicant is not a resident; and

(g) Any other information the division deems appropriate.

(5) Each licensed manufacturer and distributor shall maintain a complete set of records as may be required by the division to document all activities related to the sale or rental of charitable gaming supplies and equipment in the Commonwealth of Kentucky. These records shall be available for inspection by the division at reasonable times, and all records shall be maintained for a minimum of three (3) years. The division may require a licensed manufacturer and distributor to report on its activity, with the content and frequency of these reports to be prescribed by administrative regulation.

(6) A distributor who does not receive payment in full from a licensed charitable organization within thirty (30) days of the delivery of charitable gaming supplies and equipment shall notify the division of the delinquency in writing in a form and manner prescribed by the division. A manufacturer who does not receive payment in full from a distributor within sixty (60) days of the delivery of charitable gaming supplies and equipment shall notify the division of the delinquency in writing in a form and manner prescribed by the division.

(7) A licensed manufacturer shall not sell charitable gaming supplies and equipment to any person not licensed as a distributor in the Commonwealth of Kentucky.

(8) A licensed distributor shall not sell charitable gaming supplies and equipment to any person not licensed as a charitable organization in the Commonwealth of Kentucky, unless the organization is exempted from licensure under the provisions of this chapter.

(9) A licensed distributor shall not purchase charitable gaming supplies and equipment from any person not licensed as a manufacturer in the Commonwealth of Kentucky.

SECTION 8. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) Any charitable organization conducting charitable gaming in the Commonwealth of Kentucky shall be licensed by the division. A charitable organization shall be exempt from licensure requirements when conducting the following charitable gaming activities:

(a) Bingo in which the gross receipts do not exceed three hundred dollars ($300) per week and do not exceed a

total of five thousand dollars ($5,000) per year;

(b) A raffle or raffles for which the gross receipts do not exceed five thousand dollars ($5,000) per year; and

(c) A charity fundraising event or events which do not involve casino-type games and the gross gaming receipts for which do not exceed five thousand dollars ($5,000) per year.

(2) Any charitable organization exempt from licensure under subsection (1) of this section, shall notify the division in writing of its intent to engage in exempt charitable gaming and the address, at which the gaming is to occur.

(3) If an organization exceeds the limit imposed by any subsection of this section it shall:

(a) Report the amount to the division; and

(b) Apply for a retroactive charitable gaming license.

(4) Upon receipt of a report and application for a retroactive charitable gaming license, the division shall make an investigation to determine if the organization is otherwise qualified to hold the license.

(5) If the division determines that the applicant is qualified, it shall issue a charitable gaming license retroactive to the date on which the exemption limit was exceeded. The retroactive charitable gaming license shall be issued in the same manner as regular charitable gaming licenses.

(6) If the division determines that the applicant is not qualified it shall deny the license and take enforcement action, if appropriate.

(7) Once a retroactive or regular gaming license is issued to an organization, that organization shall not be eligible for exempt status in the future and shall maintain a charitable gaming license if it intends to engage in charitable gaming.

(8) In order to qualify for licensure, a charitable organization shall:

(a) Possess a tax exempt status under 26 U.S.C. Sections 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered under a group ruling issued by the Internal Revenue Service under authority of those sections;

(b) Have been established and continuously operating within the Commonwealth of Kentucky for charitable purposes, other than the conduct of charitable gaming, for a period of three (3) years prior to application for licensure;

(c) Have been actively engaged in charitable activities during the three (3) years immediately prior to application for licensure and be able to demonstrate, to the satisfaction of the division, reasonable progress in accomplishing its charitable purposes during this period; and

(d) Have maintained an office or place of business or operation, other than for the conduct of charitable gaming, for one (1) year in the county in which charitable gaming is to be conducted. For the conduct of a raffle, the county in which charitable gaming is to be conducted shall be the county in which the raffle drawing is to be conducted. Any charitable organization which was registered with the county clerk to conduct charitable gaming in a county on or before March 31, 1992, shall satisfy this requirement if it maintained a place of business or operation, other than for the conduct of charitable gaming, for one year prior to application in a Kentucky county adjoining the county in which they were registered.

(9) In applying for a license, the information to be submitted shall include, but not be limited to, the following:

(a) The name and address of the charitable organization;

(b) The date of the charitable organization's establishment in the Commonwealth of Kentucky and the date of establishment in the county in which charitable gaming is to be conducted;

(c) A statement of the charitable purpose or purposes for which the organization was organized. If the charitable organization is incorporated, a copy of the articles of incorporation shall satisfy this requirement;

(d) A statement explaining the organizational structure and management of the organization. For incorporated entities, a copy of the organizations bylaws shall satisfy this requirement;

(e) A detailed accounting of the charitable activities in which the charitable organization has been engaged for the three (3) years preceding application for licensure;

(f) The names, addresses, dates of birth, and Social Security numbers of all officers of the organization;

(g) The names, addresses, dates of birth, and Social Security numbers of all employees and members of the charitable organization who will be involved in the management and supervision of charitable gaming;

(h) The address of the location at which charitable gaming will be conducted and the name and address of the owner of the property, if it is owned by a person other than the charitable organization;

(i) A copy of the letter or other legal document issued by the Internal Revenue Service to grant tax-exempt status;

(j) A statement signed by the presiding or other responsible officer of the charitable organization attesting that the information submitted in the application is true and that the organization agrees to comply with all applicable laws and administrative regulations regarding charitable gaming; and

(k) Any other information the division deems appropriate.

(10) The division may issue a limited license for a specified period of time, based on the type of charitable gaming involved and the desired duration of the activity.

(11) The division shall charge a fee for each license issued and renewed, not to exceed three hundred dollars ($300). Specific fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulations and based on type of license, type of charitable gaming, actual or projected gross receipts, or other applicable factors, or combination of factors.

SECTION 9. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) Charitable gaming shall be conducted by a licensed charitable organization at only one (1) location which shall be stated on the license. A license holder shall notify the division of its intent to change location and approval by the division shall be received by the licensee prior to the conduct of charitable gaming at a new location.

(2) All premises or facilities on which or in which charitable gaming is conducted shall meet all applicable federal, state and local code requirements relating to life safety and health.

(3) A license to conduct charitable gaming shall be prominently displayed on or in the premises where charitable gaming is conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the division, law enforcement officials, and other interested officials.

(4) Charitable gaming shall be conducted and administered solely by officers, members, and bona fide employees of a licensed charitable organization using volunteer personnel who may or may not be members of the licensed charitable organization. No person engaged in the conduct and administration of charitable gaming shall receive any compensation for services related to the charitable gaming activities. Any effort or attempt to disguise any other type of compensation shall be considered an unauthorized diversion of funds and shall be actionable under subsection (4) of Section 16 of this Act.

(5) No licensed charitable organization shall contract with, or otherwise utilize the services of, any management company or consultant in managing or conducting charitable gaming.

(6) Only one (1) subordinate organization of a licensed charitable organization may, with written approval of the parent organization, conduct charitable gaming under authority of the license of the primary organization. The subordinate organization shall, however, comply with provisions of KRS Chapter 238 and the primary organization shall be held accountable for the conduct and compliance of the subordinate organization.

(7) A licensed charitable organization shall not purchase charitable gaming supplies and equipment from any person not licensed as a distributor in the Commonwealth of Kentucky.

SECTION 10. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) A licensed charitable organization shall be limited in the conduct of bingo to one (1) day per week, for a period not to exceed five (5) consecutive hours in any twenty-four (24) hour period. Only one (1) approved subordinate organization may conduct bingo for one (1) additional day per week for a period not to exceed five (5) consecutive hours. Not more than one (1) licensed charitable organization shall conduct bingo on the same twenty-four (24) hour period, at the same location, and at the same time. No licensed charitable organization shall award prizes for bingo which exceed five thousand dollars ($5,000) cash value per twenty-four (24) hour period, including the value of door prizes. No person under the age of eighteen (18) shall be permitted to play bingo. A charitable organization exempted under Section 8 of this Act may permit persons under age eighteen (18) to play bingo if they are accompanied by a parent or legal guardian and if only noncash prizes are awarded.

(2) No prize for an individual charity game ticket shall exceed five hundred ninety-nine dollars ($599) in value not including the value of cumulative or carryover prizes awarded in games using seal cards. Cumulative or carryover prizes in games utilizing seal cards shall not exceed two thousand four hundred dollars ($2,400). Information concerning rules of the particular game and prizes that are to be awarded in excess of fifty dollars ($50) in each separate package or series of packages with the same serial number and all rules governing the handling of cumulative or carryover prizes in seal card games shall be posted prominently in an area where charity game tickets are sold. A legible poster that lists prizes to be awarded, and on which prizes actually awarded are posted at the completion of the sale of each separate package shall satisfy this requirement. If seal cards are used, any unclaimed money or prize shall return to the charitable organization. No charity game ticket shall be sold in the Commonwealth of Kentucky which does not conform to the standards for opacity, randomization, minimum information, winner protection, color, and cutting established by the division. No person under the age of eighteen (18) shall be permitted to purchase a charity game ticket.

(3) Tickets for a raffle shall be sold separately, and each ticket shall constitute a separate and equal chance to win. All

raffle tickets shall be sold for the price or prices stated on the ticket, and no person shall be required to purchase more than one (1) ticket or to pay for anything other than a ticket to enter a raffle. Raffle tickets shall have a unique identifier for the ticket holder. Winners shall be drawn at random at a date, time, and place announced in advance or printed on the ticket. All prizes for a raffle shall be identified in advance of the drawing and all prizes identified shall be awarded.

(4) No licensed charitable organization shall conduct a charity fundraising event in which casino-type games are conducted, unless they have a special limited license issued by the division. Types of events which would fall into this category include casino nights, Las Vegas nights, and Monte Carlo nights. A limited license issued under this section shall not exceed twenty-four (24) hours in duration if the projected gross receipts from casino-type games are more than fifty percent (50%) of all projected gaming receipts, and shall not exceed seventy-two (72) hours if the projected gross receipts from casino-type games are less than fifty percent (50%) of all projected gaming receipts. A licensed charitable organization shall not be eligible for more than two (2) licenses per year. No person under eighteen (18) years of age shall be allowed to play or conduct any casino-type game. The division shall have broad authority to regulate the conduct of gaming authorized by a limited license issued under this subsection.

(5) Presentation of false, fraudulent, or altered identification by a minor shall be an affirmative defense in any disciplinary action or prosecution which may result from a violation of age restrictions contained in this section, if the appearance and character of the minor were such that his or her age could not be reasonably ascertained by other means.

SECTION 11. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) All gross receipts from charitable gaming shall be handled only by bona fide officers or employees of the licensed charitable organization. All adjusted gross receipts shall be deposited into a checking account devoted exclusively to charitable gaming. Payment for legitimate expenses shall be made only by checks having preprinted consecutive numbers and made payable to specific persons or organizations. The division may by administrative regulation adopt alternative reporting requirements for charitable gaming of limited scope or duration, if these requirements are sufficient to ensure accountability for all moneys handled.

(2) Accurate records and books shall be maintained by each licensed charitable organization for a period of three (3) years. Division staff shall have access to these records at reasonable times. All licensed charitable organizations shall be required to submit reports to the division at least quarterly. These reports shall include, but shall not be limited to, the following information:

- *(a) All gross receipts received from charitable gaming for the reporting period, classified by type of gaming activity;*
- *(b) The amounts or values of all prizes paid out during the reporting period;*
- *(c) The names and addresses of all persons who are winners of prizes of six hundred dollars ($600) or more;*
- *(d) All expenses paid and the names and addresses of all persons to whom expenses were paid;*
- *(e) All net receipts retained and the names and addresses of all charitable endeavors which received money from the net receipts; and*
- *(f) Any other information the division deems appropriate.*

(3) The subordinate organization which is authorized by the parent charitable organization to conduct charitable gaming shall comply with all provisions of this section, except it shall make its reports to the parent charitable organization and the parent charitable organization shall include the reports and bookkeeping entries of the subordinate organization with those of the parent organization. Entries shall be made and reported, however, in a manner which separately identifies parent organization earnings and activities from those of the subordinate organization.

(4) A licensed charitable organization shall not be permitted to expend amounts in excess of prevailing market rates for the following expenses:

- *(a) Charitable gaming supplies and equipment;*
- *(b) Rent;*
- *(c) Utilities;*
- *(d) Insurance;*
- *(e) Advertising;*
- *(f) Janitorial services;*
- *(g) Bookkeeping and accounting services;*
- *(h) Security services; and*
- *(i) Any other expenses the division may determine by administrative regulation to be legitimate.*

(5) All net receipts resulting from the conduct of charitable gaming shall be utilized exclusively for purposes consistent with the charitable, religious, educational, literary, civic, fraternal, or patriotic functions and objectives for which the licensed charitable organization received and maintained federal tax-exempt status. No net receipts shall inure to the private benefit or financial gain of any individual.

SECTION 12. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) No person shall operate a charitable gaming facility unless the person is licensed under the provisions of this chapter. The division shall charge a license fee not to exceed two thousand five hundred dollars ($2,500). Charitable gaming may be conducted in a charitable gaming facility only by a licensed charitable organization in accordance with the provisions of this chapter.

(2) In the application process, an applicant for a charitable gaming facility license shall submit the following information:

- *(a) The address of the facility;*
- *(b) A description of the facility to include square footage of the gaming area, capacity levels, and available parking;*
- *(c) The names, addresses, dates of birth, and Social Security numbers of all individuals employed by or contracted with the applicant to manage the facility or provide other authorized services;*
- *(d) The name, address, date of birth and Social Security number of any individual who has a ten percent (10%) or greater financial interest in the facility;*
- *(e) A copy of the lease agreement used by the applicant; and*
- *(f) Any other information the division deems appropriate.*

(3) No officer, employee, or contractee of a licensed charitable gaming facility shall, with respect to a lessee:

- *(a) Manage or otherwise be involved in the conduct of charitable gaming;*
- *(b) Provide bookkeeping or other accounting services related to the conduct of charitable gaming;*
- *(c) Handle any moneys generated in the conduct of charitable gaming; or*
- *(d) Advise a licensed charitable organization on the expenditure of net receipts.*

(4) A licensed charitable gaming facility shall execute a lease agreement with each licensed charitable organization that desires to conduct charitable gaming at the facility. The lease shall specifically state the amount of rent to be charged and the goods and services to be provided, including concessions, if applicable. The amount of rent charged shall be reasonable and shall be based on prevailing market values in the general locality for the goods and services to be provided. Rent shall not be based in whole or in part, on a percentage of gross receipts or net proceeds derived from the conduct of charitable gaming or by reference to the number of people in attendance. The division by administrative regulation may establish standards for the determination of prevailing market values. A copy of each signed lease agreement shall be filed with the division. The provisions of this subsection shall apply to any lease agreement for a facility where charitable gaming is to be conducted, whether or not it is with a licensed charitable gaming facility.

(5) A licensed charitable gaming facility shall report at least quarterly to the division and shall provide any information concerning its operation that the division may require.

(6) A charity fundraising event at which casino-type games are played may be conducted at a licensed charitable gaming facility, but no licensed charitable gaming facility shall be permitted to hold more than one (1) such event per week or more than seven (7) per year.

SECTION 13. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) The division shall have authority to investigate allegations of wrongdoing upon complaint or upon its own volition. The division by administrative regulation shall establish procedures for receiving and investigating complaints in an expeditious manner.

(2) In carrying out its enforcement responsibilities, the division may:

- *(a) Inspect and examine all premises in which or on which charitable gaming is conducted or charitable gaming supplies or equipment are manufactured or distributed;*
- *(b) Seize and remove from premises and impound charitable gaming supplies and equipment for the purposes of examination and inspection pursuant to an appropriate court order;*
- *(c) Demand access to, inspect, and audit books and records of licensees for the purpose of determining compliance with laws and administrative regulations relative to charitable gaming; and*
- *(d) Conduct in-depth audits and investigations, when warranted.*

(3) The division may have authority to take appropriate administrative action against any person licensed under this chapter for any violation of the provisions of this chapter or administrative regulations promulgated thereunder. The

division may deny a license, suspend or revoke a license, issue a cease and desist order, place a license holder on probation, issue a letter of reprimand, or levy a fine. An administrative fine shall not exceed one thousand dollars ($1,000) for each offense. The division shall by administrative regulation classify types of offenses and the recommended administrative action. The type of action to be taken shall be based on the nature, severity, and frequency of the offense. Administrative action authorized in this section shall be in addition to any criminal penalties provided in this chapter or under other provisions of law.

(4) The division may reinstate a license which has been revoked at any time after two (2) years from the date of revocation. A license may be reinstated only upon a finding that the violations for which the license was revoked have been corrected.

(5) All departments, divisions, boards, agencies, officers, and institutions of the Commonwealth of Kentucky and all subdivisions thereof, in particular local law enforcement entities, shall cooperate with the division in carrying out its enforcement responsibilities.

(6) The division shall report any activity or action which would constitute a criminal offense, to the appropriate authorities in the county where the activity or action occurred, and to the Attorney General.

SECTION 14. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) A license holder may appeal any administrative action taken under Section 13 of this Act. A license holder shall be notified in writing of any action to be taken against him. The notification may be delivered in person or mailed by certified mail, return receipt requested, to the last known address of the license holder. The notification shall specify the charges against the license holder and advise him of his right to appeal the decision within ten (10) days of the date of receipt of the notification.

(2) Upon receipt of an appeal, the division shall schedule the matter for hearing. A hearing shall be held no less than ten (10) days and no more than thirty (30) days from the date the request for appeal is received. The division shall assign a hearing officer and notify the license holder in writing of the date, time, and place of the hearing. The license holder shall also be advised that he has the right to appear with or without counsel to present evidence in his behalf and to rebut evidence presented against him. The division may by administrative regulation prescribe procedures by which a hearing is to be conducted. A copy of any procedural regulations shall be sent to the license holder as part of the notification of hearing.

(3) Within twenty (20) days after the conclusion of a hearing, the hearing officer shall prepare and present to the secretary of justice through the division director a recommended order based on findings of fact and conclusions of law. Within thirty (30) days of receipt of the recommended order, the secretary of justice shall affirm, reject, or modify, in whole or in part, the recommended order and shall issue a final order. The final order shall be the final administrative action on the matter and a copy of the final order shall be mailed to the license holder, by certified mail, return receipt requested.

(4) Any administrative action taken under this section shall, upon appeal, be stayed until a final order is issued, with the exception of a summary suspension. The division may summarily suspend a license upon finding that continued operation of the license holder pending a hearing would constitute a clear and present danger to the public interest. A summary suspension may be stayed only by injunction of a court of competent jurisdiction.

(5) A final order may be appealed to Franklin Circuit Court within thirty (30) days of its receipt. An appeal shall be based upon the record and new evidence may be admitted only when the evidence was not known or could not reasonably have been known at the time of the hearing and the evidence has a material bearing on the outcome of the case.

SECTION 15. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) A fee is imposed on charitable gaming in the amount of one-half of one percent (0.5%) of gross receipts derived from all charitable gaming conducted by charitable organizations required to be licensed in the Commonwealth of Kentucky. Each licensed charitable organization shall remit to the division all moneys due on a quarterly basis.

(2) The charitable gaming regulatory account is hereby created as a revolving account within the agency revenue fund and under the control of the Justice Cabinet. All revenues generated from the fee levied in subsection (1) of this section, from license fees, and from administrative fines imposed by the division, shall be deposited in this account. Moneys in this account shall be expended by the division only in the administration and enforcement of provisions of this chapter. No later than July of each odd-numbered year, the division shall assess the amount of funds raised by all fees levied in this chapter and shall make recommendations to the Legislative Research Commission concerning legislative amendments to adjust fee rates as indicated by the assessment.

SECTION 16. A NEW SECTION OF KRS CHAPTER 238 IS CREATED TO READ AS FOLLOWS:

(1) Any person who willfully conducts without the required license any activity which under this chapter requires a license shall be guilty of a Class A misdemeanor.

(2) Any person who makes any materially false or misleading statement in making application for licensure or in

submitting reports required under this chapter, or any person who willfully fails to maintain records or make entries required under this chapter, or any person who willfully refuses to produce for inspection any books, documents, or records required under this chapter shall be guilty of a Class A misdemeanor.

(3) Any person who engages in conduct designed to corrupt the outcome of any charitable gaming activity with purpose to defraud or knowing that he is facilitating a fraud shall be guilty of a Class A misdemeanor if the amount involved is less than three hundred dollars ($300) and a Class D felony if the amount involved is three hundred dollars ($300) or more.

(4) Any person who knowingly diverts charitable gaming funds from legitimate charitable purpose or lawful expenses allowed under this chapter to his financial benefit or the financial benefit of another person shall be guilty of a Class A misdemeanor if the amount involved is less than three hundred dollars ($300) and a Class D felony if the amount involved is three hundred dollars ($300) or more.

(5) Any person who commits a second or subsequent offense within a five (5) year period under subsection (1) or (2) of this section shall be guilty of a Class D felony.

Section 17. KRS 243.505 is amended to read as follows:

[~~In no event shall~~] The operation of a pari-mutuel system for betting, where authorized by law, ***or the conduct of charitable gaming by a charitable organization licensed and regulated under the provision of KRS Chapter 238, shall not*** constitute grounds for the revocation or suspension of any license issued under KRS Chapter 243.

Section 18. KRS 525.090 is amended to read as follows:

(1) A person is guilty of loitering when he:

(a) Loiters or remains in a public place for the purpose of gambling with cards, dice or other gambling paraphernalia, except that the provisions of this section shall not apply if the person is participating in ***licensed charitable gaming*** [~~activity~~] defined by ***Section 2 of this Act*** [~~KRS 528.010(10)~~]; or

(b) Loiters or remains in a public place for the purpose of unlawfully using a controlled substance; or

(c) Loiters or remains in or about a school, college or university building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or student or any other specific legitimate reason for being there and not having written permission from anyone authorized to grant the same; or

(d) Loiters or remains in any transportation facility, unless specifically authorized to do so, for the purpose of soliciting or engaging in any business, trade or commercial transactions involving the sale of merchandise or services.

(2) Loitering is a violation.

Section 19. KRS 528.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

(1) "Advancing gambling activity" -- A person "advances gambling activity" when, acting other than as a player, he engages in conduct that materially aids any form of gambling activity. The conduct shall include, but is not limited to, conduct directed toward the establishment of the particular game, contest, scheme, device, or activity involved; toward the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor; toward the solicitation or inducement of persons to participate therein; toward the actual conduct of the playing phases thereof; toward the arrangement of any of its financial or recording phases or toward any other phase of its operation. A person who gambles at a social game of chance on equal terms with other participants does not otherwise advance gambling activity by performing acts, without remuneration or fee, directed toward the arrangement or facilitation of the game as inviting persons to play, permitting the use of premises therefor and supplying equipment used therein.

(2) "Bookmaking" means advancing gambling activity by unlawfully accepting bets upon the outcome of future contingent events from members of the public as a business.

(3) ***(a)*** "Gambling" means staking or risking something of value upon the outcome of a contest, game, gaming scheme, or gaming device which is based upon an element of chance, in accord with an agreement or understanding that someone will receive something of value in the event of a certain outcome. A contest or game in which eligibility to participate is determined by chance and the ultimate winner is determined by skill shall not be considered to be gambling.

(b) Gambling shall not mean charitable gaming which is licensed and regulated under the provisions of KRS Chapter 238.

(4) "Gambling device" means:

(a) Any so-called slot machine or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and which when operated may deliver, as a result of the application of an element of chance, any money or property, or by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(b) Any other machine or any mechanical or other device, including but not limited to roulette wheels, gambling tables and similar devices, designed and manufactured primarily for use in connection with gambling and which when operated may deliver, as the result of the application of an element of chance, any money or property, or by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property;

(c) But, the following shall not be considered gambling devices within this definition:

1. Devices dispensing or selling combination or French pools on licensed, regular racetracks during races on said tracks.

2. Electro-mechanical pinball machines specially designed, constructed, set up, and kept to be played for amusement only. Any pinball machine shall be made to receive and react only to the deposit of coins during the course of a game. The ultimate and only award given directly or indirectly to any player for the attainment of a winning score or combination on any pinball machine shall be the right to play one (1) or more additional games immediately on the same device at no further cost. The maximum number of free games that can be won, registered, or accumulated at one (1) time in operation of any pinball machine shall not exceed thirty (30) free games. Any pinball machine shall be made to discharge accumulated free games only by reactivating the playing mechanism once for each game released. Any pinball machine shall be made and kept with no meter or system to preserve a record of free games played, awarded, or discharged. Nonetheless, a pinball machine shall be a gambling device if a person gives or promises to give money, tokens, merchandise, premiums, or property of any kind for scores, combinations, or free games obtained in playing the pinball machine in which the person has an interest as owner, operator, keeper, or otherwise.

3. Devices used in the conduct of charitable gaming.

(5) "Lottery and gift enterprise" means:

(a) A gambling scheme in which:

1. The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one (1) or more of which are to be designated the winning ones; and

2. The ultimate winner is to be determined by a drawing or by some other method based upon the element of chance; and

3. The holders of the winning chances are to receive something of value.

(b) A gift enterprise or referral sales plan which meets the elements of a lottery listed in paragraph (a) of this subsection is to be considered a lottery under this chapter.

(6) "Mutuel" or "the numbers games" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.

(7) "Player" means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct, or operation of the particular gambling activity. A person who engages in "bookmaking" as defined in subsection (2) of this section is not a "player." The status of a "player" shall be a defense to any prosecution under this chapter.

(8) "Profiting from gambling activity" -- A person "profits from gambling activity" when, other than as a player, he accepts or receives or agrees to accept or receive money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.

(9) "Something of value" means any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment, or a privilege of playing at a game or scheme without charge.

(10) "Charitable gaming" means games of chance ***conducted by charitable organizations licensed and regulated under the provisions of KRS Chapter 238***[~~, including bingo, operated by charitable or religious organizations or institutions, or fraternal societies, or associations, operating under the lodge system, the net earnings of which are devoted exclusively to religious, scientific, literary, educational, or fraternal purposes. In order to assume a charitable gaming status, the charitable or religious organization or institution, or fraternal society and the gaming activity conducted thereby shall conform to the requirements of KRS 528.130 and 528.140~~].

Section 20. The following KRS sections are repealed:

528.130	Charitable gaming.
528.140	Registration of organization conducting charitable gaming required.
528.150	Effect of failure to comply with KRS 528.010, 528.130, and 528.140 -- Fraud in registration -- Suspension or

revocation of registration.

Section 21. For fiscal year 1993-94, the sum of $500,000 is appropriated from the general fund to the Justice Cabinet for deposit in the Charitable Gaming Regulatory Account to be expended for the administration and enforcement of Sections 1 to 16 of this Act. At the end of fiscal year 1994-95, the Justice Cabinet shall repay the appropriation from the unexpended and unencumbered account balance in the charitable gaming regulatory account. If this amount is not sufficient to repay the appropriation in full, the remaining amount owed shall be paid from the account balance at the end of the 1995-96 fiscal year. Repayment shall be deposited in the general fund surplus account.

Section 22. Whereas there is a need to expeditiously enact a comprehensive and effective mechanism to regulate charitable gaming in a manner which will insure the honesty and integrity of the activity, an emergency is declared to exist and this Act shall become effective upon its passage and approval by the Governor.

Motions, Petitions and Communications

Representative Stumbo moved that the three day posting requirement be waived on **HB 153** and **HB 178**. Agreed.

Representative Stumbo moved that the rules be suspended for the Introduction of Bills and Resolutions and Report of Committees. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 235, by Representative R. Smith: AN ACT relating to motor vehicle usage tax.

HB 236, by Representative R. Smith: AN ACT relating to crimes and punishments.

HB 237, by Representative R. Smith: AN ACT relating to crimes and punishments.

HB 238, by Representatives Callahan, Rapier, Gray, Butler, Harper, Kerr, Richards, L. Clark, Stumbo, Walton, Clarke, Wayne, Arnold, Damron, Rasche, French, DeWeese, Noland, Treesh, Adams and Donnermeyer: AN ACT relating to the establishment of codes of ethics in cities and counties.

HB 239, by Representative Donnermeyer: AN ACT relating to refunding bonds which finance floating debt of cities and declaring an emergency.

HB 240, by Representatives Adams, Deskins, Gee, Nesler, French, Graham, Worthington, Bentley, Fox, Scorsone, Gedling, Mason, Hancock, Walton and Farrow: AN ACT relating to the State Fair Board.

HB 241, by Representative Ballard: AN ACT relating to highways.

HB 242, by Representative Long: AN ACT relating to the Commonwealth of Kentucky's procurement of architectural and engineering services.

HB 243, by Representative Long: AN ACT relating to local governments.

HB 244, by Representative Little: AN ACT relating to a compact between the Commonwealth of Kentucky and the Commonwealth of Virginia providing for the operation of an interstate park known as The Breaks Interstate Park.

HB 245, by Representative Deskins: AN ACT relating to the conduct of hearings by state cabinets, departments, agencies, boards, commissions, and other bodies.

HB 246, by Representatives Graham and French: AN ACT relating to primary education.

HCR 17, by Representative R. Smith: A CONCURRENT RESOLUTION requesting the United States Congress to prohibit or limit the sending of unsolicited, mailed advertisements.

HR 18, by Representative Ridley: A RESOLUTION petitioning the Kentucky High School Athletic Association to sanction bowling.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills and Resolutions have been posted for Committee consideration:

Transportation: **HB 40, HB 125, HB 170, HJR 13**

State Government: **HJR 3, HCR 4, HJR 5, HJR 6, HB 48, HB 52, HB 56, HB 64, HB 72, HB 88, HB 93, HB 166, HB 167**

Motions, Petitions and Communications (Continued)

Representative Maggard moved that the rules be suspended to allow co-sponsors of Bills and Resolutions. Agreed.

The following members filed requests to have their names added as co-sponsor of Bills and Resolutions: **HCR 2**, Representative Arnold; **HJR 3**, Representative Bowling; **HB 2**, Representative French; **HB 6**, Representative Riggs; **HB 39**, Representative Bryant; **HB 123**, Representatives Hatcher and Stengel; **HB 204**, Representatives Arnold and Farrow; **HB 205**, Representative Arnold; **HB 224**, Representatives Farrow and Arnold.

Representative Stumbo moved that the rules be suspended to introduce guests. Agreed.

Representative Ridley moved that the rules be suspended to act upon **HR 18**.

The Speaker ruled that the motion to act upon **HR 18** was out of order since the Resolution should go to committee.

The following members filed requests to have their names added as co-sponsors to Bills and Resolutions: **HCR 2**, Representative Nesler; **HJR 3**, Representative Cave; **HB 4**, Representatives Bondurant and Treesh; **HB 55**, Representative Nunn; **HB 123**, Representatives Butler and Riner; **HB 130**, Representative Bowling.

The Speaker announced that the House stand at ease to await Bills for introduction.

The Speaker called the House to order.

Representative Stumbo moved that the rules be suspended for the Introduction of Bills. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 247, by Representative R. Smith: AN ACT relating to economic development.

HB 248, by Representative Farley: AN ACT relating to collection of taxes.

HB 249, by Representative Farley: AN ACT relating to retirement.

HB 250, by Representatives Clarke, L. Clark, Richards, Rapier, Long, Burch, Scorsone, Mason, Nunn, Gray, Stumbo, Bentley and Jensen: AN ACT relating to health care reform.

Announcements

The Clerk announced the following meetings:

Cities, 8:30 a.m., January 12, 1994, Room 131

Central Kentucky Caucus, upon adjournment, Room 125

Economic Development, Noon, January 12, 1994

Tourism Development and Energy, 10:00 a.m., January 12, 1994

Workers' Compensation, upon adjournment, Room 149

Education, 8:00 a.m., January 12, 1994

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Wednesday, January 12, 1994.

On the roll call the vote was **Yeas 91**--Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bruce, Bryant, Buis, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, Deskins, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, K. Harper, Hatcher, Jensen, Johnson, Keith, Kerr, Lear, Lee, Lewis, Lindsay, Little, Long, Lyne, Maggard, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riggs, Riner, Sanders, Scorsone, Shacklette, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 2**--LeMaster, Lile.

The motion to adjourn was adopted.

WEDNESDAY, JANUARY 12, 1994

SEVENTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend David Hilton, First United Methodist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives B. Smith and Nelson.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of January 11, 1994 be dispensed with and the same approved. Agreed.

Senate Message

Announcing passage of **SB 10**. (Time: 2:05 p.m.)

Representative Stumbo moved that the rules be suspended to introduce guests and allow floor privileges. Agreed.

Former Representative Ward introduced a new member of the House who will be replacing him in the 34th District.

Representative Bondurant moved that the rules be suspended to introduce a guest, allow floor privileges and to act upon a Legislative Citation. Agreed.

Representative Bondurant moved the adoption of the following **Legislative Citation No. 12**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby commends Judge James E. Bondurant in recognition of his public service as District Judge. The entire membership extends its very best wishes to Judge James Bondurant on this occasion and expresses the hope for continued good fortune.

Roll call to show co-sponsors of **Legislative Citation No. 12** is as follows:

Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bondurant, Bowling, Brown, Bruce, Bryant, Buis, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Damron, Deskins, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Heleringer, Jensen, Keith, Kerr, Lee, LeMaster, Lewis, Lile, Lindsay, Long, Lyne, Maggard, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riner, Sanders, Scorsone, Shacklette, R. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Worthington, Yates, Zimmerman.

Introduction of Bills and Resolutions

HB 251, by Representatives Collins and Maggard: AN ACT relating to wrongful death.

HB 252, by Representative McElroy: AN ACT relating to counties and making an appropriation therefor.

HB 253, by Representative McElroy: AN ACT relating to the quality of motor fuels.

HB 254, by Representative McElroy: AN ACT proposing an amendment to Section 170 of the Constitution of Kentucky relating to taxation.

HB 255, by Representatives Johnson and Cave: AN ACT relating to uniform limited liability companies.

HB 256, by Representative Stumbo: AN ACT relating to education.

HB 257, by Representative Stumbo: AN ACT relating to reorganization.

HB 258, by Representative Stumbo: AN ACT relating to reorganization.

HB 259, by Representative Stumbo: AN ACT relating to reorganization.

HB 260, by Representative Stumbo: AN ACT relating to the reorganization of the Economic Development Cabinet.

HB 261, by Representative Stumbo: AN ACT relating to the reorganization of the Natural Resources and Environmental Protection Cabinet.

HB 262, by Representative Stumbo: AN ACT relating to reorganization.

HB 263, by Representative Stumbo: AN ACT relating to reorganization.

HB 264, by Representative Stumbo: AN ACT relating to reorganization.

HB 265, by Representative Stumbo: AN ACT relating to reorganization.

HB 266, by Representative Stumbo: AN ACT relating to reorganization.

HB 267, by Representative Stumbo: AN ACT relating to reorganization.

HB 268, by Representative Stumbo: AN ACT relating to reorganization.

HB 269, by Representative Richards: AN ACT relating to retirement and declaring an emergency.

HB 270, by Representatives Farrow and Adams: AN ACT relating to crimes and punishments.

HB 271, by Representative Bowling: AN ACT relating to prevention of juvenile delinquency.

HB 272, by Representative Bowling: AN ACT relating to the testimony of children.

HB 273, by Representatives Harper and Lewis: AN ACT relating to high school students.

HB 274, by Representatives Donnermeyer and Butler: AN ACT relating to open records of public agencies.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Agriculture and Small Business: **HB 240**

Appropriations and Revenue: **HB 227, HB 235**

Cities: **HB 238, HB 239, HB 249**

Counties and Special Districts: **HB 229, HB 243**

Economic Development: **HB 247**

Education: **HB 230, HB 233, HB 246, HR 18**

Elections and Constitutional Amendments: **HB 228**

Health and Welfare: **HB 250**

Judiciary: **HB 231, HB 232, HB 236, HB 237, HB 248**

State Government: **HB 226, HB 234, HB 242, HB 244, HB 245, HR 16, HCR 17**

Transportation: **HB 241**

Report of Committees

The Committee on Cities reported **HB 153** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 153, AN ACT relating to donations for public libraries.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186.030 is amended to read as follows:

(1) The application form shall contain spaces for the names and post office addresses of the owner and of the lien holder as shown by chattel mortgage, or other instrument construed as such in this state, on file in the office of the county clerk in the county in which the motor vehicle is registered, and ~~[such]~~ other information ~~[as]~~ the cabinet may require. If the motor vehicle is a truck designed for the transportation of property, the application form shall contain space for the declared gross weight in pounds. The declared gross weight shall be the weight of the vehicle and the heaviest load that the vehicle will be used to carry at any time on the highways.

(2) The application, when completed, shall be presented to the county clerk and accompanied by the appropriate fee.

(3) In counties containing a city of the first class, the clerk who accepts the application shall present the applicant with a form by which the applicant can make a voluntary contribution for the support of the free public library. If the

applicant decides to donate to the library, he or she shall include the donation in the fee. The clerk shall pay the donations to the library department in the same fashion as taxes are paid pursuant to KRS 134.815, and shall be entitled to the same commission as that payable on county taxes pursuant to KRS 134.805. The clerk shall prepare the donation form in consultation with the library department. The form shall state clearly in all capital letters that donations are voluntary and do not affect the applicant's eligibility to register a motor vehicle. The form shall offer the applicant two (2) choices, either to make or to decline to make a donation, and shall require the signature of the applicant.

The Committee on Education reported **HB 33 HB 35, HB 49,** with Committee Amendments attached thereto, **HB 50, HB 51,** with Committee Substitute attached thereto, **HB 65, HB 67,** with Committee Amendment attached thereto, and **HB 68** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 33, AN ACT relating to the Council on Higher Education.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 164.011 is amended to read as follows:

(1) There shall be a Council on Higher Education in Kentucky, appointed for a term set by law pursuant to Section 23 of the Constitution of Kentucky. The council shall be composed of the chief state school officer, and seventeen (17) lay members appointed by the Governor: one (1) from each Supreme Court district, ten (10) at large members which shall include a student member.

(2) The student member shall be enrolled as a full-time student at a state public institution of higher education and shall be selected annually in the following manner: not later than June 1 of each year the eight (8) student body presidents of the four-year state public institutions of higher education and one (1) representative of the community college student body presidents elected from among themselves, shall elect by majority vote of the nine (9) presidents three (3) nominees to submit to the Governor. From this list of nominees, the Governor shall appoint a student member.

(3) Among the lay members, there shall be at least one (1) undergraduate degree recipient from each of the state universities to be appointed by the Governor, ***and at least one (1) undergraduate degree recipient from an independent, nonprofit college or university licensed by the council to be appointed by the Governor,*** one (1) of whom may reside outside the Commonwealth. The gubernatorial appointments shall reflect no less than proportional representation of the minority racial composition of the Commonwealth. The lay members shall constitute the voting membership of the council.

(4) After the initial appointments, the lay members shall be appointed for regular terms of six (6) years, except for the student member who shall serve a one (1) year term. The initial appointments shall be as follows:

   (a) Two (2) members shall serve one (1) year terms, one of which shall be the student member;

   (b) Three (3) members shall serve two (2) year terms;

   (c) Three (3) members shall serve three (3) year terms;

   (d) Three (3) members shall serve four (4) year terms;

   (e) Three (3) members shall serve five (5) year terms; and

   (f) Three (3) members shall serve six (6) year terms.

(5) Any person, other than the chief state school officer, holding either an elective or appointive state office or who is a member of the governing board of any state university in Kentucky, shall be ineligible for membership or appointment on the council during his term.

(6) When the council meets to consider curricula for teacher education, three (3) persons who are from accredited institutions of higher learning, and who have been appointed by the executive committee of the Kentucky Association of Colleges, Secondary and Elementary Schools, shall be invited to meet with the council in an advisory capacity.

HB 35, AN ACT relating to school employees.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 161.163 is amended to read as follows:

No application form for ***certified or classified employees***~~[teachers]~~ used by any school district shall contain any block or question that would require the applicant to disclose his religious affiliation.

HB 49, AN ACT relating to superintendents.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.111 is amended to read as follows:

(1) Prior to July 1, 1992, the Department of Education shall establish a Superintendents Training Program and Assessment Center. The assessment center shall be modeled after the American Association of School Administrators assessment process or a similar validated process. The department may provide assessment centers regionally and shall provide for assessor training. The center shall include, but not be limited to, training for superintendents in the following subjects:

(a) Core concepts of management;

(b) School-based decision making;

(c) Kentucky school law;

(d) Kentucky school finance; and

(e) School curriculum and assessment.

(2) At the conclusion of the training, each participant shall complete a written comprehensive examination based on the content of the training.

(3) In addition to any applicable certification and experience requirements, to be qualified and eligible for continued employment as a school superintendent, effective July 1, 1994, the school superintendent shall have successfully completed the assessment center process. A person hired for the first time as superintendent in Kentucky after July ***15, 1994*** ~~[1, 1992]~~, shall successfully complete the assessment center process within one (1) year of assuming his duties as superintendent.

(4) The State Board for Elementary and Secondary Education shall adopt administrative regulations to govern the training content, number of hours, written examination, and criteria for successful completion of the training and assessment center process. The board shall also establish the continuing professional development requirements for school superintendents, to be effective July 1, 1994.

Section 2. KRS 160.350 is amended to read as follows:

(1) After considering the recommendations of a screening committee, as provided in KRS 160.352, each board of education shall appoint a superintendent of schools whose term of office shall begin on July 1, following his appointment. The appointment may be for a term of no more than four (4) years. In the event a vacancy occurs in the office of superintendent prior to the expiration of the term set by the board, the term shall expire on the date the vacancy occurs. Therefore, the board may appoint a superintendent for a new term as provided in this subsection, which shall begin on the date of the superintendent's appointment, except when the vacancy occurs after a school board election and before the newly elected members take office. When a vacancy occurs during this period, the position shall not be filled until the new members take office, but the board may appoint an acting superintendent to serve a term not to exceed six (6) months. This appointment may be renewed once for a period not to exceed three (3) months. The person appointed to serve as acting superintendent shall not be an applicant for, nor be appointed to, the position of superintendent. If a vacancy occurs, a local board may also appoint an acting superintendent during the period the screening committee pursuant to KRS 160.352 conducts its business and prior to the actual appointment of the new superintendent. No superintendent shall resign his term and accept a new term from the same board of education prior to the expiration date of his present term. In the case of a vacancy in the office for an unexpired term, the board of education shall make the appointment so that the term will end on June 30. The board shall set the salary of the superintendent to be paid in regular installments.

(2) Before any superintendent assumes his duties, he shall present to the board of education that appointed him a statement signed by the chief state school officer that the superintendent has been duly issued a certificate of administration and supervision issued in accordance with the provisions of law and which qualifies him to hold the position to which he has been appointed, and he shall hold such certificate throughout the period of his employment. ~~[After July 1, 1994, the statement signed by the chief state school officer shall also indicate that the superintendent candidate has successfully completed the superintendents training program and assessment center process established in KRS 156.111. However,]~~ A superintendent candidate who is ~~[relocating from outside the state]~~ to begin his duties~~[,]~~ after ***July 15*** ~~[June 30]~~, 1994, shall successfully complete the training program and assessment center process within one (1) year of assuming his duties as superintendent. A superintendent shall not serve as director or officer of a bank, trust company, or savings or loan association which has his school district funds on deposit.

(3) A superintendent of schools may be removed for cause by a vote of four-fifths (4/5) of the membership of a board of education and upon approval by the chief state school officer. However, if the dismissal of the superintendent has been recommended by a Kentucky distinguished educator pursuant to KRS 158.6455 and the action is approved by the chief state school officer, the board shall terminate the superintendent's contract. Written notice setting out the charges for removal shall be spread on the minutes of the board and given to the superintendent. The board shall seek approval by the chief state school officer for removing the superintendent. The chief state school officer shall investigate the accuracy of the charges made, evaluate the superintendent's overall performance during his appointment, and consider the

educational performance of the students in the district. Within thirty (30) days of notification, he shall either approve or reject the board's request.

The Committee Amendment No. 1 to **HB 49** is as follows:

On page 3, after line 23 add the following:

"***Section 3. KRS 156.105 is amended to read as follows:***

(1) Prior to July 1, 1992, the Department of Education shall establish a Principals Assessment Center, which shall consist of the National Association of Secondary School Principals assessment process or a similar validated process. The department may operate assessment centers regionally and shall provide for assessor training.

(2) In addition to any applicable certification and experience requirements, to be qualified and eligible for ~~[initial or]~~ continued employment as a school principal, effective July 1, 1994, the principal ~~[or applicant]~~ shall have successfully completed the assessment center process. A newly hired principal ~~[who is relocating from outside the state to begin his duties after June 30, 1994,]~~shall successfully complete the assessment center process within one (1) year of assuming his duties as principal.

(3) The State Board for Elementary and Secondary Education shall adopt administrative regulations to establish the criteria for successful completion of the assessment center process.

(4) All principals hired prior to July 13, 1990, shall be required to successfully complete the beginning teacher committee training program, pursuant to KRS 161.030(8) by July 1, 1991. All principals hired after July 13, 1990, shall be required to complete the beginning teacher committee training program pursuant to KRS 161.030(8) within one (1) year after their appointment.

The Committee Amendment No. 2 to **HB 49** is as follows:

On page 1, line 19, by deleting "***15, 1994***"; and

On page 1, line 19, by removing the opening bracket "[" in front of "~~1,~~" and removing the strikethrough from "~~1,~~";

On page 1, line 19 by inserting "***1994***" after the first comma","; and

On page 1, line 19 by placing an opening bracket "[" in front of "~~1992~~".

The Committee Title Amendment to **HB 49** is as follows:

By amending the title to read as follows:

"AN ACT relating to school employees."

HB 50, AN ACT relating to classified employees.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 161.011 is amended to read as follows:

(1) "Classified employee" shall mean an employee of a local district who is not required to have certification for his position as provided in KRS 161.020.

(2) The commissioner of education shall establish by January, 1992, job classifications and minimum qualifications for local district classified employment positions which shall be effective July 1, 1992. After June 30, 1992, no person shall be eligible to be a classified employee or receive salary for services rendered in that position unless he holds the qualifications for the position as established by the commissioner of education.

(3) No person who is initially hired after July 13, 1990, shall be eligible to hold the position of a classified employee or receive salary for services rendered in such position, unless he holds at least a high school diploma or GED certificate, or he shows progress toward obtaining a GED. To show progress toward obtaining a GED, a person shall be enrolled in a GED program and be progressing satisfactorily through the program, as defined by administrative regulations adopted by the State Board for Adult ***and Technical***~~[, Vocational]~~ Education ~~[and Vocational Rehabilitation]~~.

(4) Local school districts shall encourage classified employees who were initially hired before July 13, 1990, and who do not have a high school diploma or a GED certificate to enroll in a program to obtain a GED.

(5) Local districts shall enter into written contracts with classified employees.

(6) Local school boards shall develop and provide to all classified employees written policies which shall include, but not be limited to:

(a) Terms and conditions of employment;

(b) Identification and documentation of fringe benefits, employee rights, and procedures for the reduction or laying off of employees; and

(c) Discipline guidelines and procedures that satisfy due process requirements.

(7) Local school boards shall develop written procedures to assure that all vacant classified employee positions are advertised to the public. If financially feasible, local school boards shall provide training opportunities for classified employees focusing on topics to include, but not be limited to, suicide prevention, abuse recognition, and cardiopulmonary resuscitation (CPR).

(8) The evaluation of the local board policies required for classified personnel as set out in this section shall be subject to review by the Department of Education while it is conducting district management audits pursuant to KRS 158.785.

HB 51, AN ACT relating to speech-language pathology.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 334A.020 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the Kentucky Board of Speech-Language Pathology and Audiology;

(2) "Person" means any individual, organization, or corporate body, except that only individuals can be licensed under this chapter;

(3) "Speech-language pathologist" means one who practices speech-language pathology. A speech-language pathologist may describe himself to the public by any title or description of services incorporating the words "speech-language pathologist," "speech-language pathology," "speech-language therapy," "speech-language correction," "speech-language correctionist," "speech-language therapist," "speech clinic," "speech clinician," "language pathologist," "language pathology," "language therapist," "logopedics," "logopedist," "communicology," "communicologist," "aphasiologist," "voice therapy," "voice therapist," "voice pathology," "voice pathologist," "phoniatrist," "communication disorders,"[~~;~~] or any similar titles or descriptions;

(4) "The practice of speech pathology" means the application of principles, methods, and procedures for the measurement, testing, audiometric screening, identification, appraisal, determination of prognosis, evaluation, consultation, remediation, counseling, instruction, and research related to the development and disorders of speech, voice, verbal and written language, cognition/communication, or oral and pharyngeal sensori-motor competencies for the purpose of designing and implementing programs for the amelioration of ***these*** [~~such~~] disorders and conditions. Any representation to the public by title or by description of services, methods, or procedures for the evaluation, counseling, remediation consultation, measurement, testing, audiometric screening, identification, appraisal, determination of prognosis, instruction, and research of persons suffering or suspected of suffering from conditions or disorders affecting speech, voice, verbal and written language, cognition/communication, or oral and pharyngeal sensori-motor competencies shall be considered to be the practice of speech-language pathology;

(5) "Audiologist" is defined as one who practices audiology. An audiologist may describe himself to the public by any title or description of services incorporating the words "audiologist," "audiology," "audiological," "hearing center," "hearing clinic," "hearing clinician," "hearing therapist," "audiometry," "audiometrist," "audiometrics," "otometry," "otometrist," or any similar titles or descriptions of service;

(6) "The practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and disorders of hearing for the purpose of modifying communicative disorders involving speech, language, auditory behavior, or other aberrant behavior related to hearing loss; planning, directing, conducting, or participating in identification and hearing conservation programs; and habilitative and rehabilitative programs, including hearing aid recommendations and evaluation, auditory training, or speech reading;

(7) "Continuing professional education" in speech-language pathology and audiology consists of planned learning experiences beyond a basic educational program leading to a degree. These experiences are designed to promote knowledge, skills, and attitudes of speech-language pathology and audiology practitioners to enable them to provide improved health care to the public.

(8) "Speech-language pathology assistant" means one who assists in the practice of speech-language pathology only under the supervision and direction of an appropriately qualified supervisor and only within the public school system in the Commonwealth. Any speech pathology services provided without appropriate supervision, or outside the public school system shall be deemed to be the unlicensed practice of speech pathology and shall subject the offending party to both administrative and criminal actions.

(9) "Assisting in the practice of speech pathology" means the provision of certain specific components of a speech or language service program provided by a speech-language pathology assistant under the supervision and direction of

an appropriately qualified supervisor.

(a) If the training, supervision, documentation, and planning are appropriate, the following tasks may be delegated to a speech-language pathology assistant:

1. Conduct speech-language and hearing screenings without interpretation following specified screening protocols developed by a speech-language pathologist and audiologist, respectively;

2. Follow documented treatment plans or protocols as prescribed by the supervisor;

3. Document student progress toward meeting established objectives as stated in the treatment plan;

4. Provide direct treatment assistance to identified students under the supervision of the supervisor;

5. Assist with clerical and other related duties as directed by the supervisor;

6. Report to the supervisor about the treatment plan based on a student's performance;

7. Schedule activities, prepare charts, records, graphs, or otherwise display data. This shall not include report generation;

8. Perform simple checks and maintenance of equipment;

9. Participate with the supervisor in research projects, inservice training, and public relations programs;

10. Assist in the development and maintenance of an appropriate schedule for service delivery;

11. Assist in implementing collaborative activities with other professionals; and

12. Assist in administering tests for diagnostic evaluations and progress monitoring.

(b) The following activities shall be outside the scope of practice of the speech-language pathology assistant:

1. Performing any activity which violates the code of ethics promulgated by the board by administrative regulation;

2. Interpreting test results, or performing diagnostic evaluations;

3. Participating in parent conferences, case conferences, or any interdisciplinary team without consultation with the presence of the supervisor;

4. Doing client or family counseling;

5. Writing, developing, or modifying a student's individualized treatment plan in any way without the recommendation, guidance, and approval of the supervisor;

6. Treating students without following the individualized treatment plan prepared by the supervisor or without access to supervision;

7. Signing any document without the co-signature of the supervisor;

8. Selecting or discharging students;

9. Disclosing clinical or confidential information, either orally or in writing, to anyone not designated by the supervisor;

10. Making referrals for additional services; and

11. Representing themselves as something other than a speech-language pathology assistant.

(10) "Supervisor" means a person who holds a Kentucky license as a speech-language pathologist or who holds Kentucky Department of Education certification as a teacher of exceptional children in the areas of speech and communication disorders as established by administrative regulation.

Section 2. KRS 334A.030 is amended to read as follows:

(1) Licensure shall be granted ***as a*** [~~either in~~] speech-language ***pathologist, speech-language pathology assistant,*** [~~pathology~~] or ***audiologist*** [~~audiology~~] independently. A person may be licensed in ***more than one (1) area*** [~~both areas~~] if he meets the respective qualifications.

(2) No person shall practice or represent himself as a speech-language pathologist***, speech-language pathology assistant,*** or audiologist in this state unless he is licensed in accordance with the provisions of this law.

Section 3. KRS 334A.035 is amended to read as follows:

(1) A person who has a master's degree in the area of speech-language pathology or audiology or substantive equivalent course work as defined by the board's administrative regulations and who has completed supervised direct clinical practicum with individuals presenting a variety of disorders of communication, the experience being obtained with a training institution or in one ***(1)*** of its cooperating programs, shall apply for an interim license during the time that person is completing postgraduate professional experience [~~as~~] deemed necessary by the board. This postgraduate professional experience shall be completed under the supervision of a speech-language pathologist who holds a Kentucky license***,*** if the applicant is seeking interim licensure in speech-language pathology, or under an audiologist who holds a Kentucky license, if the applicant is seeking interim licensure in audiology. A person with interim licensure shall make

every effort to take and pass an examination approved by the board. Upon completion of postgraduate professional experience ~~{as}~~ deemed necessary by the board, the speech-language pathologist or audiologist shall make immediate application to the board for permanent licensure***,*** if all requirements have been completed satisfactorily***,*** or for renewal of the interim license at the discretion of the board. Failure to do so shall result in forfeiture of the interim license.

(2) ***A person who has a baccalaureate degree in the area of speech-language pathology as defined by administrative regulation, shall apply for an interim license as a speech-language pathology assistant during the time that person is completing their professional experience as established by the board by administrative regulation. This professional experience shall be completed under the supervision of an appropriately qualified supervisor. Upon completion of the professional experience, the speech-language pathology assistant shall make immediate application to the board for permanent licensure, if all requirements have been completed satisfactorily, or for renewal of the interim license at the discretion of the board. Failure to do so shall result in forfeiture of the interim license.*** ~~{After August 1, 1986, any person who has a bachelor's degree in the area of speech-language pathology desiring to practice in the public schools shall apply to the board for a provisional license. This provisional license shall be valid for five (5) years or until August 1, 1994, whichever comes first, provided the applicant is pursuing a program of study which will result in the applicant obtaining a master's degree in speech-language pathology or audiology or its substantive equivalent as defined by the board, and provided the applicant meets all other requirements for interim licensing. The provisional licensee may provide services only in the public schools in the Commonwealth. This provisional license shall be renewable annually for a maximum of five (5) years from the date the bachelor's degree was granted and may be extended by the board for a one (1) year period, only upon a showing of extraordinary circumstances.}~~

(3) In order to ~~{best}~~ regulate the quality of professional service to children in the public schools of the Commonwealth, any speech-language pathologist employed by the public schools shall apply for and maintain appropriate licensure until ***the*** ~~{such}~~ time ~~{as}~~ the Kentucky ***Education Professional Standards Board*** ~~{Council on Teacher Education and Certification}~~ recommends and the State Board ***for Elementary and Secondary*** ~~{of}~~ Education ***promulgates*** ~~{adopts and maintains}~~ an administrative regulation requiring ~~{such}~~ speech-language pathologists to meet the requirements of KRS 334A.050(2)(a) and (b).

SECTION 4. A NEW SECTION OF KRS CHAPTER 334A IS CREATED TO READ AS FOLLOWS:

(1) The board may issue a license to practice as a speech-language pathology assistant. The practice shall be limited to the public schools and shall be under the supervision of an appropriately qualified supervisor. The requirements for supervision shall be set forth in administrative regulations promulgated by the board. An individual shall not supervise or be listed as the supervisor for more than two (2) speech-language pathology assistants.

(2) To be eligible for licensure by the board as a speech-language pathology assistant, the applicant shall meet the following requirements:

(a) A baccalaureate degree in the area of speech-language pathology as defined by administrative regulation;

(b) Completion of postgraduate professional experience deemed appropriate by the board by administrative regulation;

(c) List on the application the name of the appropriately qualified supervisor who has agreed to provide supervision as set forth by the board by administrative regulation; and

(d) Pass an examination in speech-language pathology approved by the board and in effect at the time of application for licensure. An applicant who fails his examination may be reexamined at a subsequent examination upon payment of another licensing fee.

Section 5. KRS 334A.060 is amended to read as follows:

(1) ~~{Upon proof of bona fide practice presented to the board in the manner prescribed by the board's administrative regulations,}~~ The board may waive the examination and educational requirements for those applicants ***for licensure as a speech-language pathology assistant*** who~~{, on August 1, 1986,}~~ hold a valid and current credential as a speech and hearing specialist issued by the Kentucky State Department of Education ***or graduate with a baccalaureate degree in the area of speech-language pathology as defined by the board prior to December 31, 1994. The authority of the board to grant licensure under these circumstances shall end on March 1, 1995***.

(2) The board may waive the examination and grant a license to applicants who present proof of current licensure in a state which has standards that are at least equivalent to those of this state.

(3) The board may waive the examination and grant a license to those who hold the Certificate of Clinical Competence of the American Speech and Hearing Association in the area for which they are applying for licensure.

Section 6. KRS 334A.160 is amended to read as follows:

The amount of fees prescribed in connection with a license as a speech-language pathologist***, speech-language pathology assistant,*** or audiologist shall be as follows:

(1) The initial license fee ***for licensure as a speech-language pathologist or an audiologist*** shall not exceed one hundred dollars ($100);

(2) The delinquency fee ***for all credentials*** shall not exceed twenty dollars ($20);

(3) The application fee ***for all credentials*** shall not exceed fifty dollars ($50);

(4) The inactive license fee ***for all credentials*** shall not exceed ten dollars ($10);

(5) The ***speech-language pathology assistant*** [~~provisional~~] license fee shall not exceed seventy-five dollars ($75); and

(6) The interim license fee shall not exceed seventy-five dollars ($75).

Section 7. KRS 334A.170 is amended to read as follows:

(1) Each licensed speech-language pathologist***, speech-language pathology assistant,*** or audiologist [~~or provisional licensee~~] shall annually***,*** on or before January 30, pay to the board a renewal fee not to exceed seventy-five dollars ($75) for a renewal of his license. A thirty (30) day grace period shall be allowed after January 30, during which time licenses may be renewed on payment of a renewal fee plus grace period fee which combined shall not exceed ninety dollars ($90). After expiration of the grace period, the board may renew each license upon payment of a renewal fee plus a delinquency fee which combined shall not exceed one hundred twenty-five dollars ($125). No person who applies for renewal, whose license has expired, shall be required to submit to any examination as a condition to renewal, ***if the*** [~~provided such~~] renewal application is made within five (5) years from the date of [~~such~~] expiration.

(2) A suspended license is subject to expiration and shall be renewed as provided in this chapter, but ***the*** [~~such~~] renewal ***shall*** [~~does~~] not entitle the licensee***,*** while the license remains suspended[~~,~~] and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order of judgment by which the license was suspended. A license revoked on disciplinary grounds ***shall be*** [~~is~~] subject to expiration as provided in this chapter, but it ***shall*** [~~may~~] not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

(3) A person who fails to renew his license within the five (5) years after its expiration may not renew it, and it ***shall*** [~~may~~] not be restored, reissued***,*** or reinstated thereafter***. The***[~~, but such~~] person may apply for and obtain a new license if he meets the requirements of this chapter.

(4) [~~Except for provisional licensees~~] A person applying for renewal of licensure shall show evidence of completion of continuing professional education in speech-language pathology or audiology as prescribed by the board ***by administrative regulation***.

Section 8. KRS 334A.990 is amended to read as follows:

(1) Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding one thousand dollars ($1,000) or by both.

(2) ***When*** [~~Whenever~~] any person other than a licensed speech-language pathologist***, speech-language pathology assistant,*** or audiologist has engaged in any act or practice which constitutes an offense against this chapter, the Franklin Circuit Court***,*** on application of the board, may issue an injunction or other appropriate order restraining ***the*** [~~such~~] conduct.

The Committee Substitute to **HB 51** is as follows:

HB 51, AN ACT relating to speech-language pathology.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 334A.020 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the Kentucky Board of Speech-Language Pathology and Audiology;

(2) "Person" means any individual, organization***,*** or corporate body, except that only individuals can be licensed under this chapter;

(3) "Speech-language pathologist" means one who practices speech-language pathology. A speech-language pathologist may describe himself to the public by any title or description of services incorporating the words "speech-language pathologist," "speech-language pathology," "speech-language therapy," "speech-language correction," "speech-language correctionist," "speech-language therapist," "speech clinic," "speech clinician," "language pathologist," "language pathology," "language therapist," "logopedics," "logopedist," "communicology," "communicologist," "aphasiologist," "voice therapy," "voice therapist," "voice pathology," "voice pathologist," "phoniatrist," "communication disorders***,***"[~~;~~] or any similar titles or descriptions;

(4) "The practice of speech pathology" means the application of principles, methods***,*** and procedures for the measurement, testing, audiometric screening, identification, appraisal, determination of prognosis, evaluation, consultation, remediation, counseling, instruction***,*** and research related to the development and disorders of speech, voice, verbal and written language, cognition/communication, or oral and pharyngeal sensori-motor competencies for the purpose of

designing and implementing programs for the amelioration of ***these*** ~~[such]~~ disorders and conditions. Any representation to the public by title or by description of services, methods, or procedures for the evaluation, counseling, remediation consultation, measurement, testing, audiometric screening, identification, appraisal, determination of prognosis, instruction, and research of persons suffering or suspected of suffering from conditions or disorders affecting speech, voice, verbal and written language, cognition/communication, or oral and pharyngeal sensori-motor competencies shall be considered to be the practice of speech-language pathology;

(5) "Audiologist" is defined as one who practices audiology. An audiologist may describe himself to the public by any title or description of services incorporating the words "audiologist," "audiology," "audiological," "hearing center," "hearing clinic," "hearing clinician," "hearing therapist," "audiometry," "audiometrist," "audiometrics," "otometry," "otometrist," or any similar titles or descriptions of service;

(6) "The practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and disorders of hearing for the purpose of modifying communicative disorders involving speech, language, auditory behavior, or other aberrant behavior related to hearing loss; planning, directing, conducting, or participating in identification and hearing conservation programs; and habilitative and rehabilitative programs, including hearing aid recommendations and evaluation, auditory training, or speech reading;

(7) "Continuing professional education" in speech-language pathology and audiology consists of planned learning experiences beyond a basic educational program leading to a degree. These experiences are designed to promote knowledge, skills, and attitudes of speech-language pathology and audiology practitioners to enable them to provide improved health care to the public.

(8) "Speech-language pathology assistant" means one who assists in the practice of speech-language pathology only under the supervision and direction of an appropriately qualified supervisor and only within the public school system in the Commonwealth. Any speech pathology services provided without appropriate supervision, or outside the public school system shall be deemed to be the unlicensed practice of speech pathology and shall subject the offending party to both administrative and criminal actions.

(9) "Assisting in the practice of speech pathology" means the provision of certain specific components of a speech or language service program provided by a speech-language pathology assistant under the supervision and direction of an appropriately qualified supervisor.

(a) If the training, supervision, documentation, and planning are appropriate, the following tasks may be delegated to a speech-language pathology assistant:

1. Conduct speech-language and hearing screenings without interpretation following specified screening protocols developed by a speech-language pathologist and audiologist, respectively;

2. Follow documented treatment plans or protocols as prescribed by the supervisor;

3. Document student progress toward meeting established objectives as stated in the treatment plan;

4. Provide direct treatment assistance to identified students under the supervision of the supervisor;

5. Assist with clerical and other related duties as directed by the supervisor;

6. Report to the supervisor about the treatment plan based on a student's performance;

7. Schedule activities, prepare charts, records, graphs, or otherwise display data. This shall not include report generation;

8. Perform simple checks and maintenance of equipment;

9. Participate with the supervisor in research projects, inservice training, and public relations programs;

10. Assist in the development and maintenance of an appropriate schedule for service delivery;

11. Assist in implementing collaborative activities with other professionals; and

12. Assist in administering tests for diagnostic evaluations and progress monitoring.

(b) The following activities shall be outside the scope of practice of the speech-language pathology assistant:

1. Performing any activity which violates the code of ethics promulgated by the board by administrative regulation;

2. Interpreting test results, or performing diagnostic evaluations;

3. Participating in parent conferences, case conferences, or any interdisciplinary team without consultation with, or in the presence of the supervisor;

4. Conducting client or family counseling without the recommendation, guidance, and approval of the supervisor;

5. Writing, developing, or modifying a student's individualized treatment plan in any way without the recommendation, guidance, and approval of the supervisor;

- ***6. Treating students without following the individualized treatment plan prepared by the supervisor or without access to supervision;***
- ***7. Signing any document without the co-signature of the supervisor;***
- ***8. Selecting or discharging students;***
- ***9. Disclosing clinical or confidential information, either orally or in writing, to anyone not designated by the supervisor;***
- ***10. Making referrals for additional services; and***
- ***11. Representing themselves as something other than a speech-language pathology assistant.***

(10) "Supervisor" means a person who holds a Kentucky license as a speech-language pathologist or who holds Education Professional Standards Board certification as a teacher of exceptional children in the areas of speech and communication disorders as established by administrative regulation.

Section 2. KRS 334A.030 is amended to read as follows:

(1) Licensure shall be granted ***as a*** ~~[either in]~~ speech-language ***pathologist, speech-language pathology assistant,*** ~~[pathology]~~ or ***audiologist*** ~~[audiology]~~ independently. A person may be licensed in ***more than one (1) area*** ~~[both areas]~~ if he meets the respective qualifications.

(2) No person shall practice or represent himself as a speech-language pathologist***, speech-language pathology assistant,*** or audiologist in this state unless he is licensed in accordance with the provisions of this law.

Section 3. KRS 334A.035 is amended to read as follows:

(1) A person who has a master's degree in the area of speech-language pathology or audiology or substantive equivalent course work as defined by the board's administrative regulations and who has completed supervised direct clinical practicum with individuals presenting a variety of disorders of communication, the experience being obtained with a training institution or in one ***(1)*** of its cooperating programs, shall apply for an interim license during the time that person is completing postgraduate professional experience ~~[as]~~ deemed necessary by the board. This postgraduate professional experience shall be completed under the supervision of a speech-language pathologist who holds a Kentucky license, if the applicant is seeking interim licensure in speech-language pathology, or under an audiologist who holds a Kentucky license, if the applicant is seeking interim licensure in audiology. A person with interim licensure shall make every effort to take and pass an examination approved by the board. Upon completion of postgraduate professional experience ~~[as]~~ deemed necessary by the board, the speech-language pathologist or audiologist shall make immediate application to the board for permanent licensure, if all requirements have been completed satisfactorily, or for renewal of the interim license at the discretion of the board. Failure to do so shall result in forfeiture of the interim license.

(2) ***A person who has a baccalaureate degree in the area of speech-language pathology as defined by administrative regulation, shall apply for an interim license as a speech-language pathology assistant during the time that person is completing their professional experience as established by the board by administrative regulation. This professional experience shall be completed under the supervision of an appropriately qualified supervisor. Upon completion of the professional experience, the speech-language pathology assistant shall make immediate application to the board for permanent licensure, if all requirements have been completed satisfactorily, or for renewal of the interim license at the discretion of the board. Failure to do so shall result in forfeiture of the interim license.*** ~~[After August 1, 1986, any person who has a bachelor's degree in the area of speech-language pathology desiring to practice in the public schools shall apply to the board for a provisional license. This provisional license shall be valid for five (5) years or until August 1, 1994, whichever comes first, provided the applicant is pursuing a program of study which will result in the applicant obtaining a master's degree in speech-language pathology or audiology or its substantive equivalent as defined by the board, and provided the applicant meets all other requirements for interim licensing. The provisional licensee may provide services only in the public schools in the Commonwealth. This provisional license shall be renewable annually for a maximum of five (5) years from the date the bachelor's degree was granted and may be extended by the board for a one (1) year period, only upon a showing of extraordinary circumstances.]~~

(3) In order to ~~[best]~~ regulate the quality of professional service to children in the public schools of the Commonwealth, any speech-language pathologist employed by the public schools shall apply for and maintain appropriate licensure until ***the*** ~~[such]~~ time ~~[as]~~ the Kentucky ***Education Professional Standards Board promulgates*** ~~[Council on Teacher Education and Certification recommends and the State Board of Education adopts and maintains]~~ an administrative regulation requiring ~~[such]~~ speech-language pathologists to meet the requirements of KRS 334A.050(2)(a) and (b).

SECTION 4. A NEW SECTION OF KRS CHAPTER 334A IS CREATED TO READ AS FOLLOWS:

(1) The board may issue a license to practice as a speech-language pathology assistant. The practice shall be limited to the public schools and shall be under the supervision of an appropriately qualified supervisor. The requirements for supervision shall be set forth in administrative regulations promulgated by the board. An individual shall not supervise or be listed as the supervisor for more than two (2) speech-language pathology assistants.

(2) To be eligible for licensure by the board as a speech-language pathology assistant, the applicant shall meet the

following requirements:

(a) A baccalaureate degree in the area of speech-language pathology as defined by administrative regulation;

(b) Completion of postgraduate professional experience deemed appropriate by the board by administrative regulation;

(c) List on the application the name of the appropriately qualified supervisor who has agreed to provide supervision as set forth by the board by administrative regulation; and

(d) Pass an examination in speech-language pathology approved by the board and in effect at the time of application for licensure. An applicant who fails his examination may be reexamined at a subsequent examination upon payment of another licensing fee.

Section 5. KRS 334A.060 is amended to read as follows:

(1) ~~[Upon proof of bona fide practice presented to the board in the manner prescribed by the board's administrative regulations,]~~ The board may waive the examination and educational requirements for those applicants ***for licensure as a speech-language pathology assistant*** who~~[, on August 1, 1986,]~~ hold a valid and current credential as a speech and hearing specialist issued by the ***Education Professional Standards Board or graduate with a baccalaureate degree in the area of speech-language pathology as defined by the board prior to December 31, 1994. The authority of the board to grant licensure under these circumstances shall end on March 1, 1995***~~[Kentucky State Department of Education]~~.

(2) The board may waive the examination and grant a license to applicants who present proof of current licensure in a state which has standards that are at least equivalent to those of this state.

(3) The board may waive the examination and grant a license to those who hold the Certificate of Clinical Competence of the American Speech and Hearing Association in the area for which they are applying for licensure.

Section 6. KRS 334A.160 is amended to read as follows:

The amount of fees prescribed in connection with a license as a speech-language pathologist***, speech-language pathology assistant,*** or audiologist shall be as follows:

(1) The initial license fee ***for licensure as a speech-language pathologist or an audiologist*** shall not exceed one hundred dollars ($100);

(2) The delinquency fee ***for all credentials*** shall not exceed twenty dollars ($20);

(3) The application fee ***for all credentials*** shall not exceed fifty dollars ($50);

(4) The inactive license fee ***for all credentials*** shall not exceed ten dollars ($10);

(5) The ***speech-language pathology assistant*** ~~[provisional]~~ license fee shall not exceed seventy-five dollars ($75); and

(6) The interim license fee shall not exceed seventy-five dollars ($75).

Section 7. KRS 334A.170 is amended to read as follows:

(1) Each licensed speech-language pathologist***, speech-language pathology assistant,*** or audiologist ~~[or provisional licensee]~~ shall annually***,*** on or before January 30, pay to the board a renewal fee not to exceed seventy-five dollars ($75) for a renewal of his license. A thirty (30) day grace period shall be allowed after January 30, during which time licenses may be renewed on payment of a renewal fee plus grace period fee which combined shall not exceed ninety dollars ($90). After expiration of the grace period, the board may renew each license upon payment of a renewal fee plus a delinquency fee which combined shall not exceed one hundred twenty-five dollars ($125). No person who applies for renewal, whose license has expired, shall be required to submit to any examination as a condition to renewal, ***if the*** ~~[provided such]~~ renewal application is made within five (5) years from the date of ~~[such]~~ expiration.

(2) A suspended license is subject to expiration and shall be renewed as provided in this chapter, but ***the*** ~~[such]~~ renewal ***shall*** ~~[does]~~ not entitle the licensee***,*** while the license remains suspended~~[,]~~ and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order of judgment by which the license was suspended. A license revoked on disciplinary grounds ***shall be*** ~~[is]~~ subject to expiration as provided in this chapter, but it ***shall*** ~~[may]~~ not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

(3) A person who fails to renew his license within the five (5) years after its expiration may not renew it, and it ***shall*** ~~[may]~~ not be restored, reissued***,*** or reinstated thereafter***. The***~~[, but such]~~ person may apply for and obtain a new license if he meets the requirements of this chapter.

(4) ~~[Except for provisional licensees]~~ A person applying for renewal of licensure shall show evidence of completion of continuing professional education in speech-language pathology or audiology as prescribed by the board ***by administrative regulation***.

Section 8. KRS 334A.990 is amended to read as follows:

(1) Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding one thousand dollars ($1,000) or by both.

(2) ***When*** ~~[Whenever]~~ any person other than a licensed speech-language pathologist***, speech-language pathology assistant,*** or audiologist has engaged in any act or practice which constitutes an offense against this chapter, the Franklin Circuit Court***,*** on application of the board, may issue an injunction or other appropriate order restraining ***the*** ~~[such]~~ conduct.

HB 65, AN ACT relating to school-based decision making.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 160.345 is amended to read as follows:

(1) The term "teacher" for the purpose of this section means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.

(2) By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy shall also address and comply with the following:

(a) Each participating school shall form a school council which shall be composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. The parent representatives on the council shall not be employees of the district or employees' relatives, nor shall they be a local board member or his spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees. By July 1, 1993, the State Board for Elementary and Secondary Education shall submit recommendations to the Legislative Research Commission relating to policies and procedures to insure minority representation on school councils.

(b) The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent representatives shall be selected for one (1) year terms. The parent members shall be elected by the ***parents of students enrolled in the school in an election conducted by*** ~~[parent members of]~~ the parent teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. The principal or head teacher shall be the chair of the school council.

(c) The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.

(d) All certified staff at a school may be participants in the school-based decision making. The staff may divide into committees according to their areas of interest, such as, but not limited to, grouped grade levels, subject areas, and special programs. Each committee shall elect by a majority of the committee a chair, who shall serve for a term of one (1) year. The committee shall submit its recommendations to the school council for consideration.

(e) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.

(f) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.

(g) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.

(h) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council.

(i) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.

(j) The school council shall adopt a policy to be implemented by the principal in the following additional areas:

1. Determination of curriculum, including needs assessment and curriculum development;
2. Assignment of all instructional and noninstructional staff time;
3. Assignment of students to classes and programs within the school;
4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
5. Determination of use of school space during the school day;
6. Planning and resolution of issues regarding instructional practices;
7. Selection and implementation of discipline and classroom management techniques, including responsibilities of the student, parent, teacher, counselor, and principal;
8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision; and
9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal.

(3) The policy adopted by the local board to implement school-based decision making shall also address the following:

(a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;

(b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;

(c) School improvement plans, including the form and function of strategic planning and its relationship to district planning;

(d) Professional development plans developed pursuant to KRS 156.095 and 156.0951;

(e) Parent, citizen, and community participation including the relationship of the council with other groups;

(f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;

(g) Requirements for waiver of district policies;

(h) Requirements for record keeping by the school council; and

(i) A process for appealing a decision made by a school council.

(4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

(5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon a favorable vote of a majority of the faculty at the school, a school performing above its threshold level requirement as determined by the Department of Education pursuant to KRS 158.6455 may apply to the State Board for Elementary and Secondary Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

(6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making.

(7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the State Board for Elementary and Secondary Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.

(8) The State Board for Elementary and Secondary Education, upon recommendation of the chief state school officer, shall

adopt by administrative regulation a formula by which school district funds shall be allocated to each school council.

(9) (a) No board member, superintendent of schools, or district employee shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (j) of subsection (2) of this section.

(b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the State Board for Elementary and Secondary Education.

(c) The State Board for Elementary and Secondary Education shall establish by administrative regulation a hearing process for complaints referred by the Office of Education Accountability.

(d) If the State Board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

HB 67, AN ACT relating to textbooks.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.439 is amended to read as follows:

(1) The State Board for Elementary and Secondary Education shall promulgate by administrative regulations the method for calculating and distributing a district's textbook and instructional materials allocation. The district's allocation shall be used by schools to purchase:

(a) Textbooks from the state adoption list;

(b) Textbooks not on the state's approved list, if evidence is submitted that the textbook meets the selection criteria of the State Textbook Commission in KRS 156.405(3)(b) and the subject specific criteria of the textbook reviewers pursuant to KRS 156.407(6);

(c) Instructional materials, with an approved plan pursuant to subsection (2) of this section; or

(d) Any combination of the above.

(2) The district shall identify all purchases made with the textbook and instructional materials allocation and shall keep on file a plan developed by each school, in accordance with administrative regulations promulgated by the State Board for Elementary and Secondary Education, for providing the necessary textbooks and instructional materials for all grades, and subject areas, including the replacement of books and materials during the six (6) year adoption period. A school may carry forward to the next school year any part of its textbook and instructional materials allocation which has been distributed to the district. [~~If a local board does not approve a school council's plan, the council may appeal to the commissioner.~~]

Section 2. KRS 156.445 is amended to read as follows:

(1) No textbook shall be used in any public school in Kentucky as a basal textbook unless it has been approved and listed on the state multiple list of textbooks by the State Textbook Commission or unless a school district has applied for and received a waiver of this requirement from the ***Department of*** [~~State Board for Elementary and Secondary~~] Education pursuant to subsection (2) of this section. Any changes of textbooks made by the State Textbook Commission shall not become effective until grades and classes of the respective county and independent school districts have completed work for which the adopted book then in use was originally intended. Nothing in this section shall apply to the supplementary books that are needed from time to time.

(2) A local school board or school council may apply to the ***Department of*** [~~State Board for Elementary and Secondary~~] Education to adopt a basal textbook which is not on the multiple list by submitting evidence that the textbook it has chosen meets the selection criteria of the State Textbook Commission in KRS 156.405(3)(b) and the subject specific criteria of the textbook reviewers pursuant to KRS 156.407(6).

(3) In approving text materials for private and parochial schools for the purpose of KRS 156.160(3) such text materials shall be approved if they are comprehensive and appropriate to the grade level in question notwithstanding the fact that they may contain elements of religious philosophy.

Section 3. The following KRS sections are repealed:

157.120 Requisitions for books -- Shipments -- Invoices.

157.145 Rebinding of textbooks.

The Committee Amendment No. 1 to **HB 67** is as follows:

On page 1, line 11, after "with", by placing brackets around and striking through "an approved", and inserting "***a***" in lieu thereof and after the word "plan", by inserting "***developed***".

On page 2, line 1, after "school district" by inserting "***or school council***".

HB 68, AN ACT relating to education.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 157.520 is amended to read as follows:

(1) It is the intention of the General Assembly in KRS 157.510 to 157.540 to permit the State Board for Elementary and Secondary Education, upon recommendation of the chief state school officer, to authorize a local board of education to operate public elementary and secondary schools on a basis other than the standard school [~~day,~~] month, term, or year for purposes of experimentation. The objective of this legislation is to encourage experimentation that may result in improved quality of education or more efficient use of educational resources in the state.

(2) The board, upon recommendation of the chief state school officer, shall ***promulgate*** [~~adopt~~] administrative regulations relating to the requirements to be met by school districts for authorization to operate experimental programs on a basis other than the standard school [~~day,~~] month, term, or year.

[~~(3) The board, upon recommendation of the chief state school officer, shall select no more than three (3) school districts from those applying for authorization to operate experimental programs on a basis other than those requirements provided by KRS 158.060 and 158.070(2).~~

~~(4) The board, upon recommendation of the chief state school officer, shall select at least three school districts, if three (3) school districts meeting the requirements of the board apply, for experimental operation of year round school programs.~~]

Section 2. KRS 158.060 is amended to read as follows:

(1) Twenty (20) school days, or days in which teachers are actually employed in the schoolroom, shall constitute a school month in the common schools. The legal holidays designated by the State Board for Elementary and Secondary Education to be observed may include the first Tuesday after the first Monday in November of each year and shall be counted as school days.

(2) Each full-time teacher shall be provided with a duty-free lunch period each day during the regularly scheduled student lunch period. The duty-free lunch period shall be not less than the length of the lunch period specified in the school calendar approved by the chief state school officer. A full-time teacher may be assigned to lunch room duty during the regularly scheduled student lunch period only for an amount of time equal to the noninstructional time in excess of fifty-five (55) minutes included in the teacher's daily schedule. The calculation of noninstructional time shall not include the teacher's duty-free lunch period, the time teachers are required to be at school prior to the start of the student's six (6) hour instructional day, or the time teachers are required to remain at school after the students are dismissed.

(3) Except for [~~handicapped~~] children ***with disabilities*** and children attending the primary school program who may attend a program of less than six (6) hours per day under policy adopted by the local school district board of education and approved by the State Board for Elementary and Secondary Education ***and children attending a school district where the local board has approved a schedule that provides at least the equivalent of six (6) hours of daily instruction during the school year***, a minimum of six (6) hours of actual school work shall constitute a school day. Kindergarten programs may be operated for less than six (6) hours without state board approval. The State Board for Elementary and Secondary Education, upon recommendation of the chief state school officer, shall develop and approve regulations governing make up by school districts of whole days missed due to emergencies, or partial days missed as a result of shortening regularly scheduled school days due to emergencies.

(4)[~~(2)~~] Teachers shall be provided additional time for nonteaching activities. The nonteaching time shall be used to provide teachers opportunities for professional development activities as provided in KRS 156.095, instructional planning, school-based [~~shared~~] decision making as provided in KRS 160.345, curriculum development, and outreach activities involving their students' families and the community.

The Committee on Economic Development reported **HB 74** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 74, AN ACT relating to economic assistance for local governments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 42.455 is amended to read as follows:

(1) There is established within the Department of Local Government a Local Government Economic Assistance Program to consist of a system of grants to local governments to improve the environment for new industry and to improve the

quality of life for the residents.

(2) Grants obtained under this program shall be used for priority expenditures. Thirty percent (30%) of all moneys in the fund shall be spent on the coal haul road system as described in subsection (7) of this section. The remaining seventy percent (70%) of the fund shall be spent on priority categories limited to the following, but in no event shall grants obtained under this program be used for expenses related to administration of government:

(a) Public safety, including law enforcement, fire protection, ambulance service and other related services;

(b) Environmental protection, including sewage disposal, sanitation, solid waste, and other related programs;

(c) Public transportation, including mass transit systems, streets, and roads;

(d) Health;

(e) Recreation;

(f) Libraries and educational facilities;

(g) Social services for the poor, aged, and handicapped;

(h) Industrial and economic development; ~~[and]~~

(i) Vocational education***; and***

(j) Workforce training.

(3) The use of entitlement funds for repayment of debt as related to long-term bond issues is permissible as long as the revenue from the bond issues is expended on priority categories.

(4) Grants obtained under this program may be used as local portion to secure federal programs as long as program expenditures are in the priority category area. Interest earned on funds received by local units of government shall be considered available for use by the local unit of government in the priority expenditure categories.

(5) The Department of Local Government shall be responsible for the promulgation of rules and regulations necessary to implement the grants programs authorized by this section.

(6) The Department of Local Government shall assure that a public hearing is held on the expenditure of funds received under KRS 42.450 to 42.495. Advertisement of the public hearing shall be published at least once but may be published two (2) or more times, provided that one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the scheduled date of the public hearing. The department shall submit an annual report to the Governor indicating how the grants were used and an evaluation of the program's effectiveness in improving the economy of the units of government receiving assistance.

(7) On or before August 15, 1980, and each year thereafter, the Transportation Cabinet shall publish and furnish to the Department of Local Government a directory, including supporting maps and other documents, designating the official state coal road system in coal impact and coal producing counties which shall include all public highways, roads, and streets over which quantities of coal, sufficient to significantly affect the condition and state of repair of such highways, roads, and streets, have been transported in the immediately preceding fiscal year. The cabinet shall further publish the total county mileage of the official state coal road system and the total ton/miles within each coal impact and coal producing county for said preceding fiscal year.

(8) Every person shipping or transporting coal, and every carrier for hire or common carrier hauling coal over the public highways, roads, and streets shall file with the Transportation Cabinet such information and at such intervals as the department shall designate by regulation duly adopted for the purpose of identifying those highways, roads, and streets comprising the coal haul road system and the quantities of coal transported thereon, in order that the cabinet can accurately calculate total ton/miles within each coal impact and coal producing county.

(9) The Revenue Cabinet shall make available to the Transportation Cabinet coal severance and processing tax data for use in verifying and supplementing the information furnished under the provisions of subsection (8) of this section. The information shall be furnished in such a manner as to conceal the identity of individual taxpayers; if the data cannot be furnished without revealing the identity of individual taxpayers, it shall be withheld.

Section 2. KRS 42.4588 is amended to read as follows:

(1) There is established within the Kentucky Development Finance Authority a local government economic development program to consist of a system of grants to counties to attract new industry.

(2) Grants obtained under this program shall be used for:

(a) Industrial development projects if an industrial firm has agreed with the local government, to the satisfaction of the Kentucky Development Finance Authority, to develop, in conjunction with the industrial development project, manufacturing, processing, assembling, or other facilities approved by the secretary of the Cabinet for Economic Development; and

(b) Industrial development projects if the secretary of the Cabinet for Economic Development finds that the project is necessary for the creation of an environment for new industry in order to obtain an agreement from an industrial firm to develop manufacturing, processing, assembling, or other facilities approved by the secretary of the

Cabinet for Economic Development.

(c) Debt service on bonds issued under the provisions of KRS 65.270 or KRS 103.200 to 103.285 for industrial development projects, as defined in subsection (2)(a) and (b) of this section, or for facilities approved by the secretary of the Cabinet for Economic Development under the provisions of subsection (3) of this section.

(3) The secretary of the Cabinet for Economic Development may approve facilities, other than manufacturing, processing, or assembling facilities, for industrial development projects when the secretary finds that the facility will add value to a product. Value-added facilities shall include data processing, telecommunication, and distribution facilities, but shall not include retail facilities or coal mining, coal processing, or coal transportation facilities. The secretary may also approve privately-owned facilities for transient lodging and recreation where the secretary finds that the cost of the recreation component of the facility is equal to, or greater than, the cost of the lodging component of the facility. The criteria for approval of applications for grants provided for in paragraphs (a), (b), and (c) of subsection (9) of this section shall be paramount in the case of lodging and recreational facilities.

(4) Applications for grants from funds provided for in KRS 42.4592(1)(a) and (b) shall be made by the legislative bodies of one (1) or more counties with accounts in the local government economic development fund. Applications for grants from funds provided for in KRS 42.4592(1)(c) shall be made by the legislative bodies of two (2) or more counties with accounts in the local government economic development fund. No grant shall be awarded without application for a grant.

(5) A grant may be awarded for an industrial development project located in a county that does not have an account in the local government economic development fund, if the secretary of the Cabinet for Economic Development finds that the industrial development project may be reasonably expected to create jobs for residents of the local unit or units of government applying for the grant. Application for the grant shall be made by the legislative bodies of one (1) or more counties with accounts in the local government economic development fund.

(6) With the exception of grants awarded to service debt on bonds, as provided for in subsection (2)(c) of this section, grants awarded from funds provided for in KRS 42.4592(1) (a) and (b) shall not exceed the total balance of the accounts of the applicant counties at the time of the award of the grant.

(7) Grants awarded under the provisions of subsection (2)(c) of this section may be for a period not to exceed thirty (30) years, and shall be limited to an annual amount not to exceed twenty-five percent (25%) of the amount estimated to be allocated to the applicant county or counties for the current fiscal year under the provisions of KRS 42.4592(1)(a) and (b).

(8) Approval of grant applications shall be by the secretary of the Cabinet for Economic Development. Award of grants shall be by the Kentucky Development Finance Authority.

(9) Criteria for approval of applications and the award of grants shall be based upon the following:

(a) The number of jobs to be created or preserved, directly or indirectly, by the industrial development project;

(b) Payrolls, and the taxes generated, both at the state and local levels, by the industrial development project and taxes generated by the employment created or preserved by the industrial development project;

(c) The size, nature, and cost of the industrial development project, including the prospect of the industrial development project providing long-term jobs in enterprises consistent with the changing economies of the affected local units of government;

(d) The needs, and degree of needs, of the local units of government which will be affected by the industrial development project;

(e) The needs of any industrial firm benefiting from the industrial development project;

(f) The amount and kind of assistance, if any, available to an industrial firm from other government agencies through tax exemption or abatement, financing assistance through industrial development bonds, and otherwise, with respect to the industrial development project;

(g) The amount of capital made available to the facility by lenders and by the industrial firm; and

(h) The economic feasibility of the facility.

(10) For purposes of this section:

(a) "Industrial development project" means and includes the acquisition of any real estate and the construction, acquisition, and installation thereon and with respect thereto of improvements and facilities necessary and useful for the improvement of the real estate for conveyance to or lease to industrial firms to be used for manufacturing, processing, or assembling purposes, including surveys; site tests and inspections; subsurface site work; excavation, removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage; storm water retention; installation of utilities, such as water, sewer, sewage treatment, gas electricity, communication, and other similar facilities; off-site construction of utility extensions to the boundaries of the real estate; construction and installation of buildings, including buildings to be used for worker training and education; rail facilities; roads; sidewalks; curbs; and other improvements to the real estate necessary to its manufacturing, processing, assembling, or other approved use by industrial entities; ***workforce training;*** and

(b) "Industrial firm" means any corporation, partnership, person, or other legal entity, whether domestic or foreign, which will itself or through its subsidiaries and affiliates construct and develop a manufacturing, processing, assembling, or other approved facility on the site of an industrial development project financed pursuant to this section.

(11) Findings by the secretary of the Cabinet for Economic Development, provided for in subsections (2)(b), (3) and (5) of this section, shall be made in writing to the affected counties, the Governor, and the Legislative Research Commission.

(12) By October 1 of each odd-numbered year, the secretary of the Cabinet for Economic Development shall provide, in writing, to the Governor and the Legislative Research Commission a listing of all applications for grants received pursuant to this section subsequent to the last report, indicating which applications were approved or disapproved, with the reason for disapproval when the decision was to disapprove, and a listing of all grants awarded, with the amount of the award, the recipient county, and the related industrial development project.

Calendar

HB 140, HB 4, HB 58, HB 75, HB 79, HB 80, HB 81, HB 84, HB 99, HB 103, HB 106, HB 121, HB 122, HB 43, HB 206, and HB 62 taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Consent Calendar

HB 53 and **HB 152** taken from the Consent Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Recess

Representative Stumbo moved that the House recess for five minutes for a meeting of the Committee on Rules. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Floor Amendments

Floor Amendment No. 1 to **HB 53**, by Representative Heleringer:

On page 1, line 9, by inserting after the paragraph letter "***(a)***" the following:

"***The right to life, liberty, and the pursuit of happiness;***

(b)"; and

On page 1, line 10, by relettering "***(b)***" as "***(c)***"; and

On page 1, line 11, by relettering "***(c)***" as "***(d)***"; and

On page 1, line 13, by relettering "***(d)***" as "***(e)***"; and

On page 1, line 14, by relettering "***(e)***" as "***(f)***"; and

On page 1, line 16, by relettering "***(f)***" as "***(g)***"; and

On page 1, line 19, by relettering "***(g)***" as "***(h)***"; and

On page 1, line 20, by relettering "***(h)***" as "***(i)***".

Representative Stumbo moved that the rules be suspended for a report of the Committee on Rules. Agreed.

Report of Committees

The Committee on Rules reported the following Consent Bills have been posted for passage in the Consent Orders of the Day, January 13, 1994: **HB 53, HB 152**

The Committee on Rules reported that **HB 4, HB 43, HB 58, HB 62, HB 75, HB 79,** and **HB 80** have been posted for passage in the Orders of the Day for January 13, 1994.

The Committee on Rules reported that the following Bill has been recommitted:

Appropriations and Revenue: **HB 206**

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for the Introduction of Bills and Resolutions and to introduce guests. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 275, by Representative Lee: AN ACT relating to survivors of persons killed in the line of duty.

HB 276, by Representative Heleringer: AN ACT relating to assisting a suicide.

Motions, Petitions and Communications (Continued)

Representative Maggard moved that the rules be suspended to allow co-sponsors of Bills and Resolutions. Agreed.

Representative Donnermeyer moved that **HB 117** be withdrawn. Agreed.

Representative Brown moved that **HB 221** be withdrawn. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills and Resolutions under the rules previously suspended: **HB 4**, Representative Donnermeyer; **HB 35**, Representative Lile; **HB 50**, Representative Scorsone; **HB 56**, Representative Bowling; **HB 65**, Representative Lile; **HB 98**, Representative R. Smith; **HB 123**, Representative P. Clark; **HB 207**, Representative Arnold; **HB 218**, Representative Brown.

Announcements

The Clerk announced the following meetings:

Budget Review Subcommittee on Economic Development, 10:00 a.m., January 13, 1994, Room 125

Briefing on Governor's Commission on Quality and Efficiency, upon adjournment, Room 149

Labor and Industry, canceled, January 13, 1994

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Thursday, January 13, 1994.

On the roll call the vote was **Yeas 83**--Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bruce, Bryant, Buis, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Graham, Gray, Hampton, Harper, Hatcher, Jensen, Johnson, Keith, Kerr, Lear, Lee, Lewis, Lindsay, Little, Long, Lyne, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nesler, Noland, Northup, Nunn, Palumbo, Rasche, Reinhardt, Richards, Ridley, Riggs, Riner, Sanders, Scorsone, Shacklette, R. Smith, Stacy, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 4**--Heleringer, LeMaster, Lile, Maggard.

The motion to adjourn was adopted.

THURSDAY, JANUARY 13, 1994

EIGHTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Dr. John Callaway, First Presbyterian Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The Clerk read the Certificates of Election for the new Representatives-elect, William Scott, 24th District; Mary Lou Marzian, 34th District; Allen Maricle, 49th District; and Arnold Simpson, 65th District.

Representative Stumbo moved that floor privileges be granted to the special guests. Agreed.

The oath of office was administered to the newly elected members by Judge Martin Sheehan, Special Judge, Franklin Circuit Court.

The roll was called. All members present except Representatives LeMaster, Nelson and R. Smith.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of January 12, 1994 be dispensed with and the same approved. Agreed.

Introduction of Bills and Resolutions

HB 277, by Representative Lewis: AN ACT relating to state mandates.

HB 278, by Representative Kerr: AN ACT relating to guardians and conservators.

HCR 19, by Representatives Graham, Gedling, Nesler, Stacy, Bowling, Collins, Buis, Maggard, Crenshaw, Butler, McElroy, Lee, Lindsay, Ballard, Farrow, Moberly, Fox, Gee, Turner, Allen, Arnold, Napier, Morris, Zimmerman, Rasche, P. Clark, Stengel, Coleman, Lyne, Worthington, Cave, Todd, Adams, French, Adkins, Bentley and Sanders: A CONCURRENT RESOLUTION requesting reauthorization of the Tobacco Task Force.

HR 20, by Representative Hancock: A RESOLUTION recognizing and honoring playwright George C. Wolfe.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Agriculture and Small Business: **HB 253**

Banking and Insurance: **HB 273**

Counties and Special Districts: **HB 252, HB 275**

Education: **HB 256**

Elections and Constitutional Amendments: **HB 254**

Judiciary: **HB 251, HB 255, HB 270, HB 271, HB 272, HB 276**

State Government: **SB 10, HB 257, HB 258, HB 259, HB 260, HB 261, HB 262, HB 263, HB 264, HB 265, HB 266, HB 267, HB 268, HB 269, HB 274**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bill has been posted for Committee consideration:

Health and Welfare: **HB 250**

Report of Committees

The Committee on Banking and Insurance reported **HB 32** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 32, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.1-120 is amended to read as follows:

No provision of this code shall apply to:

(1) Fraternal benefit societies (as identified in Subtitle 29), except as stated in Subtitle 29.

(2) Nonprofit hospital, medical-surgical, dental, and health service corporations (as identified in Subtitle 32) except as stated in Subtitle 32.

(3) Burial associations (as identified in KRS Chapter 303), except as stated in Subtitle 31.

(4) Assessment or cooperative insurers (as identified in KRS Chapter 299), except as stated in KRS Chapter 299.

(5) Insurance premium finance companies (as identified in Subtitle 30), except as stated in Subtitle 30.

(6) A group or association of health facility and health services institutions subject to the certificate of need and licensure provisions of KRS Chapter 216B or a group of Kentucky for profit corporations (as defined in KRS Chapter 271B), or the members of a bona fide association, composed of any number of members, who join together to self-insure against professional liability or public liability risks for bodily injury or property damage, to anyone except employees for claims arising out of their employment of the members of such group, which arises out of the operation of institutions or other legal entities by members of the group and who comply with the following conditions:

(a) Establishment of a professional or public liability risk management trust fund to provide adequate coverage for claims made against members of the fund for professional liability or public liability risks;

(b) Establishment of a comprehensive loss prevention and risk management program coordinated with an effective claims management system for members of the group; and

(c) Filing with the department, on a form to be provided by the department, a certification setting forth the establishment of such a trust fund; the date upon which the trust fund is to become effective, the identity of the members of the trust fund, and a copy of the programs and systems established for the members of the trust fund.

(7) Qualified organizations which issue charitable gift annuities within the Commonwealth of Kentucky. For the purposes of this subsection:

(a) A "qualified organization" means one which is:

1. Exempt from taxation under Section 501(c)(3) of the Internal Revenue Code as a charitable organization, if it files a copy of federal form 990 with the Division of Consumer Protection in the Office of the Attorney General; or

2. Exempt from taxation under Section 501(c)(3) of the Internal Revenue Code as a religious organization; or

3. Exempt as a publicly-owned or nonprofit, privately-endowed educational institution approved or licensed by the State Board of Education, the Southern Association of Colleges and Schools, or an equivalent public authority of the jurisdiction where the institution is located; and

(b) A "charitable gift annuity" means a giving plan or method by which a gift of cash or other property is made to a qualified organization in exchange for its agreement to pay an annuity.

(8) A religious publication, or its subscribers, that:

(a) Is a nonprofit religious organization;

(b) Is limited to subscribers who are members of the same denomination or religion;

(c) Acts as an organizational clearinghouse for information between subscribers who have financial, physical, or medical needs and subscribers who choose to assist with those needs, matching subscribers with the present ability to pay with subscribers with a present financial or medical need;

(d) Pays for the subscribers' financial or medical needs by payments directly from one (1) subscriber to another; and

(e) Suggests amounts to give that are voluntary among the subscribers, with no assumption of risk or promise to pay either among the subscribers or between the subscribers and the publication.

The Committee on Judiciary reported **HB 3, HB 14** with Committee Substitute attached thereto, and **HB 162,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 3, AN ACT relating to jurisdiction over the Federal Correctional Institution site at Manchester, Kentucky, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 3 IS CREATED TO READ AS FOLLOWS:

Kentucky cedes to the United States concurrent civil and criminal jurisdiction over all of the land and premises acquired by the United States in Clay County constituting the Federal Correctional Institution at Manchester.

Section 2. Whereas the Federal Correctional Institution at Manchester, Kentucky is already in operation, an emergency is declared and this Act shall become effective upon its passage and approval by the Governor and acceptance by the United States.

HB 14, AN ACT relating to cemetery lots.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 381.715 is amended to read as follows:

(1) As used in this section, "cemetery lot" is a lot containing one (1) or more grave spaces and located within a cemetery registered pursuant to KRS 367.946 in a county containing an urban-county government or city of the first ***or fourth*** class.

(2) An officer of the cemetery may cause to be filed, on behalf of the cemetery***,*** an action in the Circuit Court of the county where the cemetery is located requesting that the burial rights in the unused portion of the lots in question be deemed abandoned and that the cemetery be authorized to sell ***the***[~~such~~] rights upon entry of the court's judgment. The defendants in the action shall be the unknown heirs of the original owner of the burial rights in the lots in question.

(3) The petition shall include the following:

(a) The name of the original owner of the burial rights in the lots in question.

(b) The name of all persons buried in the lots and the date of burial, if known.

(c) The name, address***,*** and telephone number of the cemetery office.

(d) An affidavit by the petitioner that:

1. No person has been buried in the cemetery lots in question for a period of at least one hundred (100) years; and

2. The identity of any owner of the burial rights in the lot in question or any heir of the owner is unknown to any officer or employee of the cemetery and not discoverable after a good faith attempt by an officer or employee to identify ***the***[~~such~~] owner or heir.

(4) Service of process shall be by warning order attorney, appointed by the court pursuant to CR 4.07.

(5) If the court finds the allegations set forth in paragraph (d) of subsection (3) of this section to be true, the court shall enter judgment deeming the burial rights in the lots in question abandoned and authorizing the cemetery to sell ***the***[~~such~~] rights.

(6) No judgment shall be entered declaring burial rights abandoned if an owner or heir of a cemetery lot has filed with the cemetery a statement in writing directing that certain grave spaces not be used.

The Committee Substitute to **HB 14** is as follows:

HB 14, AN ACT relating to cemetery lots.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 381.715 is amended to read as follows:

(1) As used in this section, "cemetery lot" is a lot containing one (1) or more grave spaces and located within a cemetery registered pursuant to KRS 367.946 in a county containing an urban-county government or ***in a*** city [~~of the first class~~].

(2) An officer of the cemetery may cause to be filed, on behalf of the cemetery***,*** an action in the Circuit Court of the county where the cemetery is located requesting that the burial rights in the unused portion of the lots in question be deemed abandoned and that the cemetery be authorized to sell ***the***[~~such~~] rights upon entry of the court's judgment. The defendants in the action shall be the unknown heirs of the original owner of the burial rights in the lots in question.

(3) The petition shall include the following:

(a) The name of the original owner of the burial rights in the lots in question.

(b) The name of all persons buried in the lots and the date of burial, if known.

(c) The name, address***,*** and telephone number of the cemetery office.

(d) An affidavit by the petitioner that:

1. No person has been buried in the cemetery lots in question for a period of at least one hundred (100) years; and

2. The identity of any owner of the burial rights in the lot in question or any heir of the owner is unknown to any officer or employee of the cemetery and not discoverable after a good faith attempt by an officer or

employee to identify ***the***[~~such~~] owner or heir.

(4) Service of process shall be by warning order attorney, appointed by the court pursuant to CR 4.07.

(5) If the court finds the allegations set forth in paragraph (d) of subsection (3) of this section to be true, the court shall enter judgment deeming the burial rights in the lots in question abandoned and authorizing the cemetery to sell ***the***[~~such~~] rights.

(6) No judgment shall be entered declaring burial rights abandoned if an owner or heir of a cemetery lot has filed with the cemetery a statement in writing directing that certain grave spaces not be used.

HB 162, AN ACT relating to the administration of estates.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 391.035 is amended to read as follows:

(1) ***If*** [~~Whenever~~] real or personal property passes by the laws of intestate succession, or under a will to a beneficiary not named in ***the*** [~~such~~] will, proceedings may be had in the District Court to determine the persons entitled to ***the*** [~~such~~] property.

(2) (a) If an estate is in process of administration the executor, administrator or any person claiming an interest in the property may file a motion in the District Court where administration is in process. If there is no pending administration or administration has been dispensed with, any person claiming an interest in the property may file a motion in the District Court of the county in which the decedent last resided or***, if*** [~~in the event~~] the decedent was not a Kentucky resident, in the District Court of the county in which the property, or the greater part thereof, is located;

(b) The motion shall set forth all of the facts known to ***the*** movant relating to the matter, including the names, ages***,*** and addresses of all persons who are or may be entitled to share in ***the*** [~~such~~] property and their relationship to the decedent or to the class of beneficiaries entitled to share. The motion shall also describe the property under consideration and an estimate of its value;

(c) The motion shall be served in a manner authorized by the Rules of Civil Procedure for the initiation of a civil action and shall set forth the place and time***,*** [~~(~~]which shall not be less than twenty (20) days from the date of service***,***[~~)~~] when the motion will come on for hearing.

(3) Upon the hearing on the motion any person claiming an interest in the property may introduce proof in support of his claim and the court may entertain the admission of any other relevant evidence to aid the court in determining the persons entitled to share in the property.

(4) After hearing all the evidence the court shall enter judgment in which the names, ages and addresses of the persons entitled to share in the property are set forth and the proportionate interest of each. ***The judgment shall be conclusive evidence of the facts determined therein as against all parties to the proceeding.***

(5) In a case where some or all of the property is real ***property*** [~~estate~~] located in this state***,*** a certified copy of the judgment shall be recorded in the office of the appropriate county clerk in lieu of the affidavit required by KRS 382.120. ***The judgment shall be conclusive evidence of the facts determined therein as against all parties to the proceedings.***

(6) Any party may at any time prior to judgment institute an adversary proceeding in Circuit Court pursuant to KRS 24A.120(2).

(7) Any aggrieved party may no later than thirty (30) days from the date of the judgment, institute an adversary proceeding in Circuit Court pursuant to KRS 24A.120(2).

(8) Any unknown defendants before the court by constructive service alone shall be entitled to the protection afforded by Civil Rule 4.11.

(9) No proceedings under this section shall be conducted by or before a commissioner of the District Court.

Section 2. KRS 395.278 is amended to read as follows:

An order of substitution shall be entered or a motion shall be made [~~An application~~] to revive an action in the name of ***or against*** the ***personal*** representative or successor of a ***deceased party*** [~~plaintiff, or against the representative or successor of a defendant, shall be made~~] within ***six (6) months*** [~~one (1) year~~] after the ***appointment, or if no personal representative has been appointed, within two (2) years after the decedent's death*** [~~death of a deceased party~~].

Section 3. KRS 396.205 is amended to read as follows:

No cause of action on any claim not otherwise barred by the provisions of KRS 396.011 and subsection (1) of KRS 396.055, or any other applicable statute of limitations, shall be brought against the personal representative or against any distributee after the expiration of two (2) years from the date of the order of discharge of the personal representative ***notwithstanding any other statute to the contrary***. The foregoing limitation shall not preclude an action by any claimant [~~against the personal representative~~] for fraud[~~, misrepresentation or inadequate disclosure related to the settlement of the decedent's estate~~].

The Committee Substitute to **HB 162** is as follows:

HB 162, AN ACT relating to the administration of estates.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 391.035 is amended to read as follows:

(1) ***If*** [~~Whenever~~] real or personal property passes by the laws of intestate succession, or under a will to a beneficiary not named in ***the*** [~~such~~] will, proceedings may be had in the District Court to determine the persons entitled to ***the*** [~~such~~] property.

(2) (a) If an estate is in process of administration the executor, administrator or any person claiming an interest in the property may file a motion in the District Court where administration is in process. If there is no pending administration or administration has been dispensed with, any person claiming an interest in the property may file a motion in the District Court of the county in which the decedent last resided or***, if*** [~~in the event~~] the decedent was not a Kentucky resident, in the District Court of the county in which the property, or the greater part thereof, is located;

(b) The motion shall set forth all of the facts known to ***the*** movant relating to the matter, including the names, ages***,*** and addresses of all persons who are or may be entitled to share in ***the*** [~~such~~] property and their relationship to the decedent or to the class of beneficiaries entitled to share. The motion shall also describe the property under consideration and an estimate of its value;

(c) The motion shall be served in a manner authorized by the Rules of Civil Procedure for the initiation of a civil action and shall set forth the place and time***,*** [~~(~~]which shall not be less than twenty (20) days from the date of service***,***[~~)~~] when the motion will come on for hearing.

(3) Upon the hearing on the motion any person claiming an interest in the property may introduce proof in support of his claim and the court may entertain the admission of any other relevant evidence to aid the court in determining the persons entitled to share in the property.

(4) After hearing all the evidence the court shall enter judgment in which the names, ages and addresses of the persons entitled to share in the property are set forth and the proportionate interest of each. ***The judgment shall be conclusive evidence of the facts determined therein as against all parties, whether known or unknown, to the proceeding.***

(5) In a case where some or all of the property is real ***property*** [~~estate~~] located in this state***,*** a certified copy of the judgment shall be recorded in the office of the appropriate county clerk in lieu of the affidavit required by KRS 382.120. ***The judgment shall be conclusive evidence of the facts determined therein as against all parties, whether known or unknown, to the proceedings.***

(6) Any party may at any time prior to judgment institute an adversary proceeding in Circuit Court pursuant to KRS 24A.120(2).

(7) Any aggrieved party may no later than thirty (30) days from the date of the judgment, institute an adversary proceeding in Circuit Court pursuant to KRS 24A.120(2).

(8) Any unknown defendants before the court by constructive service alone shall be entitled to the protection afforded by Civil Rule 4.11.

(9) No proceedings under this section shall be conducted by or before a commissioner of the District Court.

Section 2. KRS 395.278 is amended to read as follows:

An order of substitution shall be entered or a motion shall be made [~~An application~~] to revive an action in the name of ***or against*** the ***personal*** representative or successor of a ***deceased party*** [~~plaintiff, or against the representative or successor of a defendant, shall be made~~] within ***six (6) months*** [~~one (1) year~~] after the ***appointment, or if no personal representative has been appointed, within two (2) years after the decedent's death*** [~~death of a deceased party~~].

Section 3. KRS 396.205 is amended to read as follows:

No cause of action on any claim not otherwise barred by the provisions of KRS 396.011 and subsection (1) of KRS 396.055, or any other applicable statute of limitations, shall be brought against the personal representative or against any distributee after the expiration of two (2) years from the date of the order of discharge of the personal representative ***notwithstanding any other statute to the contrary***. The foregoing limitation shall not preclude an action by any claimant [~~against the personal representative~~] for fraud[~~, misrepresentation or inadequate disclosure related to the settlement of the decedent's estate~~].

Calendar

HB 153, HB 33, HB 35, HB 49, HB 50, HB 51, HB 65, HB 67 and **HB 68** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Consent Calendar

HB 74 taken from the Consent Calendar and ordered read at length for the second time. Representative Stumbo moved that it be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Recess

Representative Stumbo moved that the House recess for five minutes for a meeting of the Committee on Rules. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Representative Stumbo moved that the rules be suspended for a report of the Committee on Rules. Agreed.

Report of Committees

The Committee on Rules reported that **HB 81, HB 84 HB 99, HB 103, HB 106, HB 121, HB 122, HB 140, HB 33, HB 35, HB 49, HB 51, HB 65, HB 67, HB 68** and **HB 153** have been posted for passage in the Orders of the Day for January 14, 1994.

The Committee on Rules reported that the following Bill has been recommitted:

Appropriations and Revenue: **HB 50**

Orders of the Day

HB 4 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bentley moved that **HB 4** be passed.

On the roll call the vote was: Yeas 93 , Nays 1 (See January 13 , 1994 roll call on **HB 4** - Appendix)

HB 4 was passed and the title agreed to.

Representative Bentley moved that the vote by which **HB 4** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 43 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Yates moved that **HB 43** be passed.

On the roll call the vote was: Yeas 73 , Nays 16 (See January 13 , 1994 roll call on **HB 43** - Appendix)

HB 43 was passed and the title agreed to.

Representative Yates moved that the vote by which **HB 43** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 58 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lindsay moved that **HB 58** be passed.

On the roll call the vote was: Yeas 92 , Nays 0 (See January 13 , 1994 roll call on **HB 58** - Appendix)

HB 58 was passed and the title agreed to.

Representative Lindsay moved that the vote by which **HB 58** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 62, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Callahan moved the adoption of Committee Amendment No. 1 to **HB 62**. Agreed.

Representative Callahan moved that **HB 62**, as amended, be passed.

On the roll call the vote was: Yeas 95, Nays 0. (See January 13, 1994 roll call on **HB 62** - Appendix)

HB 62, as amended, was passed and the title agreed to.

Representative Callahan moved that the vote by which **HB 62**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 75 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved that **HB 75** be passed.

On the roll call the vote was: Yeas 97 , Nays 0 (See January 13 , 1994 roll call on **HB 75** - Appendix)

HB 75 was passed and the title agreed to.

Representative Long moved that the vote by which **HB 75** was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments

Floor Amendment No. 1 to **HB 52**, by Representative Geveden:

On page 1, line 18, after "***committee***" by inserting "***, with the approval of the Legislative Research Commission,***".

Orders of the Day (Continued)

HB 79, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of Committee Amendment No. 1 to **HB 79**. Agreed.

Representative Long moved that **HB 79**, as amended, be passed.

On the roll call the vote was: Yeas 95, Nays 1. (See January 13, 1994 roll call on **HB 79** - Appendix)

HB 79, as amended, was passed and the title agreed to.

Representative Long moved that the vote by which **HB 79**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 80, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of Committee Amendment No. 1 to **HB 80**. Agreed.

Representative Long moved that **HB 80**, as amended, be passed.

On the roll call the vote was: Yeas 71, Nays 24. (See January 13, 1994 roll call on **HB 80** - Appendix)

HB 80, as amended, was passed and the title agreed to.

Representative Long moved that the vote by which **HB 80**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Representative Stumbo moved that the rules be suspended to make a motion regarding **HB 53** and **HB 152**. Agreed.

Representative Stumbo moved that **HB 53** and **HB 152** be taken from the Consent Orders of the Day and placed in the Regular Orders of the Day for January 14, 1994. Agreed.

Motions, Petitions and Communications

Representative Barrows moved the adoption of the following **Legislative Citation No. 13**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in loving memory of Arthur "Bear" Gregory. The House of Representatives joins Representative Joe Barrows in expressing its deepest sympathy to The Gregory Family for the loss of your beloved family member. Arthur "Bear" Gregory shall be remembered as a valued friend, dedicated public servant and respected member of the community.

Representative Hancock moved the adoption of the following **Legislative Citation No. 14**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to Melanie Parrish in recognition of winning the title of Kentucky's Young Woman of the Year. The entire membership extends its very best wishes on this memorable occasion and expresses the hope for continued good fortune.

Representative Stumbo moved that the rules be suspended for the Introduction of Bills and Resolutions and Report of Committees. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 279, by Representative McElroy: AN ACT relating to inheritance and estate taxes.

HB 280, by Representatives Gray, Bowling and Scorsone: AN ACT relating to legal services for indigent people.

HB 281, by Representative Riggs: AN ACT relating to motor vehicles.

HB 282, by Representative Brown: AN ACT relating to solid waste management.

HB 283, by Representative Brown: AN ACT relating to a groundwater monitoring network and making an appropriation therefor.

HB 284, by Representative Brown: AN ACT relating to solid waste infrastructure funding.

HB 285, by Representatives Cyrus and Bowling: AN ACT relating to motor carriers.

HB 286, by Representative Bowling: AN ACT relating to crimes and punishments.

HB 287, by Representative Lewis: AN ACT relating to manufactured homes.

HB 288, by Representatives Allen, Mullinix, Keith, Buis, Napier, Turner, Sanders, Gedling, Hampton, Gee, Walton and Stacy: AN ACT relating to license fees for sorghum producers.

HB 289, by Representatives Mason, Burch, Crenshaw, Nunn and Maggard: AN ACT relating to medical treatment of children.

HB 290, by Representatives Farrow, Heleringer and Crenshaw: AN ACT proposing an amendment to the Constitution of Kentucky relating to powers of the General Assembly.

HB 291, by Representative Rasche: AN ACT relating to the Kentucky Unified Juvenile Code.

Report of Committees

The Committee on State Government reported **HJR 3, HCR 4, HJR 5, HJR 6, HB 52, HB 56** , with Committee Amendment attached thereto, **HB 64**, with Committee Amendments attached thereto, **HB 72, HB 88**, with Committee Amendment attached thereto, **HB 93**, with Committee Amendment and Committee Title Amendment attached thereto, **HB 166**, with Committee Amendment attached thereto, and **HB 167** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HJR 3, A JOINT RESOLUTION recognizing the Kentucky Aviation Hall of Fame, Inc. as the official Aviation Hall of Fame of Kentucky.

WHEREAS, aviation and aviators have played an integral part of the history of the Commonwealth of Kentucky, as well as the United States of America; and

WHEREAS, the Kentucky Aviation History Roundtable, Inc., has worked tirelessly toward its goals of preserving aviation heritage of this Commonwealth and nation and of creating educational programs and facilities to attract young people to the future of aviation; and

WHEREAS, the Kentucky Aviation History Roundtable, Inc., has established the Aviation Museum of Kentucky, Inc., at the Blue Grass Airport, Lexington; and

WHEREAS, the Kentucky Aviation Hall of Fame, Inc., has been established and is the only organization in the Commonwealth dedicated to the recognition and enshrinement of those Kentuckians who have made important contributions to aviation;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. That the Kentucky Aviation History Roundtable, Inc., be commended for its accomplishments towards its goals and the Kentucky Aviation Hall of Fame, Inc., be recognized as the official Aviation Hall of Fame of Kentucky.

Section 2. The Clerk shall forward a copy of this Resolution to the Aviation Museum of Kentucky, Inc., Blue Grass Airport, Lexington, Kentucky.

HCR 4, A CONCURRENT RESOLUTION requesting the Legislative Research Commission to reestablish the Subcommittee on Veterans' Affairs.

WHEREAS, Kentucky's veterans have many concerns meriting legislative attention; and

WHEREAS, the present committee structure of the Kentucky General Assembly does not allow proper attention to be paid to these concerns; and

WHEREAS, the Subcommittee to Study Problems of Vietnam Veterans in Kentucky requested the Legislative Research Commission to establish a permanent committee on veterans' affairs; and

WHEREAS, Kentucky owes its veterans a debt of gratitude for service in defense of their country;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The Kentucky Legislative Research Commission is requested to establish a Subcommittee on Veterans' Affairs to operate during the 1994-95 interim and present its recommendations to the Kentucky General Assembly.

Section 2. It is recommended that this subcommittee be appointed by the Legislative Research Commission.

HJR 5, A JOINT RESOLUTION designating Bernheim Arboretum and Research Forest the official arboretum of the Commonwealth of Kentucky.

WHEREAS, Bernheim Forest is a nationally renowned arboretum which has attracted millions of tourists from Kentucky, as well as fourteen other states; and

WHEREAS, Bernheim Forest consists of a 14,000-acre nature preserve with a nature center, picnic areas, hiking trails, and lakes; and

WHEREAS, Bernheim Forest contains more than 1,800 varieties of trees and plants from all over the world, including the nation's largest collection of American Hollies;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Bernheim Arboretum and Research Forest shall be designated as the official state arboretum of the Commonwealth of Kentucky.

HJR 6, A JOINT RESOLUTION designating the first Sunday of June and the six days thereafter National Garden Week.

WHEREAS, the settlement of our Commonwealth originated with the tilling of its soils; and

WHEREAS, the taming of these soils resulted in the successful propagation of foodstuffs and plantlife for commercial venture and pleasure; and

WHEREAS, the responsible management of these soils and plantlife instills in all citizens the appreciation of our bountiful natural resources and the respect of our environment; and

WHEREAS, thousands of these citizens actively devote countless hours and immeasurable energy propagating both foodstuffs and plantlife and preserving both our natural resources and environment;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. That the first Sunday of June and the six days thereafter be designated National Garden Week in Kentucky.

HB 52, AN ACT relating to the Capital Projects and Bond Oversight Committee.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS 45.760 TO 45.810 IS CREATED TO READ AS FOLLOWS:

(1) In reviewing a project, the committee shall determine whether the project has met all the relevant requirements of:

(a) KRS 45.750 to 45.816;

(b) KRS 56.800 to 56.823; and

(c) Any other statutes relating to the committee's oversight of:

1. Capital projects;

2. The allotment and expenditure of funds from the emergency repair, maintenance, and replacement account and the capital construction and equipment purchase contingency account;

3. The state's acquisition of capital assets, including the lease of real property;

4. The issuance of bonds by the Commonwealth, and the related individual projects; and

5. Bonds issued by or on behalf of local school districts.

(2) If the committee determines that any of the requirements in subsection (1) of this section have not been met, the committee may direct the general counsel of the Legislative Research Commission to file a civil court proceeding to seek an injunction to prohibit further action on the capital project, the acquisition of the capital asset, the initiation or modification of the lease of real property, the bond issue, or the allotment or expenditure of funds from the capital construction emergency or contingency accounts.

(3) The determination by the committee to pursue an injunction shall require a separate action by the committee, with the approval of at least two-thirds (2/3) of the committee's membership. The committee may take action regarding seeking an injunction before, during, or after its compliance with the provisions of KRS 45.800(2) or KRS 45.810(3), where applicable.

HB 56, AN ACT relating to information resources management.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 61.940 is amended to read as follows:

The General Assembly finds and declares that:

(1) Information and information resources residing in the various agencies of state government are strategic assets belonging to the people of Kentucky that must be managed as valuable state resources;

(2) Technological and theoretical advances in information use are recent in origin, immense in scope and complexity, and change at a rapid rate which presents Kentucky with the opportunity to provide higher quality, more timely, and more cost-effective government services to ensure standardization, interoperability, and interconnectivity;

(3) The danger exists that state agencies could independently acquire uncoordinated and duplicative information resources and information technologies that are more appropriately acquired as part of a coordinated effort for maximum cost-effectiveness and use;

(4) The sharing of information resources and technologies among state agencies is the most cost-effective method of providing the highest quality and most timely government services that would otherwise be cost prohibitive;

(5) Considerations of cost and the need for the transfer of information among agencies of state government in the most timely and useful form possible require a uniform policy and coordinated approach for the use and acquisition of information resources and technologies;

(6) The ability to identify, develop, and implement changes in a rapidly moving field, demands the development of mechanisms to provide for the research and development of technologies which address systems, uses, and applications;

(7) It is the policy of the Commonwealth of Kentucky to coordinate and direct the use of information resources and technologies to provide the most cost-effective and useful development, management, exchange, and retrieval of information by its elected and appointed officials and citizens;

(8) It is the intent of the General Assembly that an information resources management commission be created to develop and implement plans for the effective and efficient use of information technology across all branches of state government;

(9) The exercise by an information resources management commission of the powers and authority conferred by this Act shall be deemed and held to be the performance of essential governmental functions ~~[It is the intent of the General Assembly that an information systems commission be created to develop and implement plans for the effective~~

~~and efficient use of computers and related systems in all branches of state government~~].

SECTION 2. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 7 of this Act, unless the context requires otherwise:

(1) "Commission" means the Kentucky Information Resources Management Commission;

(2) "Communications" or "telecommunications" means any transmission, emission, or reception of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems, and includes all facilities and equipment performing these functions;

(3) "Council" means the Communications Advisory Council established in KRS 61.955;

(4) "Geographic Information System or GIS" means a computerized database management system for the capture, storage, retrieval, analysis and display of spatial or locationally defined data;

(5) "Information resources" means the procedures, equipment, and software that are designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel;

(6) "Information resources management" means the planning, budgeting, organizing, directing, training, and accountability associated with government information. The term encompasses both information itself and the related resources associated with its use;

(7) "Information resources management architecture" means the orderly arrangement of policies, standards, and guidelines for managing information technology resources for the purpose of maximizing the interconnection and efficiency of these resources, and the ability of users to share and optimize the information resources;

(8) "Information technologies" means data processing and telecommunications hardware, software, services, supplies, facilities, maintenance, and training which are used to support information processing and telecommunications systems to include geographic information systems;

(9) "Office" means the Office for the Kentucky Information Resources Management Commission; and

(10) "Project" means a program to provide information technologies support to functions within a state agency, which should be characterized by well defined parameters, specific objectives, common benefits, planned activities, expected outcomes and completion dates, and an established budget with a specified source of funding.

Section 3. KRS 61.945 is amended to read as follows:

(1) There is hereby created an independent agency of state government to be known as the Kentucky Information ***Resources Management*** [~~Systems~~] Commission, hereafter called the commission. It shall be the responsibility of the commission to coordinate ***and guide the application of information technologies and resources***[~~, on a statewide level, strategic planning for computerized information systems~~] in state government.

(2) The commission shall consist of:

(a) Three (3) ***cabinet secretaries from the executive branch, at least one (1) of whom shall be from either the Transportation or Human Resources Cabinet, appointed by the Governor,*** [~~officers of the Finance and Administration Cabinet which shall include the secretary of the cabinet and the commissioners of the Department of Administration and Department of Information Systems~~] or their respective designees;

(b) The ***Commissioner of the Department of Information Systems*** [~~state budget director or his designee~~];

(c) ***One (1) representative from the public universities to be appointed by the Governor from a list of three (3) persons submitted by the executive director of the Council on Higher Education*** [~~The Secretary of State or his designee~~];

(d) ***Two (2) citizen members from the private sector with information resources management knowledge and experience to be appointed by the Governor*** [~~The State Treasurer or his designee~~];

(e) ***One (1) representative of local government appointed by the Governor from a list of six (6) persons, three (3) to be submitted by the president of the Kentucky League of Cities, and three (3) to be submitted by the president of the Kentucky Association of Counties*** [~~The Attorney General or his designee~~];

(f) [~~The director of the Administrative Office of the Courts or his designee;~~

~~(g) The Auditor of Public Accounts or his designee;~~

~~(h) The state librarian or his designee;~~

~~(i) The executive director of the Council on Higher Education or his designee;~~

~~(j) One (1) representative of the Kentucky Association of Counties appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Counties;~~

~~(k) One (1) representative of the Kentucky League of Cities appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky League of Cities;~~

~~(l)~~] One (1) member of the press to be appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Press Association;

(g) The State Librarian or his designee as an ex officio nonvoting member;

(h) The Chairman of the Communications Advisory Council as an ex officio nonvoting member; and

(i) The Chairman of the Geographic Information Advisory Council as an ex officio nonvoting member [~~and~~
~~(m) Three (3) citizen members appointed by the Governor~~].

(3) ***The Commission shall select from its membership a chairperson and any other officers it considers essential.*** A member of the commission shall not:

(a) Be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that has, a substantial interest in the [~~automated~~] information ***resources technology*** industry;

(b) Own, control, or have directly or indirectly, more than a ten percent (10%) interest in a business entity that has a substantial interest in the [~~automated~~] information ***resources technology*** industry; [~~or~~]

(c) Be in any manner connected with any contract or bid for furnishing any state governmental body with [~~automated~~] information ***resources*** systems, the computers on which they are automated, or a service related to [~~the automation of~~] information ***resources*** systems***;***

(d) Be required to register as a lobbyist because of activities for compensation on behalf of a business entity specified in subsections (3)(a) and (b) of this section that has, or on behalf of a trade association of business entities that has a substantial interest in the information resources technologies industry; or

(e) Receive anything of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise [~~or the computers in which they are automated, or a related service~~].

(4) ***(a)*** It shall be a ground for removal of a member of the commission if the member***:***

1. Does not maintain during service on the commission the qualifications or status required for initial appointment to the commission;

2. Violates a prohibition established by subsection (3) of this section***; or***

3. Is absent from three (3) consecutive meetings or more than half of the regularly scheduled commission meetings that the member is eligible to attend during a state fiscal year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the ***commission*** [~~committee~~] shall not be affected by the fact that it was taken when a ground for removal of a member existed. If the ***chairperson*** [~~chairman~~] of the commission has knowledge that a potential ground for removal of a commission member exists, the ***chairperson*** [~~chairman~~] shall notify the Governor of the potential ground for removal.

(5) ***(a)*** The term of office of the members specified in ***subsections*** [~~subsection~~] (2)***(b), (g), (h) and (i)*** [~~(a) to (h)~~] of this section shall be the same as the term of office by virtue of which they serve upon the commission.

(b) The terms of the cabinet secretaries appointed pursuant to subsection (2)(a) of this section shall be established in the commission's operating policies or bylaws not to be less than two (2) years.

(6) [~~Appointed~~] Members of the commission ***appointed pursuant to subsections (2)(c), (d), (e), and (f) of this section*** shall serve for a term of four (4) years. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments. If a nominating organization changes its name, the subsequent organization having the same responsibilities and purposes shall be the nominating organization.

(7) Members of the commission shall serve without compensation, but shall be reimbursed for actual expenses incurred in the performance of their duties.

(8) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at commission meetings.

Section 4. KRS 61.950 is amended to read as follows:

(1) The commission shall meet at least four (4) times each year ***and report its findings no less than semiannually to the Legislative Research Commission and the Governor. All reports of the commission shall be made available to the general public***. [~~It shall select from its membership a chairman and any other officers it considers essential.~~] In addition, the commission, upon the call of its officers, may hold meetings at any time it deems necessary.

(2) The commission's ***roles and*** duties shall include the following:

(a) ***Providing overall leadership, policy direction, strategic planning and coordination of information resources management for state government and public universities;***

(b) Formulation of a ***five (5) year*** statewide information resources management plan***, to be updated every two (2) years,*** from long-range information resources management plans submitted by the three (3) branches and constitutional offices of government, including the public universities, as the commission may require[~~. This plan shall take into account projected information resource requirements of the Commonwealth of Kentucky and all its public universities, departments, officers, agencies and subdivisions, with particular emphasis on coordination of strategic planning for computerized information systems and state and local government information transfers~~];

(c) Defining, maintaining, and publishing a timely information resources management architecture relating to the management of information resources by state agencies, and implementing processes and procedures to ensure compliance with the information resources management architecture;

(d) Coordinating, through policy and interagency agreements and monitoring, an appropriate program of training and education for state and local agencies regarding strategic information systems planning, and the selection and use of information technologies to facilitate effective information resources management, appropriate employee skill building, and career development;

(e) Promoting executive level awareness, support, and involvement with information resources management across all three (3) branches of government;

(f) Reviewing and approving or disapproving, in whole or part, agency five (5) year strategic information resources plans, and forwarding those plans with findings and recommendations to the agency head, the Governor's Office for Policy and Management, and the Legislative Research Commission for use during the preparation and enactment of the biennial budget. Commission review shall be based upon the extent to which the plan is compliant with statewide information resources standards, policies and guidelines; is suited to supporting the mission of the agency; and furthers implementation of statewide initiatives identified in the statewide plan. As part of the review process, the commission shall monitor and evaluate the progress of the current plan and the agency's use of information technologies and shall include its assessment of these activities in the findings and recommendations;

(g) Identifying and assessing opportunities for multiagency development and use of information resources, or the development of agency projects which would improve the quality and availability of information. When identifying these opportunities the commission may require agencies to evaluate the opportunities as alternatives to their own plans, and may forward these findings as provided in paragraph (f) of this subsection;

(h) Maintaining supportive relationship and coordinating activities with the adjunct Communications Advisory Council provided for in KRS 61.955 and 61.957, and the Geographic Information Advisory Council established by Executive Order #92.1049, October 1, 1992, as necessary to ensure coordination and implementation of unified, comprehensive, statewide strategies involved with, or affected by, information technology;

(i) Establishing and maintaining relationships with other planning organizations as necessary to ensure coordination and implementation of comprehensive statewide strategies involved with, or affected by, information technology;

(j) Reviewing and recommending to the Department of Personnel and other associated agencies appropriate job classifications related to information resources management, to include both technical and managerial positions;

(k) Establishing and maintaining an information dissemination service or clearinghouse for:

1. Current practices of state agencies regarding information resources management;

2. Emerging and advancing information resources technologies;

3. Information resources vendor performance in the public sector;

4. Technical resources in the Commonwealth; and

5. Elements of the information resources management architecture;

(l) Establishing and maintaining research and development capacity for beneficial applications of information resources technology for the state's public sector, which includes:

1. Conducting research on current and emerging information resources technologies and their potential to enhance governmental services; and

2. Sponsoring and evaluating pilot projects to assist with the successful adoption by other state agencies;

(m) Fostering and encouraging the interest and cooperation of the state information resources technology community for improvement and enhancement of public services delivery;

(n) Serving as catalyst for information technology advancements in the public sector;

(o)[~~(b)~~] Recommending procedures and legislation to improve the accessibility of machine readable public records *by state agencies, citizens, and businesses*; and

(p)[~~(c)~~]Recommending procedures and legislation to ***ensure*** [~~insure~~] the privacy of individuals, with particular emphasis

on the potential for invasion of individual privacy.

(3) [~~The commission shall have a permanent staff to assist it in the formulation of the statewide electronic data processing plan and to provide necessary support for its research activities. Permanent staff shall be knowledgeable in the management of information systems. To accomplish the commission's work, all public universities, departments, divisions, agencies and officers of the Commonwealth shall furnish the commission necessary assistance, resources, information, records or advice as it may require which is pertinent to the subject matter being studied. The commission shall report its findings and recommendations to the Legislative Research Commission on a quarterly basis. All reports of the commission shall be made readily available to the general public.~~

~~(4)~~] Nothing in KRS 61.940, 61.945 or this section shall be construed to alter or diminish the provisions of KRS 171.410 to 171.740 or the authority conveyed by these statutes to the Archives and Records Commission and the Department for Libraries and Archives.

(4)[~~(5)~~] The commission may promulgate necessary administrative regulations for the furtherance of this section.

(5) The commission may establish committees or work groups composed of commission and noncommission members as necessary to advise the commission in carrying out its responsibilities, duties, and powers. Persons connected with the automated information and communications resources industries, as specified in Section 3 of this Act, may participate on committees or work groups, but shall not have a vote.

(6) The commission may adopt bylaws and operating policies necessary for its efficient and effective operation.

SECTION 5. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

The commission shall have the power:

(1) To make and enter into memoranda of agreement and contracts necessary or incidental to the performance of duties and execution of its powers, including but not limited to agreements or contracts with the United States, other state agencies, and any governmental subdivision of the Commonwealth;

(2) To accept grants from the United States Government and its agencies and instrumentalities, and from any source, other than any person, firm, or corporation, or any director, officer, or agent thereof which manufactures or sells information resources technology equipment, goods, or services. To these ends, the commission shall have the power to comply with those conditions and execute those agreements which are necessary, convenient, or desirable;

(3) To purchase interest in contractual services, rentals of all types, supplies, materials, equipment, and other services to be used in the research and development of beneficial applications of information resources technologies. Competitive bids may not be required for:

(a) New and emerging technologies as approved by the Secretary of the Finance and Administration Cabinet or his designee; or

(b) Related professional, technical, or scientific services, but contracts shall be submitted in accordance with KRS 45A.690 to 45A.725.

SECTION 6. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

(1) To assist the commission in the formulation of the statewide information resources management plan, and to provide necessary support as required to carry out the powers and duties of the commission, the Office for the Kentucky Information Resources Management Commission is hereby established and attached for administrative purposes to the Finance and Administration Cabinet, Office of the Secretary.

(2) The Office for the Kentucky Information Resources Management Commission shall be headed by an executive director recommended by the commission whose appointment is subject to KRS 12.050. The executive director shall serve at the pleasure of the commission and may employ personnel, pursuant to the provisions of KRS Chapter 18A, as required to perform the functions of the office. He shall be responsible for all administrative functions of the commission, including budgeting, funding initiatives, personnel, information resources planning and performance review, purchasing, information resources technologies research and development, and any additional matters delegated by the commission or its committees and work groups.

(3) The office may solicit, receive, and consider proposals from any state agency, federal agency, local government, university, nonprofit organization, or private person or corporation. The office may also solicit and accept money by grant, gift, donation, bequest, legislative appropriation, or other conveyance.

(4) To accomplish the commission's work, all public universities, departments, divisions, agencies and officers of the Commonwealth shall furnish the commission necessary assistance, resources, information, records, or advice that it requires which is pertinent to the subject matter being studied.

SECTION 7. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

The five (5) year statewide information resources management plan provided by KRS 61.950 shall:

(1) Take into account projected information resource requirements of the Commonwealth of Kentucky and all its public universities, departments, officers, agencies and subdivisions, with particular emphasis on coordination of strategic

planning for computerized information resources systems and state and local government information transfers;

(2) Establish long range policy guidelines and strategies at the state level to be used by agencies in the development and implementation of their own information technology and resources management plans;

(3) Identify major issues related to improved information resources management, including the identification of procurement policy initiatives to encourage resources sharing and fair competitive resources acquisition;

(4) Identify priorities for the implementation of information technologies based on identification of feasible and measurable performance criteria; and

(5) Emphasize connectivity and provide for the electronic transfer of data, voice, radio, and video among agencies.

The Committee Amendment No. 1 to **HB 56** is as follows:

On page 4, lines 11 and 12, by deleting "***Commissioner of the Department of Information Systems***" and removing brackets and strikethroughs; and

On page 4, by deleting lines 13 through 27 in their entirety and page 5, lines 1 through 15 in their entirety, and inserting in lieu thereof:

"(c) ***The commissioner of the Department of Information Systems*** [~~The Secretary of State or his designee~~];

(d) ***The State Librarian or his designee*** [~~The State Treasurer or his designee~~];

(e) ***One (1) representative from the public universities to be appointed by the Governor from a list of three (3) persons submitted by the executive director of the Council on Higher Education*** [~~The Attorney General or his designee~~];

(f) ***Two (2) citizen members from the private sector with information resources management knowledge and experience to be appointed by the Governor*** [~~The director of the Administrative Office of the Courts or his designee~~];

(g) ***One (1) representative of local government appointed by the Governor from a list of six (6) persons, three (3) to be submitted by the president of the Kentucky League of Cities, and three (3) to be submitted by the president of the Kentucky Association of Counties*** [~~The Auditor of Public Accounts or his designee~~];

(h) [~~The state librarian or his designee;~~

~~(i) The executive director of the Council on Higher Education or his designee;~~

~~(j) One (1) representative of the Kentucky Association of Counties appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Counties;~~

~~(k) One (1) representative of the Kentucky League of Cities appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky League of Cities;~~

~~(l)~~] One (1) member of the press to be appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Press Association;

(i) The chairman of the Communications Advisory Council as an ex officio, nonvoting member; and

(j) The chairman of the Geographic Information Advisory Council as an ex officio, nonvoting member [~~and~~

~~(m) Three (3) citizen members appointed by the Governor~~]."; and

On page 5, line 18, after "employee," by inserting "***registered legislative agent, Executive Branch lobbyist,***"

On page 5, line 27, after "***;***" by adding "***or***"; and

On page 6, by deleting lines 1 through 5 in their entirety and renumbering the following subsection accordingly; and

On page 12, line 24, by deleting the words "***recommended by the commission***"; and

On page 12, line 25, after "***12.050.***", by inserting "***The commission may recommend a nominee to the secretary of the Finance and Administration Cabinet.***"; and

On page 12, line 25, after the word "***director***" by deleting "***shall serve at the pleasure of the Commission and***".

HB 64, AN ACT relating to open records of public agencies.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds an essential relationship between the intent of this chapter and that of KRS 171.410 to 171.740, dealing with the management of public records, and of KRS 61.940 to 61.957, dealing with the coordination of strategic planning for computerized information systems in state government; and that to ensure the efficient administration of government and to provide accountability of government activities, public agencies are required to manage and maintain

their records according to the requirements of these statutes. The General Assembly further recognizes that while all government agency records are public records for the purpose of their management, not all these records are required to be open to public access, as defined in this chapter, some being exempt under KRS 61.878.

Section 2. KRS 61.870 is amended to read as follows:

As used in KRS 61.872 to 61.884, unless the context requires otherwise:

(1) "Public agency" means:

(a) Every state or local government officer;

(b) Every state or local government department, division, bureau, board, commission, and authority;

(c) Every state or local legislative board, commission, committee, and officer;

(d) Every county and city governing body, council, school district board, special district board, and municipal corporation;

(e) Every state or local court or judicial agency;

(f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;

(g) Any body created by state or local authority in any branch of government;

(h) Any body which derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds;

(i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof***;***[~~.~~]

(j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and

(k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection;

(2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings***, software,*** or other ***documentation*** [~~documentary materials~~] regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned or maintained by or for a body referred to in subsection (1)(h) of this section that are not related to functions, activities, programs, or operations funded by state or local authority;

(3) ***(a) "Software" means the program code which makes a computer system function, but does not include that portion of the program code which contains specific addresses of files, passwords, access codes, user identifications, or any other mechanism for controlling the security or restricting access to public records in the public agency's computer system.***

(b) "Software" consists of the operating system, application programs, procedures, routines, and subroutines such as translators and utility programs, but does not include that material which is prohibited from disclosure or copying by a license agreement between a public agency and an outside entity which supplied the material to the agency;

(4) (a) "Commercial purpose" means the direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee.

(b) "Commercial purpose" shall not include:

1. Publication or related use of a public record by a newspaper or periodical; or

2. Use of a public record by a radio or television station in its news or other informational programs;

(5) "Official custodian" means the chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control; [~~and~~]

(6)[~~(4)~~] "Custodian" means the official custodian or any authorized person having personal custody and control of public records***;***[~~.~~]

(7) "Media" means the physical material in or on which records may be stored or represented, and which may include, but is not limited to paper, microform, disks, diskettes, optical disks, magnetic tapes, and cards; and

(8) "Mechanical processing" means any operation or other procedure which is transacted on a machine, and which may include, but is not limited to a copier, computer, recorder or tape processor, or other automated device.

Section 3. KRS 61.872 is amended to read as follows:

(1) All public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No person shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.

(2) Any person shall have the right to inspect public records. The official custodian may require written application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected. The application shall be hand delivered, mailed, or sent via facsimile to the public agency.

(3) A person may inspect the public records:

(a) During the regular office hours of the public agency; or

(b) By receiving copies of the public records from the public agency through the mail. The public agency shall mail copies of the public records to a person whose residence or principal place of business is outside the county in which the public records are located after he precisely describes the public records which are readily available within the public agency. ***If the person requesting the public records requests that copies of the records be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of mailing.***

(4) If the person to whom the application is directed does not have custody or control of the public record requested, ***that*** [~~such~~] person shall [~~so~~] notify the applicant and shall furnish the name and location of the ***official*** custodian of the ***agency's*** public ***records*** [~~record, if such facts are known to him~~].

(5) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately [~~so~~] notify the applicant and shall designate a place, time and date, for inspection of the public records, not to exceed three (3) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time and earliest date on which the public record will be available for inspection.

(6) If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.

Section 4. KRS 61.874 is amended to read as follows:

(1) Upon inspection, the applicant shall have the right to make abstracts of the public records and memoranda thereof, and to obtain copies of all [~~written~~] public records ***not exempted by the terms of KRS 61.878***. When copies are requested, the custodian may require a written request and advance payment of the prescribed fee, including postage where appropriate. If the applicant desires copies of public records other than written records, the custodian of the records shall ***duplicate the records or*** permit the applicant to duplicate the records; however, the custodian ***shall*** [~~may~~] ensure that such duplication will not damage or alter the ***original*** records.

(2) ***(a) Nonexempt public records used for noncommercial purposes shall be available for copying in either standard electronic or standard hard copy format, as designated by the party requesting the records, where the agency currently maintains the records in electronic format. Nonexempt public records used for noncommercial purposes shall be copied in standard hard copy format where agencies currently maintain records in hard copy format. Agencies are not required to convert hard copy format records to electronic formats.***

(b) The minimum standard format in paper form shall be defined as not less than 8 1/2 inches x 11 inches in at least one (1) color on white paper, or for electronic format, in a flat file electronic American Standard Code for Information Interchange (ASCII) format. If the public agency maintains electronic public records in a format other than ASCII, and this format conforms to the requestor's requirements, the public record may be provided in this alternate electronic format for standard fees as specified by the public agency. Any request for a public record in a form other than the forms described in this section shall be considered a nonstandardized request.

(3) The public agency may prescribe a reasonable fee for making copies of ***nonexempt*** public records ***requested for use for noncommercial purposes*** which shall not exceed the actual cost ***of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but*** not including the cost of staff required. ***If a public agency is asked to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual or a group, the public agency may recover staff costs as well as any actual costs incurred.***

(4) (a) If copies of nonexempt public records are requested for commercial purposes, the public agency may establish a reasonable fee based on the principle of sharing the costs incurred by the agency in creating and maintaining those public records which are to be used for commercial purposes.

(b) The public agency from which copies of nonexempt public records are requested for a commercial purpose may require a certified statement from the requestor stating the commercial purpose for which they shall be used, and may require the requestor to enter into a contract with the agency. The contract shall permit use of the public records for the stated commercial purpose for a specified fee.

(c) The fee provided for in subsection (a) of this section shall be based on the:

1. Cost to the public agency of media, mechanical processing, and staff required to produce a copy of the public record or records; and

2. Cost to the public agency of the creation, purchase, or other acquisition of the public records.

(5) It shall be unlawful for a person to obtain a copy of any part of a public record for a:

(a) Commercial purpose, without stating the commercial purpose, if a certified statement from the requestor was required by the public agency pursuant to subsection (4)(a) of this section; or

(b) Commercial purpose, if the person uses or knowingly allows the use of the public record for a different commercial purpose; or

(c) Noncommercial purpose, if the person uses or knowingly allows the use of the public record for a commercial purpose. A newspaper, periodical, radio or television station shall not be held to have used or knowingly allowed the use of the public record for a commercial purpose merely because of its publication or broadcast, unless it has also given its express permission for that commercial use.

(6) Online access to public records in electronic form, as provided under this section, may be provided and made available at the discretion of the public agency. If a party wishes to access public records by electronic means and the public agency agrees to provide online access, a public agency may require that the party enter into a contract, license, or other agreement with the agency, and may charge fees for these agreements. Fees shall not exceed:

(a) The cost of physical connection to the system and reasonable cost of computer time access charges; and

(b) If the records are requested for a commercial purpose, a reasonable fee based on the factors set forth in KRS 61.874(4).

Section 5. KRS 61.880 is amended to read as follows:

(1) If a person enforces KRS 61.870 to 61.884 pursuant to this section, he shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the three (3) day period, of its decision. An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his authority, and it shall constitute final agency action.

(2) ***(a)*** If a complaining party wishes the Attorney General to review a public agency's denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection. If the public agency refuses to provide a written response, a complaining party shall provide a copy of the written request. The Attorney General shall review the request and denial and issue within ***twenty (20)*** [~~ten (10)~~] days, excepting Saturdays, Sundays and legal holidays, a written decision stating whether the agency violated provisions of KRS 61.870 to 61.884.

(b) In unusual circumstances, the Attorney General may extend the twenty (20) day time limit by sending written notice to the complaining party and a copy to the denying agency, setting forth the reasons for the extension, and the day on which a decision is expected to be issued, which shall not exceed an additional thirty (30) work days, excepting Saturdays, Sundays, and legal holidays. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper resolution of an appeal:

1. The need to obtain additional documentation from the agency or a copy of the records involved;

2. The need to conduct extensive research on issues of first impression; or

3. An unmanageable increase in the number of appeals received by the Attorney General.

(c) On the day that the Attorney General renders his decision, he shall mail a copy to the agency and a copy to the person who requested the record in question. The burden of proof in sustaining the action shall rest with the agency, and the Attorney General may request additional documentation from the agency for substantiation. The Attorney General may also request a copy of the records involved but they shall not be disclosed.

(3) Each agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding the enforcement of KRS 61.870 to 61.884. ***The Attorney General shall not, however, be named as a party in any Circuit Court actions regarding the enforcement of KRS 61.870 to 61.884, nor shall he have any duty to defend his decision in Circuit Court or any subsequent proceedings.***

(4) ***If*** [~~In the event~~] a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees or the misdirection of the applicant, the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.

(5) (a) A party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under

KRS 61.882.

(b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained.

SECTION 6. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

A person who violates any provision of KRS 61.874 shall be liable to the public agency from which the public records were obtained for damages in the amount of:

(1) Three (3) times the amount that would have been charged for the public record if the actual commercial purpose for which it was obtained or used had been stated;

(2) Costs and reasonable attorneys' fees; and

(3) Any other penalty established by law.

Section 7. KRS 133.047 is amended to read as follows:

(1) Notwithstanding the provisions of KRS 61.870 to 61.884, when the Revenue Cabinet has completed action on the assessment of property in any county and has certified the assessment to the county clerk of that county, as provided for in KRS 133.180, the property tax roll or a copy of the property tax roll, shall be retained in the office of the property valuation administrator for maintenance as an open public record for five (5) years. The property tax roll shall be available for public inspection during the regular working hours of the office of the property valuation administrator as provided for in KRS 132.410(2).

(2) Any person inspecting a property tax roll shall do so in a manner not unduly interfering with the proper operation of the custodian's office.

(3) Personal property tax returns, accompanying documents, and assessment records, with the exception of the certified personal property tax roll, shall be considered confidential under the provisions of KRS 131.190.

(4) Real property tax returns and accompanying documents submitted by a taxpayer shall be considered confidential under the provisions of KRS 131.190. Other real property records in the office of the property valuation administrator shall be subject to the provisions of KRS 61.870 to KRS 61.884. However, notwithstanding the provisions of KRS 61.874 [~~to 61.975~~] the Revenue Cabinet shall develop and provide to each property valuation administrator a reasonable fee schedule to be used in compensating for the cost of personnel time expended in providing information and assistance to persons seeking information to be used for commercial or business purposes. Any person seeking information on his own property, or any other person, including the press, seeking information directly related to property tax assessment, appeals, equalization, requests for refunds, or similar matters shall not be subject to fees for personnel time.

(5) The Revenue Cabinet shall provide advice, guidelines, and assistance to each property valuation administrator in implementing the provisions of KRS ***61.870 to 61.884*** [~~61.965 to 61.975~~].

Section 8. The following KRS sections are repealed:

61.960 Definitions for KRS 61.965 to 61.975 and 61.992.
61.965 Application of KRS 61.965 to 61.975.
61.970 Use of database or geographic information system.
61.975 Public records available for inspection -- Fees for copying or contracts for electronic use.
61.992 Penalties for KRS 61.960 to 61.975.

The Committee Amendment No. 1 to **HB 64** is as follows:

On page 3, line 12, by deleting the word "***or***"; and

On page 3, line 14, by inserting "***or***" after the word "***programs;***"; and

On page 3, between lines 14 and 15, by inserting the following:

"***3. Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties;***"

On page 6, line 19 before the word "***If***" by inserting the following:

"***Unless an enactment of the General Assembly prohibits the disclosure of public records to persons who intend to use them for commercial purposes,***"; and

On page 6,

The Committee Amendment No. 2 to **HB 64** is as follows:

On page 10, line 7, by deleting "***Any provision***" and inserting in lieu thereof "***subsections (2) to (6)***".

HB 72, AN ACT relating to state financial administration.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 45.750 is amended to read as follows:

(1) As used in KRS 45.760 to 45.810:

(a) "Committee" means the Capital Projects and Bond Oversight Committee.

(b) "Capital projects" includes:

1. The construction, reconstruction, acquisition, and structural maintenance of buildings;

2. The installation of utility services, including roads and sewers;

3. The acquisition of land;

4. The purchase and installation initially of equipment, facilities, and furnishings of a permanent nature for buildings;

5. The acquisition of any building to be occupied by any:

a. Subdivision of state government as defined in KRS 12.010 or enumerated in KRS 12.020;

b. Municipal corporation which exercises its authority on a state-wide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, Kentucky Housing Corporation, or any entity with a governing body whose membership is substantially similar to the membership of the governing body of a municipal corporation which exercises its authority on a state-wide basis; and

c. Institution of higher education;

6. The purchase and installation initially of movable equipment, furnishings, and appurtenances necessary to make a building operable; and

7. Major items of equipment, to include aircraft, estimated to cost one hundred thousand dollars ($100,000) or more ***in cash or other consideration***.

(c) "Capital projects" means, regardless of the source of ***cash or other consideration*** ~~[funds]~~:

1. Any capital construction item, or any combination of capital construction items necessary to make a building or utility installation complete, estimated to cost two hundred thousand dollars ($200,000) or more ***in cash or other consideration***;

2. A "major item of movable equipment," estimated to cost one hundred thousand dollars ($100,000) or more ***in cash or other consideration***; and

3. Equipment projects which constitute a computer or telecommunications system, as defined in a regulation which shall be promulgated by the Kentucky Information Systems Commission, estimated to cost two hundred thousand dollars ($200,000) or more ***in cash or other consideration***.

(d) "Purchase of equipment" shall include, but not be limited to, equipment purchased or otherwise acquired, or equipment to be purchased or otherwise to be acquired, under a lease or lease-purchase contract or agreement or an arrangement equivalent to a lease or lease-purchase contract or agreement.

(e) "Emergency repair, maintenance, or replacement project" means the maintenance, repair, or reconstruction of a capital construction project or the maintenance, repair, or replacement of a major item of equipment that is:

1. Necessitated by injury or damage resulting from a disaster; or

2. Necessary to maintain government operations or to prevent or minimize injury or damage that could reasonably be expected to result from an impending disaster; or

3. Necessitated by an unforeseen mechanical breakdown, electrical breakdown, or structural defect that must be corrected to make a facility or item of equipment usable.

(f) "Disaster" means a fire, flood, tornado, other natural disaster, riot, enemy attack, sabotage, explosion, power failure, energy shortage, transportation emergency, or other man-caused disaster.

(g) "Capital construction funds" means any funds used for capital construction, including, but not limited to, appropriated capital construction funds, agency funds, federal funds, private funds, or funds from any source held by an agency for management or investment purposes.

(h) "Entity head" means the Chief Justice of the Supreme Court, the President Pro Tem of the Senate and the Speaker of the House of Representatives, the secretary of the Finance and Administration Cabinet, the president of any university which complies with KRS 164A.585, 164A.595, and 164A.600, the board of trustees of the Kentucky Employees Retirement System, the board of trustees of the Teachers' Retirement System of the State of Kentucky, the board of directors of the Kentucky Higher Education Student Loan Corporation, the board of directors of the Kentucky Lottery Corporation, or the board of directors of the Kentucky Housing Corporation.

(2) Except as provided in subsection (3) of this section, KRS 45.760 to 45.810 shall apply to capital projects and bonds for use by:

(a) The state government;

(b) One of its departments or agencies, as defined in KRS 12.010 or enumerated in KRS 12.020;

(c) A municipal corporation which exercises its authority on a state-wide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, and Kentucky Housing Corporation; and

(d) Institutions of higher education.

(3) KRS 45.760 to 45.810 shall not apply to:

(a) Capital projects or bonds used directly in or for the construction or maintenance of roads, including, but not limited to, bulldozers, graders, earth movers, and real estate purchased for rights-of-way; and

(b) Political subdivisions, except for those defined in KRS 12.010, enumerated in KRS 12.020, or created as a municipal corporation which exercises its authority on a state-wide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, Kentucky Housing Corporation, or any entity with a governing body whose membership is substantially similar to the membership of the governing body of a municipal corporation which exercises its authority on a state-wide basis. However, the provisions of KRS 45.750 to 45.810 shall not apply to acquisition or maintenance of any building or land which is purchased as a legal investment by any of the state retirement systems, which is not to be occupied by the retirement system, and which is financed solely with those assets of the retirement system used for investment purposes.

HB 88, AN ACT relating to state lease of property.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 48.111 is amended to read as follows:

(1) The Governor shall include in the executive branch budget recommendation and in the draft appropriations act for the executive branch submitted to each regular session of the General Assembly pursuant to KRS 48.110, for the biennium period beginning July 1, 1992, and for each biennium thereafter, a recommended program for rental of any space for which the annual rental cost will exceed two hundred thousand dollars ($200,000).

(2) The recommended program for leased space shall include:

(a) A summary description of each specific two hundred thousand dollar ($200,000) lease project recommended for funding during the biennium; and

(b) For each project:

1. The name of the agency for which space will be leased;

2. The purpose and justification for the lease;

3. ***Whether the lease contains a purchase option which will be exercised during the biennium pursuant to subsection (4) of Section 2 of this Act and the estimated purchase price;***

4. a. Whether the lease contains a lease-purchase which will be completed during the biennium pursuant to subsection (5) of Section 2 of this Act prior to the total amortization, through lease payments, of the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease; and

b. The estimated sum of money that will have to be paid in addition to rent paid to complete the purchase;

5. The estimated cost of the lease; and

6.~~[4.]~~ The recommended sources of funds.

(3) All information required by subsection (2) of this section shall be included in the executive branch budget recommendation. The appropriations act for the executive branch shall contain only the information specified in subparagraphs 1. and 2. of subsection (2)(b) of this section.

(4) Except as provided in subsection (5) of this section, no lease with an annual rental cost which will exceed two hundred thousand dollars ($200,000) shall be executed unless the lease has been identified and included in the appropriations act. The appropriations act for the executive branch shall authorize the expenditure by the budget unit that will occupy the premises.

(5) A lease with an annual rental cost exceeding two hundred thousand dollars ($200,000) may be authorized even though it is not specifically listed in the biennial budget report and appropriations act or acts, subject to the following conditions and procedures:

(a) A lease is awarded as the result of an emergency in which case the provisions of KRS 56.805(3) and (4) and KRS 56.823***(5)***[~~(4)~~] shall apply; or

(b) 1. Fifty percent (50%) or more of the actual cost shall be funded by federal or private funds; and

2. Money specifically budgeted and appropriated by the General Assembly for another purpose shall not be allotted or reallotted for expenditure on the lease. Money utilized shall not jeopardize any existing program and shall not require the use of current general funds specifically dedicated to existing programs; and

3. The Finance and Administration Cabinet shall comply with the requirements of subsection (6) of this section.

(6) (a) Prior to final authorization of a lease pursuant to paragraph (b) of subsection (5) of this section, the cabinet shall report to the Capital Projects and Bond Oversight Committee:

1. The name of the agency for which space will be leased;

2. The purpose and justification for the lease;

3. The estimated cost of the lease;

4. The source of funds; and

5. Whether the requirements of paragraph (b) of subsection (5) of this section have been met.

(b) Within thirty (30) days after the report has been submitted to the committee, the committee shall conduct its review and decide whether to approve or disapprove the proposed lease authorization. The Legislative Research Commission shall promptly transmit the committee's findings and determinations to the Finance and Administration Cabinet.

(c) If the committee disapproves a proposed lease authorization, the secretary of the Finance and Administration Cabinet shall:

1. Revise the proposed lease authorization to comply with the objection of the committee; or

2. Cancel the proposed lease authorization; or

3. Determine to proceed with the proposed lease authorization disapproved by the committee.

(d) The decision made by the secretary of the Finance and Administration Cabinet under paragraph (c) of this subsection shall be communicated to the committee in writing within thirty (30) days of the committee's disapproval.

(e) The Legislative Research Commission shall maintain records of the committee's disapproval of a proposed lease authorization and the cabinet's report of its actions on a disapproved proposed lease authorization. If the committee disapproves a proposed lease authorization, the Legislative Research Commission shall transmit the committee's disapproval and the cabinet's action on the disapproval to the appropriate interim joint committee of the Legislative Research Commission and to the General Assembly when next convened.

(f) If after committee review a lease is authorized, the lease shall be awarded pursuant to the provisions of KRS 56.800 to 56.823 and this section, KRS 43.050, and KRS 48.190 and shall be subsequently reviewed pursuant to the appropriate subsection of KRS 56.823.

Section 2. KRS 56.806 is amended to read as follows:

(1) Except when another lease term is approved by the secretary of the Finance and Administration Cabinet, the terms of all leases entered into pursuant to KRS 56.803 or 56.805 may provide for an initial lease term beginning on a date stated and ending on June 30 in each year in which the General Assembly has convened in regular session and appropriated funds for the operation of the state government during the next ensuing biennium. The leases may grant the state successive options for the automatic renewal of the lease upon the same terms and conditions for additional renewal periods of twenty-four (24) months each, not to exceed three (3) automatic renewal periods. Any lease containing provision for the automatic renewal of the lease after the expiration of the initial lease term shall also provide that the state may, upon written notice given to the lessor on or before April 15 of the year in which the initial or any automatic renewal term expires, elect not to exercise its option for the automatic renewal of the lease term. Subject to the agreement of the lessor, a lease in which the final automatic renewal period has expired, or will expire as of the end of the then current term, may be renewed upon the same terms and conditions, provisions of KRS 56.803 to the contrary notwithstanding.

(2) The Department for Facilities Management shall comply with the provisions of this subsection when calculating rentable area for the purposes of a lease.

(a) If the Commonwealth is the only tenant on a single floor of a multistory building, the rentable area shall be the entire area described by measuring to the inside finished surface of the dominant portion of the permanent outer building walls, excluding any major vertical penetrations of the floor which shall include, but not be limited to, stairways, elevator shafts, pipe chases, vertical air ducts, and the enclosing wall of all such excluded areas. Restrooms, corridors, and utility rooms which exclusively serve the floor occupied by the Commonwealth shall be included as part of the rentable area.

(b) If the Commonwealth is the only tenant in a one (1) story or multistory building, rentable area shall be calculated pursuant to the provisions of paragraph (a) of this subsection except that those areas excluded pursuant to paragraph (a) shall be included as part of the rentable area.

(c) If the Commonwealth shares a floor with one (1) or more other tenants, the rentable area shall be calculated by measuring from the inside finished surface of the dominant portion of the permanent outer building walls to the office side of every corridor wall or other wall separating the Commonwealth's leased space from other adjacent rentable areas which shall include, but not be limited to, space under the control of another tenant, public corridors, restrooms, all common service and utility areas, stairways, elevator shafts, vertical pipe chases, and air ducts.

(d) The Commonwealth's rentable area determined pursuant to paragraphs (a), (b), and (c) of this subsection shall include columns and projections necessary to the building.

(3) ***The Finance and Administration Cabinet may include in a lease an option to purchase the leased property or a lease-purchase of the leased property.***

(4) If the Finance and Administration Cabinet exercises an option to purchase leased property, the option price shall not exceed the fair market value of the leased property as of the time the option is exercised. Two (2) competent and qualified real estate appraisers shall each determine the fair market value. Each real estate appraiser shall be selected by mutual agreement of the parties and shall employ an accepted appraisal technique.

(5) If the Finance and Administration Cabinet includes in a lease the lease-purchase of the leased property, two (2) competent and qualified real estate appraisers shall each determine the fair market value of the leased property as of the time the lessor and the Commonwealth enter into the lease. Each appraiser shall be selected by mutual agreement of the parties and shall employ an accepted appraisal technique. The lease shall provide for an initial lease term ending June 30 of the second year of the then current fiscal biennium of the Commonwealth, with the option of the Commonwealth, as lessee, to extend the term of the lease for a term of two (2) years from the expiration of each extended term of the lease, until the original term of the lease has been extended for a total number of years agreed upon by the parties. The agreed rental paid for the original term and for each of the full number of years for which the term of the lease may be extended shall amortize the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease. The lease shall provide that the Commonwealth may, at the expiration of the original or any extended term, purchase the leased property at a stated price, which shall be the balance of the fair market value of the leased property as of the time the lease was entered into which has not been amortized by the payments of rent previously made by the Commonwealth.

(6) Except when a lease incorporates a lease-purchase pursuant to subsection (5) of this section, the Commonwealth shall reserve the right to cancel a lease upon written notice within thirty (30), sixty (60), or ninety (90) days, whichever is specified in the lease agreement.

Section 3. KRS 56.823 is amended to read as follows:

(1) The Finance and Administration Cabinet shall report information on leases and lease modifications awarded pursuant to KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190 to the Capital Projects and Bond Oversight Committee as required by this section.

(2) Any lease awarded pursuant to KRS 56.803 for which the annual rental cost will exceed two hundred thousand dollars ($200,000) shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall include:

(a) The name of the agency that will occupy the premises;

(b) The name of the lessor;

(c) The terms of the lease;

(d) The reason for the lease;

(e) A copy of the writing required by KRS 56.803(17);

(f) A statement as to whether the Finance and Administration Cabinet complied with the requirements established in KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190. If the cabinet has not complied with any requirement, the cabinet shall explain why;

(g) An explanation of why the Finance and Administration Cabinet chose this lessor over his competition; and

(h) A cost comparison between the cost per square foot of the leased space and the average cost per square foot of comparable space the state leases in the same county. If there are factors which make the comparison misleading, the cabinet shall inform the committee of these factors.

(3) ***Any lease that incorporates a lease-purchase pursuant to subsection (5) of Section 2 of this Act shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution.***

(a) If a lease is awarded pursuant to KRS 56.803, the report shall include the:

1. Fair market value of the property as of the time the lessor and the Commonwealth entered into the lease;

2. Name and qualifications of each of the two (2) real estate appraisers who determined the fair market value;

3. Appraisal technique each appraiser employed; and

4. Information required by subsection (2) of this section.

(b) If a lease is awarded pursuant to KRS 56.805(2), the report shall include the:

1. Fair market value of the property at the time the lessor and the Commonwealth entered into the lease;

2. Name and qualifications of each of the two (2) real estate appraisers who determined the fair market value;

3. Appraisal technique each appraiser employed;

4. Information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section; and

5. Procedure the department followed to obtain the lease.

(4) Any lease awarded pursuant to KRS 56.805(2) for which the annual rental cost will exceed two hundred thousand dollars ($200,000) shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall state the information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section and the procedure the department followed to obtain the lease. The report shall also include a copy of the writing required by KRS 56.805(2).

(5)[~~(4)~~] Any lease awarded as the result of an emergency described at KRS 56.805(3) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution. The report shall include a copy of the certificate or the certificate and the Governor's authorization, as appropriate, kept on file pursuant to KRS 56.805(4) and shall further state:

(a) The information required by paragraphs (a), (b), (f), (g), and (h) of subsection (2) of this section;

(b) The terms of lease before and after the emergency; and

(c) The procedure the department followed after the emergency to obtain a lease.

(6)[~~(5)~~] Any built-to-suit lease awarded pursuant to KRS 56.8169 shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall state the information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section. The report shall also include:

(a) The written finding and Governor's approval required by KRS 56.8161;

(b) The selection committee's ranking of firms required by KRS 56.8169(15)(a);

(c) The written reason for requesting best-and-final offers, if best-and-final offers are requested, made pursuant to KRS 56.8169(16)(b);

(d) The selection committee's selection of the best best-and-final offer, if best-and-final offers are requested, made pursuant to KRS 56.8169(16)(d);

(e) The certificates signed pursuant to KRS 56.8171(2); and

(f) The report prepared by the employee of the Auditor of Public Accounts pursuant to KRS 56.8171(3).

(7) If the Finance and Administration Cabinet decides to exercise an option to purchase pursuant to subsection (4) of Section 2 of this Act, the cabinet shall report to the Capital Projects and Bond Oversight Committee after the decision is reached but before the purchase occurs. The report shall include the:

(a) Fair market value of the property;

(b) Option price;

(c) Name and qualifications of each of the two (2) real estate appraisers who set the fair market value;

(d) Appraisal technique each appraiser employed; and

(e) Rent paid by the Commonwealth prior to the exercise of the option.

(8) When, pursuant to subsection (5) of Section 2 of this Act, the Finance and Administration Cabinet attempts to complete a lease-purchase through lease payments totally amortizing the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease, the cabinet shall report to the Capital Projects and Bond Oversight Committee no more than ninety (90) days before the final lease payment. The report shall

include the:

(a) Fair market value of the property at the time the lessor and the Commonwealth entered into the lease;

(b) Name and qualifications of each of the two (2) real estate appraisers who set the fair market value;

(c) Appraisal technique each appraiser employed; and

(d) Rent paid by the Commonwealth toward the purchase.

(9) When, pursuant to subsection (5) of Section 2 of this Act, the Finance and Administration Cabinet decides to attempt to complete a lease-purchase prior to the total amortization, through lease payments, of the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease, the cabinet shall report to the Capital Projects and Bond Oversight Committee after the decision is reached but before the purchase occurs. The report shall state the information required by subsection (8) of this section. The report shall also include the sum of money that must be paid in addition to rent paid, in order to complete the purchase.

(10) If the Finance and Administration Cabinet, pursuant to subsection (5) of Section 2 of this Act, includes in a lease the lease-purchase of the leased property and thereafter becomes aware that a purchase will not be achieved, within thirty (30) days after the cabinet becomes aware, it shall notify the Capital Projects and Bond Oversight Committee of the circumstances preventing the purchase

[~~(6) If any lease contains a purchase option which is ultimately exercised by the Commonwealth, within thirty (30) days after the purchase, it shall be reported to the Capital Projects and Bond Oversight Committee. The report shall state the total cost of the building to the Commonwealth including rent payments made prior to the purchase~~].

(11)[~~(7)~~] (a) Except in the case of an emergency as provided in paragraph (b) of this subsection, any modification to an existing lease, made pursuant to KRS 56.813, that is less than fifty thousand dollars ($50,000) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution, and any modification to an existing lease, made pursuant to KRS 56.813, that is fifty thousand dollars ($50,000) or more shall be reported to the Capital Projects and Bond Oversight Committee before execution. In either case, the report shall consist of:

1. The terms of the lease before and after modification;
2. The reason for the modification;
3. The name of the lessor;
4. Any comments received from the public pursuant to KRS 56.813(4); and
5. A statement as to whether the Finance and Administration Cabinet complied with the requirements in KRS 56.813. If the cabinet has not complied with any requirement, the cabinet shall explain why.

(b) Any modification to an existing lease which is required because of an emergency as described at KRS 56.805(3) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution. The report shall include a copy of the certificate or the certificate and the Governor's authorization, as appropriate, kept on file pursuant to KRS 56.805(4) and shall further state:

1. The terms of the lease before and after modification;
2. The name of the lessor;
3. Any comments received from the public pursuant to KRS 56.813(4); and
4. A statement ***that*** [~~as to whether~~] the Finance and Administration Cabinet complied with the requirements in KRS 56.805(3) and (4) and in KRS 56.813. If the cabinet has not complied with any requirement, the cabinet shall explain why.

The Committee Amendment No. 1 to **HB 88** is as follows:

On page 6, line 2, delete "***mutual agreement of the parties***" and insert in lieu thereof "***the Finance and Administration Cabinet***"

On page 6, line 8, delete "***mutual agreement of the parties***" and insert in lieu thereof "***the Finance and Administration Cabinet***"

HB 93, AN ACT relating to lease of property for state use.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS 56.800 TO 56.823 IS CREATED TO READ AS FOLLOWS:

(1) In September of each year, every agency shall report to the Finance and Administration Cabinet concerning a leased property if, in the preceding twelve (12) months, the agency has:

(a) Reconfigured ten percent (10%) or more of the space; or

(b) Changed the use of ten percent (10%) or more of the space.

(2) An agency's report shall include:

(a) The address of the property;

(b) The percentage of space which the agency reconfigured or changed the use of;

(c) The factors which prompted the reconfiguration or change in use; and

(d) Any other relevant information requested by the Finance and Administration Cabinet.

The Committee Amendment No. 1 to **HB 93** is as follows:

On page 1, line 4, by deleting "***a***" and insert in lieu thereof "***any state-owned or***"; and
On page 1, line 6, by deleting "***or***"; and
On page 1, line 7, by deleting the period and inserting in lieu thereof "***; or***"; and
On page 1, between lines 7 and 8, by inserting the following:
"***(c) Changed the number of staffers occupying the space by ten percent (10%) or more.***"

The Committee Title Amendment to **HB 93** is as follows:

By amending the title to read as follows:
"AN ACT relating to property leased or owned by the state.".

HB 166, AN ACT relating to capital projects.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 7A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Capital project" means:

(a) Any undertaking which is to be financed or funded through an appropriation by the General Assembly of general fund, road fund, bond fund, trust and agency fund, or federal fund moneys, where the expenditure is a capital expenditure pursuant to statute or under standards prescribed by the Legislative Research Commission under the authority of KRS Chapter 48; or

(b) Any undertaking which is to be financed by a capital expenditure for use by the state government or one of its departments or agencies, as defined in KRS 12.010 or enumerated in KRS 12.020, including projects related to the construction or maintenance of roads, and including projects of institutions of higher education as defined in KRS 164A.550(2); or

(c) Any capital construction item, or any combination of capital construction items necessary to make a building or utility installation complete, estimated to cost ***four*** [~~two~~] hundred thousand dollars ***($400,000)*** [~~($200,000)~~] or more, or any item of movable equipment, estimated to cost ***one hundred*** [~~fifty~~] thousand dollars ***($100,000)*** [~~($50,000)~~] or more, regardless of the source of funds; or

(d) Any lease [~~or rental~~] of real property ***if the estimated cost of purchasing the real property is two hundred thousand dollars ($200,000) or more; or***

(e) Any lease [~~or~~] of an item of movable equipment ***if*** [~~where the estimated cost of purchasing the real property is two hundred thousand dollars ($200,000) or more, or~~] the ***total*** [~~estimated~~] cost of ***the lease, lease-purchase, or lease with an option to purchase*** [~~purchasing the equipment~~] is ***one hundred*** [~~fifty~~] thousand dollars ***($100,000)*** [~~($50,000)~~] or more.

(2) "Board" means the Capital Planning Advisory Board of the Kentucky General Assembly created by KRS 7A.110.

(3) "Plan" means the state capital improvement plan provided for by KRS 7A.120.

(4) "State agency" means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity of the executive, judicial, or legislative branch of the state government.

Section 2. KRS 45.750 is amended to read as follows:

(1) As used in KRS 45.760 to 45.810:

(a) "Committee" means the Capital Projects and Bond Oversight Committee.

(b) ***"Capital construction item" means*** [~~"Capital projects" includes~~]:

1. The construction, reconstruction, acquisition, and structural maintenance of buildings;

2. The installation of utility services, including roads and sewers;

3. The acquisition ***or improvement*** of ***real property*** [~~land~~];

4. The purchase and installation initially of equipment, facilities, and furnishings of a permanent nature for buildings;

5. The acquisition of any building to be occupied by any:

   a. Subdivision of state government as defined in KRS 12.010 or enumerated in KRS 12.020;

   b. Municipal corporation which exercises its authority on a state-wide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, Kentucky Housing Corporation, or any entity with a governing body whose membership is substantially similar to the membership of the governing body of a municipal corporation which exercises its authority on a state-wide basis; and

   c. Institution of higher education***.***[~~;~~

~~6. The purchase and installation initially of movable equipment, furnishings, and appurtenances necessary to make a building operable; and~~

~~7. Major items of equipment, to include aircraft, estimated to cost one hundred thousand dollars ($100,000) or more.~~]

(c) ***"Lease" means any lease, lease-purchase, or lease with an option to purchase of any real property space occupied by:***

1. Any entity listed in paragraph (b) 5. of this subsection;

2. The legislative branch; or

3. The judicial branch when leased from a private sector landlord.

(d) "Equipment" means:

1. Any major item of equipment, including aircraft;

2. Any movable furnishing, appurtenance, or other equipment, necessary to make a building operable; and

3. Equipment purchased or otherwise acquired, or equipment to be purchased or otherwise to be acquired, under a lease or lease-purchase contract or agreement or an arrangement equivalent to a lease or lease-purchase contract or agreement.

(e) "System" means any computer or telecommunications system, as defined in an administrative regulation which shall be promulgated by the Kentucky Information Systems Commission.

(f) "Capital projects" means, regardless of the source of funds:

1. Any capital construction item, or any combination of capital construction items necessary to make a building or utility installation complete, estimated to cost ***four*** [~~two~~] hundred thousand dollars ***($400,000)*** [~~($200,000)~~] or more;

2. ***Any lease of real property space with an annual rental cost exceeding two hundred thousand dollars ($200,000);***

3. The use allowance paid by the judicial branch for a real property space pursuant to KRS 26A.090(2) and 26A.115 when the use allowance for the space exceeds two hundred thousand dollars ($200,000) on an annual basis;

4. ***Any*** [~~A "major~~] item of [~~movable~~] equipment[~~,"~~] estimated to cost one hundred thousand dollars ($100,000) or more; [~~and~~]

5. Any lease of an item of movable equipment if the total cost of the lease, lease-purchase, or lease with an option to purchase is one hundred thousand dollars ($100,000) or more; and

6.[~~3.~~] ***Any*** [~~Equipment projects which constitute a computer or telecommunications~~] system[~~, as defined in a regulation which shall be promulgated by the Kentucky Information Systems Commission,~~] estimated to cost ***four*** [~~two~~] hundred thousand dollars ***($400,000)*** [~~($200,000)~~] or more.

[~~(d) "Purchase of equipment" shall include, but not be limited to, equipment purchased or otherwise acquired, or equipment to be purchased or otherwise to be acquired, under a lease or lease-purchase contract or agreement or an arrangement equivalent to a lease or lease-purchase contract or agreement.~~]

(g)[~~(e)~~]"Emergency repair, maintenance, or replacement project" means the maintenance, repair, or reconstruction of a capital construction project or the maintenance, repair, or replacement of a major item of equipment that is:

1. Necessitated by injury or damage resulting from a disaster; or

2. Necessary to maintain government operations or to prevent or minimize injury or damage that could reasonably be expected to result from an impending disaster; or

3. Necessitated by an unforeseen mechanical breakdown, electrical breakdown, or structural defect that must be corrected to make a facility or item of equipment usable.

(h)[~~(f)~~] "Disaster" means a fire, flood, tornado, other natural disaster, riot, enemy attack, sabotage, explosion, power failure, energy shortage, transportation emergency, or other man-caused disaster.

(i)[~~(g)~~] "Capital construction funds" means any funds used for capital construction, including, but not limited to, appropriated capital construction funds, agency funds, federal funds, private funds, or funds from any source held by an agency for management or investment purposes.

(j)[~~(h)~~] "Entity head" means the Chief Justice of the Supreme Court, the President Pro Tem of the Senate and the Speaker of the House of Representatives, the secretary of the Finance and Administration Cabinet, the president of any university which complies with KRS 164A.585, 164A.595, and 164A.600, the board of trustees of the Kentucky Employees Retirement System, the board of trustees of the Teachers' Retirement System of the State of Kentucky, the board of directors of the Kentucky Higher Education Student Loan Corporation, the board of directors of the Kentucky Lottery Corporation, or the board of directors of the Kentucky Housing Corporation.

(2) Except as provided in subsection (3) of this section, KRS 45.760 to 45.810 shall apply to capital projects and bonds for use by:

(a) The state government;

(b) One of its departments or agencies, as defined in KRS 12.010 or enumerated in KRS 12.020;

(c) A municipal corporation which exercises its authority on a state-wide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, and Kentucky Housing Corporation; and

(d) Institutions of higher education.

(3) KRS 45.760 to 45.810 shall not apply to:

(a) Capital projects or bonds used directly in or for the construction or maintenance of roads, including, but not limited to, bulldozers, graders, earth movers, and real estate purchased for rights-of-way; and

(b) Political subdivisions, except for those defined in KRS 12.010, enumerated in KRS 12.020, or created as a municipal corporation which exercises its authority on a state-wide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, Kentucky Housing Corporation, or any entity with a governing body whose membership is substantially similar to the membership of the governing body of a municipal corporation which exercises its authority on a state-wide basis. However, the provisions of KRS 45.750 to 45.810 shall not apply to acquisition or maintenance of any building or land which is purchased as a legal investment by any of the state retirement systems, which is not to be occupied by the retirement system, and which is financed solely with those assets of the retirement system used for investment purposes.

Section 3. KRS 45.793 is amended to read as follows:

(1) Beginning in October, 1992, the Finance and Administration Cabinet shall provide to the committee at its January, April, July, and October regular meetings a status report on the progress of capital projects which received line item authorization in either of the two (2) preceding sessions of the Kentucky General Assembly and which were:

(a) Financed with at least ***four*** [~~two~~] hundred thousand dollars ***($400,000)*** [~~($200,000)~~] from the general fund, the road fund, restricted agency funds, federal funds, investment income, capital construction surplus funds, or bond surplus funds, excluding items of equipment; or

(b) State or agency bond-funded.

(2) For each capital project identified in subsection (1) (a) of this section, the status report shall include, but not be limited to, the:

(a) Project title;

(b) Amount authorized, including any project cost modification reported to the committee pursuant to KRS 45.760, 45.770, and 45.800;

(c) Source of funds;

(d) County or counties in which the project is located;

(e) Current phase of the project;

(f) Status of the assistance agreement, if applicable;

(g) Explanation of any delay or major change in the project; and

(h) Other information which might be useful in explaining the status of the project.

(3) For each capital project identified in subsection (1) (b) of this section, the status report shall include the information required in subsection (2) of this section as well as the status of the bond sale which shall include, but not be limited to:

(a) The estimated sale date or date sold;

(b) The bond issue series name or number;

(c) An explanation of the difference, if any, between the budgeted and actual annual debt service requirements; and

(d) If the bonds have not yet been sold, an explanation of why authorized bonds have not been sold.

Section 4. KRS 48.010 is amended to read as follows:

(1) "Account" is a technical accounting term meaning a formal record in which related transactions and events, (i.e., expenditures, receipts, encumbrances, and inter-account charges or credits) which occur during a specific period of time, are summarized and accumulated.

(2) "Activities" means those actions or services performed by a budget unit which depict in a quantitative manner the fulfillment of lawful purposes.

(3) "Appropriation" means an authorization by the General Assembly to expend, from public funds, a sum of money not in excess of the sum specified, for the purposes specified in the authorization and under the procedure prescribed in this chapter.

(4) "Appropriation act" means any act of the General Assembly that authorizes the expenditure of public funds, other than a branch budget bill provided for by this chapter.

(5) "Budget" means the complete financial plan for each fiscal year contained in a branch budget bill provided for by this chapter.

(6) "Branch budget recommendation" means the recommendations to the General Assembly of the Governor for the executive branch, the Chief Justice for the judicial branch, and the Legislative Research Commission for the legislative branch, accompanied by an estimate of the receipts and expenditures for each branch and accompanying explanations provided for by this chapter for the next two (2) fiscal years.

(7) "Budget unit request" means a detailed statement of the financial requirements of a budget unit by principal budget class, and an estimate of its receipts and expenditures for the next two (2) fiscal years, with the accompanying explanations provided for by this chapter.

(8) "Budget unit" means any subdivision of any branch of government, however designated, for which appropriations are requested.

(9) "Capital outlay" means the exchange of values involved in acquiring lands, buildings, equipment or other permanent properties, or in their construction, development, or permanent improvement.

(10) "Disbursement" means cash actually paid out for any purpose.

(11) "Employee" means the lawful incumbent of a position.

(12) "Expenditure" means cash actually paid out or an exchange of value for any purpose.

(13) "Fund" means an independent fiscal and accounting entity with a self-balancing set of accounts recording cash or other resources or both together with all related liabilities, obligations, reserves, and equities which are segregated for the purpose of carrying on specific activities in accordance with legal restrictions or other limitations, to include:

(a) "General Fund." This fund shall consist of all moneys, not otherwise restricted, available for the general operations of state government.

(b) "Bond Debt Related Fund." This fund shall consist of all outstanding bonded debt liability and related funds of state government, including all revenue bonds issued by or approved by the State Property and Buildings Commission. Accounts necessary to assure integrity of trust indentures shall be maintained. Funds appropriated for debt service shall be allotted to these accounts and any excess of appropriation over net requirements for principal, interest and reserves for any issue shall lapse to the surplus account of the general fund if general funds are a part of the appropriation for that budget unit.

(c) "Capital Construction Fund." This fund shall consist of moneys appropriated under the provision of KRS 45.750 to 45.800 for capital construction projects, except road construction projects, for all budget units of state government.

(d) "Federal Fund." This fund shall include all receipts from the federal government for any purpose.

(e) "Fiduciary Fund." This fund shall consist of moneys held by a budget unit in a trustee or agency capacity.

(f) "Restricted Fund." This fund shall consist of budget unit receipts restricted as to purpose by statute.

(g) "Road Fund." This fund shall consist of money derived from excise or license taxation relating to gasoline and other motor fuels, and moneys derived from fees, excise or license taxation relating to registration, operation or use of vehicles for use on public highways. A separate record of each source of receipt within this fund group shall be maintained.

(14) "Principal budget class" includes the following:

(a) "Capital outlay" means the exchange of values involved in acquiring lands, buildings, or other permanent properties, or in their construction, development, or permanent improvement estimated to cost less than ***four*** [~~two~~] hundred thousand dollars ***($400,000)*** [~~($200,000)~~], and items of equipment or other capital items estimated to cost less than ***one hundred*** [~~fifty~~] thousand dollars ***($100,000)*** [~~($50,000)~~].

(b) "Debt service" means the amount of money required to pay the interest, principal, and required contributions to accumulate moneys for future retirement of lawfully incurred debt.

(c) "Grants, loans, or benefits" means expenditures for any grant, aid, loan, or relief payment to individuals, organizations, or jurisdictions not otherwise classified pursuant to this chapter.

(d) "Operating expenses" means expenditures directly attributable to the operation of state government not otherwise classified pursuant to this chapter.

(e) "Personnel costs" means the salaries, wages, benefits (including but not limited to, employer share of FICA, retirement contributions, insurance, unemployment insurance, workers' compensation), and increments of all officers and employees, and payment to persons awarded personal service contracts.

(15) "Receipts" includes the following:

(a) "Nonrevenue receipts" means values accruing that either decrease an asset or create a liability.

(b) "Operating receipts" means cash received by a budget unit for services rendered, or from the sale of materials, goods, or supplies created by the budget unit or of items held for resale.

(c) "Revenue receipts" means values accruing as a result of taxation or revenues, or both, and without resultant increase in liabilities or decrease in assets, whether such values are represented by cash actually received or by amounts due and payable, or partly by each.

Section 5. KRS 154A.060 is amended to read as follows:

(1) The corporation shall conduct and administer lottery games which will result in maximization of revenues to the Commonwealth of Kentucky while at the same time provide entertainment to its citizens. It shall be the duty of the corporation, its employees, and the members of the board to provide for the effective operation of lottery games which insure the integrity of the lottery and maintain the dignity of the Commonwealth and the general welfare of its citizens. The corporation, in pursuit of the attainment of the objectives and the purposes of this chapter, may:

(a) Sue and be sued in its corporate name;

(b) Adopt a corporate seal and a symbol;

(c) Hold copyrights, trademarks, and service marks and enforce its rights with respect thereto;

(d) Appoint agents upon which process may be served;

(e) Enter into written agreements with one (1) or more other states for the operation, marketing, and promotion of a joint lottery or joint lottery games;

(f) Acquire real property and make improvements thereon. Such acquisitions shall be reported to the Capital Projects and Bond Oversight Committee for its review and determination in accordance with KRS 45.750 to 45.810; and

(g) Make, execute, and effectuate any and all agreements or contracts including:

1. Contracts for the purchase of such goods and services as are necessary for the operation and promotion of the state lottery, provided that proposed purchases of major items of equipment estimated to cost ***one hundred*** [~~fifty~~] thousand dollars ***($100,000)*** [~~($50,000)~~] or more ***and proposed purchases of items of equipment where the estimated contract price for all the items of equipment taken together is four hundred thousand dollars ($400,000) or more*** shall be reported to the Capital Projects and Bond Oversight Committee for its review and determination in accordance with the provisions of KRS 45.750 to 45.810***. A contract shall not be artificially divided to cause an estimated contract price to fall below the four hundred thousand dollar ($400,000) threshold.***[~~, and~~] Contracts for personal service shall be reviewed in accordance with KRS 45A.690 to 45A.725***.***[~~; however,~~] The corporation shall not be required to include purchases of equipment in the executive branch budget recommendations and the draft branch budget bill submitted to each regular session of the General Assembly pursuant to KRS 48.130.

2. Contracts to incur debt in its own name and enter into financing agreements with the Commonwealth, its own agencies, or with a commercial bank, excluding the authority to issue bonds.

(2) The corporation shall:

(a) Supervise and administer the lottery in accordance with the provisions of this chapter and the administrative regulations adopted by the board;

(b) Submit monthly and annual reports to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives containing financial statements which include, but are not limited to, disclosure of gross revenues, expenses, and net proceeds for the period;

(c) Adopt by administrative regulation a system of continuous internal audits;

(d) Maintain weekly or more frequent records of lottery transactions, including distribution of tickets to lottery retailers, revenues received, claims for prizes, prizes paid, and all other financial transactions of the corporation; and

(e) Adopt by administrative regulation a code of ethics for officers and employees of the corporation to carry out the standards of conduct established by the provisions of this chapter.

The Committee Amendment No. 1 to **HB 166** is as follows:

On page 13, after line 6, add

"Section 6. KRS 164.020 is amended to read as follows:

The Council on Higher Education in Kentucky shall:

(1) Engage in analyses and research to determine the overall needs of higher education in the Commonwealth.

(2) Develop and transmit to the Governor comprehensive plans for public higher education which meet the needs of the Commonwealth. The plans so developed shall conform to the respective functions and duties of the state universities, the community colleges, and the University of Kentucky, as provided by statute. The council shall for all purposes of federal legislation relating to planning be considered the "single state agency" as that term may be used in federal legislation. When federal legislation requires additional representation on any "single state agency," the Council on Higher Education shall establish advisory groups necessary to satisfy federal legislative or regulatory guidelines.

(3) Determine tuition and approve the minimum qualifications for admission to the public institutions of higher education. In determining the tuition for non-Kentucky residents, the council shall consider the fees required of Kentucky students by institutions in adjoining states, the resident fees charged by other states, the total actual per student cost of training in the institutions for which the fees are being determined, and the ratios of Kentucky students to non-Kentucky students comprising the enrollments of the respective institutions, and other factors the council may in its sole discretion deem pertinent.

(4) Consider the requirements and review the budget requests, which shall be prepared in the manner and submitted by the institutions to the council by dates prescribed by the council, of the institutions of public higher education as to their appropriate level of support considering the functions of the institutions and their respective needs. The council, in cooperation with the university presidents, shall devise, establish, and periodically review and revise formulas for use in making recommendations to provide to the Governor and the legislature for use in making appropriations for the institutions of higher learning. The formulas shall provide for adequate and equitable allocation of funds among the several universities considering their respective needs and statutory, institutional, and geographic missions. In the development, revision, and refinement of formulas, committees composed of members of the council staff and a representative of each of the state universities shall conduct hearings on each campus in a manner to give all principal segments of each institution the opportunity to participate in the development of the formulas. The studies shall include, but not be limited to:

(a) A review of formulas used by other states to calculate needs and appropriate funds for institutions of higher education;

(b) A complete review of selected comparable institutions with reference to both the state appropriations and tuition charges; and

(c) A review of institutional activities and programs that can be calculated for use in the development of the formulas.

There shall be included in the final report the institutional responses to the studies and their recommendations and the recommendations of the advisory conference of presidents. Nothing in this chapter shall prevent or prohibit the Governor, the Legislature, the Council on Higher Education, or the governing board of any institution of higher education from requesting or recommending deviations from any applicable formula or formulas prescribed by the Council on Higher Education and advancing reasons and arguments in support of them. The individual institutions' budget requests, including tuition and registration fee schedules for all categories of students, along with council recommendations shall be submitted to the Governor through the Finance and Administration Cabinet not later than November 15 of each odd-numbered year. The council shall submit a separate budgetary recommendation for the University of Kentucky community college system.

(5) Review and approve all capital construction projects the cost of which exceeds ***four***~~[two]~~ hundred thousand dollars ***($400,000)***~~[($200,000)]~~ approved by the governing boards of the state-supported institutions of higher education prior to the institutions' submission of the projects to the Finance and Administration Cabinet or the State Property and Buildings Commission.

(6) Require reports from the executive officer of each institution it deems necessary for the effectual performance of its duties.

(7) Publish annually a report of the educational and financial affairs of the institutions and disseminate other information relating to higher education.

(8) Define and approve the offering of all higher education associate, baccalaureate, graduate, and professional degree or certificate programs in the state-supported higher education institutions; review proposals and make recommendations to the Governor regarding the establishment of new state-supported community colleges and new four (4) year colleges. The Council on Higher Education shall postpone the approval of any new program at a state institution of higher learning, unless the institution has met its equal educational opportunity goals, as established by the council. In accordance with administrative regulations promulgated by the council, those institutions not meeting the goals shall be able to obtain a temporary waiver, if the institution has made substantial progress toward meeting its equal educational opportunity goals. Provided, nothing in this section, KRS 164.011, 164.125, and 164.290 to 164.295 shall be construed to grant the Council on Higher Education authority to disestablish or eliminate any college of law which became a part of the state system of higher education through merger with a state college.

(9) Approve the teacher education programs in the public institutions.

(10) Elect a chairperson annually from the voting membership and appoint an executive director and staff needed and fix their compensation without limitation of the provisions of KRS Chapter 18A and KRS 64.640, subject to the approval of the commissioner of personnel and the secretary of the Finance and Administration Cabinet. No relative of a Council on Higher Education member shall be employed by the agency.

(11) Constitute the representative agency of the Commonwealth in all matters of higher education of a general and statewide nature which are not otherwise delegated to one (1) or more institutions of higher learning. The responsibility may be exercised through appropriate contractual relationships with individuals or agencies located within or without the Commonwealth. The authority includes, but is not limited to, contractual arrangements for programs of research, specialized training, and cultural enrichment.

(12) Develop procedures for the approval of a designated receiver to provide for the maintenance of student records of the public institutions of higher education and the colleges as defined in KRS 164.945, and institutions operating pursuant to KRS 165A.310 which offer collegiate level courses for academic credit, which cease to operate after July 15, 1980. Procedures shall include assurances that, upon proper request, subject to federal and state laws and regulations, copies of student records shall be made available within a reasonable length of time for a minimum fee.

(13) Monitor and report on compliance with KRS 164.351. The report shall be transmitted to the director of the Legislative Research Commission for distribution to the Health and Welfare Committee.

(14) Develop in cooperation with each state institution of higher education a comprehensive orientation program to be carried out by the respective institution for newly-appointed governing board trustees and regents. The orientation program shall include, but not be limited to, the presentation of information concerning the respective institution's mission, budget, plans, policies, strengths, and weaknesses."

HB 167, AN ACT relating to state procurement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 56.491 is amended to read as follows:

(1) No state agency shall have power or authority to make plans and specifications, advertise for bids, let contracts, or incur any financing commitments, either in the way of a charge against public funds or in the way of negotiations for issuance of revenue bonds, for any capital construction projects involving the improvement of lands or the construction, alteration, reconstruction, or major repair of any building or other structure, or sewage disposal or water supply system, requiring the expenditure of more than one hundred ***and twenty-five*** thousand dollars ***($125,000)*** [~~($100,000)~~] without first securing the approval of the Finance and Administration Cabinet.

(2) The state agency seeking the approval shall submit to the Finance and Administration Cabinet a general description of the proposed project, with the detailed information the cabinet may require. Review of construction plans for conformance with the Uniform State Building Code shall be conducted by the Department of Housing, Buildings and Construction. The Finance and Administration Cabinet shall not approve any project requiring its approval in any instance if it finds that: the project is not needed; the proposed method of financing is not sound; the project will exceed the amount of the funds available therefor; the work contemplated will be insufficient to accomplish the purpose of the project; or after providing for the ordinary recurring expenses of government and debt service and for payments under existing allotments for extraordinary expenses and capital outlay, cash will not be available in the State Treasury to promptly pay for the work during the biennium, or except as provided in subsection (5) of this section, that the work is to be done by employees of the agency.

(3) The finding of the Finance and Administration Cabinet shall be final, except in cases where the issuance and sale of bonds is proposed, in which cases the cabinet shall submit its findings to the commission for final approval, modification, or disapproval.

(4) Any capital construction project, the total cost of completion of which the Finance and Administration Cabinet

determines will exceed one hundred ***and twenty-five*** thousand dollars ***($125,000)*** [~~($100,000)~~], shall be contracted for on a competitive bid basis, and the execution of the contracts shall be approved and authorized by the cabinet. When a capital construction project has been approved as provided in this section, in whole or in part, the cabinet shall prepare the plans and specifications, advertise for bids, award the contracts, supervise the construction, and handle the financial negotiations on behalf of the requesting state agency; or with prior written approval, the cabinet may authorize a state agency to do so with delegated authority of the cabinet.

(5) A capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will not exceed one hundred ***and twenty-five*** thousand dollars ***($125,000)*** [~~($100,000)~~], may be performed by the employees of the requesting agency or by individuals hired specifically for the project who shall be exempt from the requirements of KRS Chapter 18A, if the project is approved and authorized by the cabinet. Necessary materials and supplies shall be procured in accordance with the standard purchasing procedures and policies of the cabinet as defined in KRS Chapter 45A.

(6) This section shall not apply to capital outlays to the Department of Highways for roads and bridges.

(7) This section shall not apply to capital outlays by the Justice Cabinet for repair, maintenance, improvement, or expansion of present correctional facilities on which projects inmates are used. Any capital construction project to be performed by the Justice Cabinet shall be approved and authorized by the Finance and Administration Cabinet.

The Committee on Transportation reported **HB 17, HB 19, HB 40, HB 125, HB 170,** with Committee Amendment attached thereto, and **HJR 13**, with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 17, AN ACT relating to school buses.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.550 is amended to read as follows:

(1) Operators of all school buses and motor vehicles used for transporting students shall illuminate headlights whenever the vehicle is in operation.

(2) Operators of all buses and motor vehicles used for transporting children shall stop their vehicles before crossing any railroad when tracks are at the same level of the roadway. The stop shall be made not less than ***fifteen (15)*** [~~ten (10)~~] feet nor more than ***fifty (50)*** [~~thirty (30)~~] feet from the nearest track over which the highway crosses, except where the crossing is protected by gates or a flagman employed by the railroad. After making the stop, the operator shall open the service door and carefully look in each direction and listen for approaching trains or maintenance vehicles before proceeding.

HB 19, AN ACT relating to motor vehicle registration.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186A.035 is amended to read as follows:

(1) All motor vehicles with a gross vehicular weight of six thousand (6,000) pounds or less, first registered, or for which the registration is renewed in this state on or after January 1, 1983, shall be placed in a system of year-round registration based upon the birth month of the owner, in order to distribute the work of registering motor vehicles as uniformly as practicable throughout the twelve (12) months of the year.

(2) If the owner of a motor vehicle is other than an individual, the month in which the owning entity came into being shall be used for purposes of this section. If a motor vehicle is jointly owned, the owners shall indicate to the county clerk the birth month of one (1) of them to be used for purposes of this section. ***In addition, if a motor vehicle is jointly owned by a husband and wife, the ownership shall exist as a joint tenantship with right of survivorship, unless the registration expressly states to the contrary and gives an alternative specific status. Upon the death of one of the spouses, the jointly owned vehicle shall transfer to the surviving spouse free from payment of any state-required transferral fees.***

(3) The certificate of registration and license plate issued for a motor vehicle first registered, renewed, or titled in this state on or after January 1, 1983, shall be valid, unless canceled by the cabinet in accordance with KRS Chapter 186 or this chapter, upon payment of the required fee, for a period beginning on the first day of the month of the year in which registration is applied for, and expiring on the last day of the next birth month of the owner following the month during which registration is applied for, provided however that, upon the owner's request, and after payment of the proper prorated fee, an owner may obtain a certificate of registration and license plate valid through the last day of his second birth month following the month and year in which he applied for a certificate of registration. Any transaction relating to registration or registration renewal which would cause an unexpired Kentucky motor vehicle license plate to be surrendered shall have that unexpired fee prorated or credited against any additional fee required by a subsequent registration.

(4) After a motor vehicle has been initially placed in the system of year-round registration, the owner shall renew the registration annually during the owner's birth month, by making application to the county clerk and paying the fee required for twelve (12) consecutive months of registration, which shall take effect on the first day of the month succeeding the owner's birth month and shall expire on the last day of the owner's next birth month. The county clerk shall be entitled to a registration fee of two dollars ($2) for each registration, or if said registration exceeds a twelve (12) month period the clerk shall receive a fee of three dollars ($3).

(5) At least thirty (30) days prior to the expiration of the registration of any motor vehicle previously registered in the Commonwealth as provided by subsection (1) of this section, the owner of the vehicle shall be notified by mail on the same notice required by KRS 134.805(5) of the date of expiration. Any registration renewal by mail shall require payment of an additional one dollar ($1) fee which shall be received by the county clerk. Nonreceipt of the notice herein shall not constitute a defense to any registration related offense.

(6) Any owner who fails to renew the registration of a motor vehicle during the month in which the previous registration expired, shall, if he applies for renewal of the registration in some later month, pay the same fees that would have been required if the registration had been renewed in the month which the previous registration expired.

(7) Fees which must be prorated in carrying out the intent of this section shall be prorated on the basis of twelfths of the annual registration fee. Any vehicle which is registered at any time during a month, shall pay the fee required for that whole month plus any additional months of registration purchased consistent with the intent of the section.

(8) The county clerk shall ensure that the certificate of registration issued to an owner displays the month and year in which the registration period begins, and the month and year of its expiration, and shall issue to the owner a decal or decals corresponding to the month and year of expiration shown in the certificate of registration which shall be placed upon the corresponding license plate by the owner in the manner required by administrative regulations of the Department of Vehicle Regulation.

HB 40, AN ACT relating to motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186.021 is amended to read as follows:

(1) ***Except as provided in subsection (2) of this section, a*** ~~[No]~~ county clerk shall ***not*** issue a replacement plate, decal, or registration certificate as provided in KRS 186.180, or a registration for renewal to any ***person*** ~~[persons]~~ who on January 1 of any year owned a motor vehicle on which state, county, city, urban-county government, school, or special taxing district ad valorem taxes are delinquent.

(2) ***Pursuant to KRS 134.810(4), the owner of record on January 1 of any year shall be liable for taxes due on a motor vehicle. A person other than the owner of record who applies to a county clerk to transfer the registration of a motor vehicle may pay any delinquent ad valorem taxes due on the motor vehicle to facilitate the county clerk's transferring registration of the motor vehicle. The person applying shall not be required to pay delinquent ad valorem taxes due on any other motor vehicle owned by the owner of record from which he is purchasing his motor vehicle as a condition of registration.***

(3) ***A*** ~~[No]~~ county clerk shall ***not*** issue a replacement plate, decal, or registration certificate as provided in KRS 186.180, or a registration renewal for any motor vehicle ***that*** ~~[which]~~ is not insured in compliance with KRS 304.39-080. Each applicant for registration renewal shall present proof of compliance to the county clerk in a manner prescribed in ***administrative*** regulations issued by the Department of Insurance.

HB 125, AN ACT relating to operating records of motorists.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 187.310 is amended to read as follows:

(1) The cabinet shall, upon request, furnish any person a certified abstract of the operating record of any person subject to the provisions of KRS 187.290 to 187.620***. The***~~[, which]~~ abstract shall ~~[also fully]~~ designate the motor vehicles, if any, registered in the name of ***the***~~[such]~~ person***.***~~[, and]~~ If there ***is not a***~~[shall be no]~~ record of ***the person being convicted***~~[any conviction of such person]~~ of violating any law relating to the operation of a motor vehicle, or of any injury or damage caused by ***the***~~[such]~~ person, the department shall so certify ***on the abstract***.

(2) The certified abstract shall not include information concerning any violation of the law, injury, or damage ***that***~~[which]~~ occurred earlier than three (3) years prior to the request. ***The***~~[Such]~~ abstracts shall not be admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle accident. The certified abstract shall not include accident reports filed with the Department of State Police under KRS 189.635***, and shall not include suspension orders of a student who has had his operator's license, permit, or privilege to operate a motor vehicle revoked or denied for being academically deficient pursuant to KRS 159.051, if the suspension has been lifted by the reinstatement of academic eligibility pursuant to KRS 159.051.***~~[and]~~ The cabinet shall not furnish to any person the accident report of a driver other than himself. This section shall in no way preclude the right of any court of law, law enforcement officer, or attorney representing the individual affected from securing full and complete information concerning the record of that individual.

HB 170, AN ACT relating to motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.150 is amended to read as follows:

(1) ***A*** ~~[No]~~ vehicle shall ***not*** be operated upon any highway unless it is so constructed as to prevent its contents from escaping.

(2) ***A*** ~~[No]~~ vehicle shall ***not*** be operated upon any public highway for a distance of over one (1) mile whose load is susceptible to shifting or spillage unless ***the*** ~~[said]~~ load is covered with a device suitable for prevention of spillage.

(3) Any company which ships its products on a highway shall be responsible for maintaining their private road in a condition so as to prevent the tracking, or depositing of mud, or any other substances, which may interfere in any way with the safe, convenient and continuous use of the highway. If it is found that the private owner of a road has not maintained or surfaced their road so that transporters using it cannot keep mud or other substances from being deposited on the highway, then the company shipping the products shall be responsible.

Section 2. KRS 189.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and 189.960, shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars ($60) nor more than five hundred dollars ($500).

(b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or 189.490, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection~~[, after payment of commissions to officers entitled thereto,]~~ shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, such person shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less than sixty (60) days nor more than six

(6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100), and upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name such vehicle used in the transportation of inflammable liquids or explosives is licensed, such person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(18) Any person who abandons a vehicle upon the right-of-way of a state highway for seven (7) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(19) Every person violating KRS 189.393 shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty-five dollars ($35) nor more than five hundred dollars ($500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars ($60) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment.

(20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of such a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(24) Any person who violates the provisions of KRS 189.125(2) shall be fined fifty dollars ($50).

(25) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(26) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

(27) Any company who violates KRS 189.150(3) shall be fined not less than twenty-five dollars ($25), nor more than three hundred ($300), in addition to the cost of removal of the mud or other substance from, or clearing of, the highway by the governmental unit responsible for maintenance of the highway, if it is not removed by the company. The cost assessed for cleaning the highway shall be credited to the road fund.

The Committee Amendment No. 1 to **HB 170** is as follows:

On page 6, line 18, after the word "***the***" and before the word "***road***" insert the word "***appropriate***".

HJR 13, A JOINT RESOLUTION directing the secretary of the Transportation Cabinet to designate United States Route 23, "The Country Music Highway."

WHEREAS, United States Route 23 from South Shore, Kentucky, to the Virginia State Line traverses what could be considered the "Heart of Appalachia"; and

WHEREAS, country music superstars such as Billy Ray Cyrus, The Judds, Ricky Skaggs, Keith Whitley, Loretta Lynn, Crystal Gayle, Dwight Yoakam, Patty Loveless, and Gary Stewart have origins in communities along or near to this highway; and

WHEREAS, the music they so wonderfully create often symbolizes a way of life found only in the ruggedly beautiful terrain of the Appalachian region; and

WHEREAS, a designation of this nature is extremely appropriate and justified and will serve as a reminder of the unsung riches eastern Kentucky has within its boundaries;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. That the secretary of the Transportation Cabinet be directed to designate United States Route 23 from South Shore, Kentucky, to the Virginia State Line, "The Country Music Highway."

Section 2. That the Clerk of the House of Representatives be directed to transmit a copy of this Resolution to the secretary of the Transportation Cabinet.

The Committee Amendment No. 1 to **HJR 13** is as follows:

On page 1, between lines 3 and 4, by adding a new Section 2 to read as follows:

"The cabinet shall contact the fiscal court of each county through which United States Route 23 passes to inform the fiscal court that United States Route 23 has been designated "The Country Music Highway". Upon notification by the cabinet a fiscal court may, at its own expense, erect signs recognizing United States Route 23 as "The Country Music Highway"."; and

On line 4, by renumbering existing "Section 2" as "Section 3".

Motions, Petitions and Communications (Continued)

Representative Maggard moved that the rules be suspended to allow co-sponsors of Bills. Agreed.

The following members filed requests to have their names added as co-sponsors to Bills: **HB 2**, Representative Collins; **HB 4, HB 7**, Representative Callahan; **HB 4, HB 26**, Representative Maggard; **HB 50**, Representative Bryant; **HB 62**, Representative Donnermeyer; **HB 135**, Representative Northup; **HB 204, HB 205, HB 224**, Representatives Lewis and Rasche; **HB 215**, Representatives Bowling and Marzian.

Representatives Turner, Reinhardt, Treesh, Walton and Buis filed a petition to take **HB 53** from the Consent Orders of the Day and place in the Regular Orders of the Day.

Announcements

The Clerk announced the following meetings:

Health and Welfare Public Hearing, 2:00 p.m., January 20, 1994, Room 131

Western Kentucky Caucus, 8:00 a.m., January 21, 1994

General Government Subcommittee on Child Support Funds Public Hearing, 1:00 p.m., January 19, 1994, Room 149

Budget workshop, upon adjournment, Room 149

Adjournment

Representative Stumbo moved that the House adjourn until 9:00 a.m., Friday, January 14, 1994.

On the roll call the vote was **Yeas 81**–Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Brown, Bruce, Bryant, Buis, Burch, Butler, Callahan, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Cyrus, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, K. Harper, Hatcher, Jensen, Keith, Kerr, Lee, Lewis, Lindsay, Little, Lyne, Maggard, Mason, Marzian, McElroy, Moberly, Mullinix, Napier, Nesler, Noland, Northup, Nunn, Palumbo, Rasche, Reinhardt, Richards, Ridley, Riggs, Riner, Sanders, Scott, Shacklette, B. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 1**–Lile.

The motion to adjourn was adopted.

FRIDAY, JANUARY 14, 1994

NINTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend Jay Ayers, South Frankfort Presbyterian Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Curd, Geveden, Lear, Mullinix, Nelson, Rasche, Ridley and R. Smith.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of January 13, 1994 be dispensed with and the same approved. Agreed.

Floor Amendments

Floor Amendment No. 1 to **HB 50**, by Representative Little:

On page 2, lines 3 and 4 by deleting the following:

"***Local school boards shall develop written procedures to assure that all vacant classified employee positions are advertised to the public.***".

Floor Amendment No. 1 to **HB 93**, by Representative Harper:

On page 1, line 3, after "***(1)***" insert "***Except as provided in subsection (3) of this section,***"

On page 1, after line 14, add "***(3) The provisions of this section shall not apply when the property involved covers less than one thousand (1,000) square feet.***"

Floor Amendment No. 1 to **HB 40**, by Representative Little:

On page 1, after line 20, by inserting a new Section 2 to read as follows:

"Section 2. KRS 134.810 is amended to read as follows:

(1) All state, county, city, urban-county government, school, and special taxing district ad valorem taxes shall be due and payable on or before the earlier of the last day of the month in which registration renewal is required by law for a motor vehicle renewed or the last day of the month in which a vehicle is transferred.

(2) All state, county, city, urban-county government, school, and special taxing district ad valorem taxes due on motor vehicles shall become delinquent following the earlier of the end of the month in which registration renewal is required by law or the last day of the second calendar month following the month in which a vehicle was transferred.

(3) Any taxes which are paid within thirty (30) days of becoming delinquent shall be subject to a penalty of three percent (3%) on the taxes due. Any taxes which are not paid within thirty (30) days of becoming delinquent shall be subject to a penalty of ten percent (10%) on the taxes due. In addition, interest at an annual rate of fifteen percent (15%) shall accrue on said taxes and penalty from the date of delinquency. No penalty or interest shall accrue on a motor vehicle under dealer assignment pursuant to KRS 186A.220.

(4) When a motor vehicle has been transferred before registration renewal or before taxes due have been paid, the owner of record on January 1 of any year shall be liable for the taxes on the motor vehicle, except as hereinafter provided.

(5) If an owner obtains a certificate of registration for a motor vehicle valid through the last day of his second birth month following the month and year in which he applied for a certificate of registration, all state, county, city, urban-county government, school, and special tax district ad valorem tax liabilities arising from the assessment date following initial registration shall be due and payable on or before the last day of the first birth month following the assessment date or date of transfer, whichever is earlier. Any taxes due under the provisions of this subsection and not paid as set forth above shall be considered delinquent and subject to the same interest and penalties found in subsection (3) of this section.

(6) For purposes of the state ad valorem tax only, all motor vehicles held for sale by a licensed Kentucky dealer on January 1 of any year shall not be taxed as a motor vehicle pursuant to KRS 132.485(3) but shall be subject to ad valorem tax as goods held for sale in the regular course of business under the provisions of KRS 132.020(9) and 132.220.

(7) Any provision to the contrary notwithstanding, when any ad valorem tax on a motor vehicle becomes delinquent, the state

and each county, city, urban-county government, or other taxing district shall have a lien on all motor vehicles owned or acquired by the person who owned the motor vehicle at the time the tax liability arose. *A*[~~No~~] lien for delinquent ad valorem taxes shall ***not*** attach to any motor vehicle transferred while the taxes are due on that vehicle. ***For the purpose of delinquent ad valorem taxes on leased vehicles only, a lien on a leased vehicle shall not be attached to another vehicle owned by the lessor.***

(8) The lien required by subsection (7) of this section shall be filed and released by the automatic entry of appropriate information in the AVIS database. For the filing and release of each lien or set of liens arising from motor vehicle ad valorem property tax delinquency, a fee of one dollar ($1) shall be added to the delinquent tax account. The fee shall be collected and retained by the county clerk who collects the delinquent tax.

(9) The implementation of the automated lien system provided in this section shall not affect the manner in which commercial liens are recorded or released."

Representative Hatcher moved that the rules be suspended to introduce guests, allow floor privileges and act upon a Legislative Citation. Agreed.

Representative Hatcher moved the adoption of the following **Legislative Citation No. 16**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby commends Fellowship of Reconciliation in recognition of organizing the Stop the Killing, Start the Healing Campaign. The entire membership extends its very best wishes on this memorable occasion and expresses the hope for continued success.

Introduction of Bills and Resolutions

HB 292, by Representative Collins: AN ACT relating to school-based decision making councils.

HB 293, by Representatives Collins and Morris: AN ACT relating to license plates.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Appropriations and Revenue: **HB 279, HB 285**

Counties and Special Districts: **HB 287**

Elections and Constitutional Amendments: **HB 290**

Health and Welfare: **HB 288, HB 289**

Judiciary: **HB 278, HB 280, HB 286, HB 291**

Natural Resource and Environment: **HB 282, HB 283, HB 284**

State Government: **HB 277, HCR 19, HR 20**

Transportation: **HB 281**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bill has been posted for Committee consideration:

Business Organizations and Professions: **HB 8**

Calendar

HB 32, HB 3, HB 14, HB 162, HJR 3, HCR 4, HJR 5, HJR 6, HB 52, HB 56, HB 64, HB 72, HB 88, HB 93, HB 166, HB 167, HB 17, HB 19, HB 40, HB 125, HB 170 and **HJR 13** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Recess

Representative Stumbo moved that the House recess for five minutes for a meeting of the Committee on Rules. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 99**, by Representative Long:

On page 12, line 27, by placing an opening bracket "[" before the word "No" and striking through the remainder of the line; and

On page 13, line 2, by placing a closing bracket "]" before the word "Each" and striking through the language on lines 1 and 2 within the closing bracket; and

On page 14, line 8, after the period "." by inserting the following new language: "***The tax shall be refunded with interest at the tax interest rate as defined in KRS 131.010(6).***".

Report of Committees

The Committee on Rules reported that **HB 3, HB 14, HB 17, HB 19, HB 32, HB 40, HB 52, HB 64, HB 72, HB 88, HB 93, HB 125, HB 162, HB 166, HB 167, HB 170, HJR 3** and **HCR 4** have been posted for passage in the Orders of the Day for January 20, 1994.

The Committee on Rules reported that the following Bill has been recommitted:

Appropriations and Revenue: **HB 56**

Orders of the Day

HB 121 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved that **HB 121** be passed.

On the roll call the vote was: Yeas 89 , Nays 0 (See January 14 , 1994 roll call on **HB 121** - Appendix)

HB 121 was passed and the title agreed to.

Representative Long moved that the vote by which **HB 121** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 122 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved that **HB 122** be passed.

On the roll call the vote was: Yeas 86 , Nays 0 (See January 14 , 1994 roll call on **HB 122** - Appendix)

HB 122 was passed and the title agreed to.

Representative Long moved that the vote by which **HB 122** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 35 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Zimmerman moved that **HB 35** be passed.

On the roll call the vote was: Yeas 88 , Nays 0 (See January 14 , 1994 roll call on **HB 35** - Appendix)

HB 35 was passed and the title agreed to.

Representative Zimmerman moved that the vote by which **HB 35** was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications (Continued)

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions and Report of Committees. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 294, by Representative Lyne: AN ACT relating to soil and water conservation.

HB 295, by Representatives Clarke, Stumbo and Lear: AN ACT relating to the registration for legislative lobbying and declaring an emergency.

HB 296, by Representatives Bentley, Mason, Maggard, Adkins and Bowling: AN ACT relating to parks.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills and Resolutions have been posted for Committee consideration:

State Government: **SB 10, HR 16, HCR 17, HB 98, HB 128, HB 175, HB 185, HB 226, HB 234, HB 242, HB 244, HB 245**

Motions, Petitions and Communications (Continued)

Representative Johnson moved the adoption of the following **Legislative Citation No. 17**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to Thomas N. Thompson in recognition of his election as President of the National Association of Home Builders. Thomas Thompson has provided the opportunity for citizens of Kentucky to achieve the "American Dream" of home ownership. The entire membership joins Representative Louis Johnson in extending its very best wishes on this memorable occasion and expresses the hope for continued good fortune.

Pursuant to **HR 10**, the Speaker appointed the following committee to wait upon the Governor: Representative Barrows, Chairman, Representatives Bentley, Adams, Bondurant and DeWeese.

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 88**, by Representative Bowling:

On page 5, line 27, delete "***option is exercised***" and insert in lieu thereof "***lessor and the Commonwealth enter into the option***"

Motions, Petitions and Communications (Continued)

Representative Maggard moved the rules be suspended for the purpose of recording a vote. Agreed.

Representative Maggard moved that he be recorded as voting "yea" on **HB 35, HB 121** and **HB 122**. Agreed.

Representative Ballard moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Ballard moved that his vote be changed from "yea" to "abstain" on **HB 122**. Agreed.

Representative Crenshaw moved the rules be suspended for the purpose of recording a vote. Agreed.

Representative Crenshaw moved that he be recorded as voting "yea" on **HB 121, HB 122** and **HB 35**. Agreed.

Announcements

The Clerk announced the following meetings:

Special meeting, Budget Review Subcommittee on General Government, 1:00 p.m., January 19, 1994

Health and Welfare, 2:00 p.m., January 20, 1994, Room 131

State Government, upon adjournment, January 20, 1994

Judiciary, January 20, 1994, canceled

Adjournment

Representative Stumbo moved that the House adjourn until 4:00 p.m., Thursday, January 20, 1994.

On the roll call the vote was **Yeas 79**--Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bruce, Bryant, Buis, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Cyrus, Damron, DeWeese, Donnermeyer, Farrow, Ford, Fox, French, Gedling, Gee, Graham, Gray, Hampton, Hancock, Hatcher, Jensen, Johnson, Keith, Kerr, Lee, Lindsay, Lyne, Maricle, Maggard, Mason, Marzian, McElroy, Moberly, Morris, Napier, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Reinhardt, Richards, Riner, Sanders, Scorsone, B. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 4**--Heleringer, LeMaster, Lile, Riggs.

The motion to adjourn was adopted.

THURSDAY, JANUARY 20, 1994

TENTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Representative Tom Riner, Louisville.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. The following members were present: Representatives Barrows, Clarke, Coleman, Cyrus, Hancock, Long, Rapier and Riner.

Motions, Petitions, and Communications

Representative Rapier requested that, since the roll call machine revealed the absence of a quorum, the Journal show those marked on the roll as present. Representative Rapier also asked that the Journal reflect that the absences are due to the severe winter storm which has immobilized all of Kentucky and that the members of the House of Representatives were in their home districts when the storm struck.

Representative Rapier moved that, in accordance with Section 37 of the Constitution of the Commonwealth of Kentucky and the rules of the House of Representatives, the House adjourn until the hour of 9:00 a.m., Friday, January 21, 1994.

The motion to adjourn was adopted by voice vote.

FRIDAY, JANUARY 21, 1994

ELEVENTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Representative Tom Riner, Louisville.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. The following members were present: Representatives Barrows, Clarke, Coleman, Cyrus, Hancock, Rapier and Riner.

Motions, Petitions, and Communications

Representative Rapier requested that, since the roll call machine revealed the absence of a quorum, the Journal show those marked on the roll as present. Representative Rapier also asked that the Journal reflect that the absences are due to the severe winter storm which has immobilized all of Kentucky and that the members of the House of Representatives were in their home districts when the storm struck.

Representative Rapier moved that, in accordance with Section 37 of the Constitution of the Commonwealth of Kentucky and the rules of the House of Representatives, the House adjourn until the hour of 4:00 p.m., Monday, January 24, 1994.

The motion to adjourn was adopted by voice vote.

MONDAY, JANUARY 24, 1994

TWELFTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend David Hilton, First United Methodist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Allen and Arnold.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House for January 20, 21 and 24. Agreed.

Representative McElroy moved that the reading of the Journals dated, Friday, January 14, Thursday, January 20 and Friday, January 21, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 50** and **SB 62**. (Time: 4:05 p.m.)

Introduction of Bills and Resolutions

HB 297, by Representative Long: AN ACT relating to revenue and taxation.

HB 298, by Representative Long: AN ACT relating to income taxation.

HB 299, by Representative Long: AN ACT relating to state procurement.

HB 300, by Representatives Clarke, Richards, Long, L. Clark, Rapier and Stumbo: AN ACT making appropriations for operations, maintenance, and support of the legislative branch of the government of the Commonwealth of Kentucky.

HB 301, by Representative Long: AN ACT making appropriations for the operations, maintenance, support, and functioning of the judicial branch of the government of the Commonwealth of Kentucky and its various officers, boards, commissions, subdivisions, and other state supported activities.

HB 302, by Representative Long: AN ACT relating to appropriations for the operation, maintenance, support, and functioning of the government of the Commonwealth of Kentucky and its various officers, cabinets, departments, boards, commissions, institutions, subdivisions, agencies, and other state supported activities.

HB 303, by Representatives Graham, French and Moberly: AN ACT relating to the primary program.

HB 304, by Representative Curd: AN ACT relating to student assessment.

HB 305, by Representative Scorsone: AN ACT relating to the Kentucky Unified Juvenile Code.

HJR 21, by Representatives Hancock, Farrow, Coleman, Barrows, Adams and Long: A JOINT RESOLUTION authorizing and directing an increase in benefits to recipients of the Kentucky Employees Retirement System and the State Police Retirement System, and declaring an emergency.

HR 22, by Representative Gray: A RESOLUTION adjourning the House of Representatives in honor of Representative Larry Clark upon the occasion of his tenth anniversary as a House member.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Education: **HB 292**

Natural Resources and Environmental Protection: **HB 294**

State Government: **HB 295**

Tourism and Energy: **HB 296**

Transportation: **HB 293**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Agriculture and Small Business: **HB 218**

Appropriations and Revenue: **HB 31, HB 113, HB 157**

Cities: **HB 238, HB 220**

Education: **HB 46, HB 91, HB 97, HB 139, HB 169, HB 176, HB 203**

Elections and Constitutional Amendments: **HB 30, HB 55**

Report of Committees

The Committee on Committees reported the following Committee assignments:

Representative William Scott: Agriculture and Small Business, Counties and Special Districts and Economic Development; Representative Mary Lou Marzian: Economic Development, Elections and Constitutional Amendments and Health and Welfare; Representative Allen Maricle: Elections and Constitutional Amendments and Transportation; Representative Arnold Simpson: Business Organizations and Professions, Cities and Elections and Constitutional Amendments.

Recess

Representative Stumbo moved that the House recess for five minutes for a meeting of the Committee on Rules. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Report of Committees

The Committee on Rules reported the following Consent Bill has been posted for passage in the Regular Orders of the Day, January 25, 1994: **HB 74**

The Committee on Rules reported that **HJR 5, HJR 6** and **HJR 13** have been posted for passage in the Orders of the Day for January 25, 1994.

Floor Amendments

Floor Amendment No. 2 to **HB 52**, by Representative Donnermeyer:

On page 1, line 18, after "***may***" insert the following: "***, by majority vote, request that the Legislative Research Commission***"; and

On page 1, line 18, after "***direct***" delete "***the***" and insert in lieu thereof "***its***"; and

On page 1, line 18, delete "***of the***"; and

On page 1, line 19, delete "***Legislative Research Commission***"; and

On page 1, line 24, after "***(3)***" delete the remainder of the line; and

On page 1, delete line 25 in its entirety; and

On page 2, line 1, delete "***the committee's membership.***"; and

On page 2, line 1, after "***action***" delete "***regarding seeking***" and insert in lieu thereof "***requesting the Legislative Research Commission to seek***".

Orders of the Day

HB 81, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bentley moved the adoption of Committee Amendment No. 1 to **HB 81**. Agreed.

Representative Long moved that **HB 81**, as amended, be passed.

On the roll call the vote was: Yeas 89, Nays 3. (See January 24, 1994 roll call on **HB 81** - Appendix)

HB 81, as amended, was passed and the title agreed to.

Representative Long moved that the vote by which **HB 81**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 103 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved that **HB 103** be passed.

On the roll call the vote was: Yeas 91 , Nays 0. (See January 24 , 1994 roll call on **HB 103** - Appendix)

HB 103 was passed and the title agreed to.

Representative Long moved that the vote by which **HB 103** was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 2 to **HB 93**, by Representative Morris:

On page 1, line 4, delete "***a***" and insert in lieu thereof "***any state-owned or***"

On page 1, line 6, delete "***or***"

On page 1, line 7, delete the period and insert lieu thereof "***; or***"

On page 1, between lines 7 and 8, insert:

"***(c) Changed the number of employees occupying the space by ten percent (10%) or more.***"

On page 1, delete lines 10 and 11 in their entirety and insert in lieu thereof:

"***(b) 1. The percentage of space which the agency reconfigured or changed the use of; or***
2. The percentage change in the number of employees;"

On page 1, line 12, delete "***or***" and insert in lieu thereof "***,***" and
after "***use***" insert "***, or change in number of employees***"

Orders of the Day (Continued)

HB 140 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Farrow moved that **HB 140** be passed.

On the roll call the vote was: Yeas 92 , Nays 1. (See January 24 , 1994 roll call on **HB 140** - Appendix)

HB 140 was passed and the title agreed to.

Representative Farrow moved that the vote by which **HB 140** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 33 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Coleman moved that **HB 33** be passed.

On the roll call the vote was: Yeas 94 , Nays 0. (See January 24 , 1994 roll call on **HB 33** - Appendix)

HB 33 was passed and the title agreed to.

Representative Coleman moved that the vote by which **HB 33** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 49, with Committee Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Curd moved the adoption of Committee Amendment No. 1 to **HB 49**. Agreed.

Representative Curd moved the adoption of Committee Amendment No. 2 to **HB 49**. Agreed.

Representative Curd moved that **HB 49**, as amended, be passed.

On the roll call the vote was: Yeas 93, Nays 0. (See January 24, 1994 roll call on **HB 49** - Appendix)

HB 49, as amended, was passed.

Representative Curd moved the adoption of the Committee Title Amendment to **HB 49**. Agreed; and the title was agreed to.

Representative Curd moved that the vote by which **HB 49**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 51, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Curd moved the adoption of the Committee Substitute to **HB 51**. Agreed.

Representative Curd moved that **HB 51**, by way of Committee Substitute, be passed.

Representative Curd moved that **HB 51**, by way of Committee Substitute, be passed over. Agreed.

HB 65 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Moberly moved that **HB 65** be passed.

On the roll call the vote was: Yeas 90 , Nays 0. (See January 24 , 1994 roll call on **HB 65** - Appendix)

HB 65 was passed and the title agreed to.

Representative Stumbo moved that the vote by which **HB 65** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 67, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Moberly moved the adoption of Committee Amendment No. 1 to **HB 67**. Agreed.

Representative Moberly moved that **HB 67**, as amended, be passed.

On the roll call the vote was: Yeas 49, Nays 41. (See January 24, 1994 roll call on **HB 67** - Appendix)

HB 67, as amended, was passed and the title agreed to.

Representative Stumbo moved that the vote by which **HB 67**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 32 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative French moved that **HB 32** be passed.

On the roll call the vote was: Yeas 86 , Nays 0. (See January 24 , 1994 roll call on **HB 32** - Appendix)

HB 32 was passed and the title agreed to.

Representative French moved that the vote by which **HB 32** was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 2 to **HB 99**, by Representative Bentley:

On page 21, line 21, after the "(f)" by bracketing and striking through the word "water,".

Orders of the Day (Continued)

HB 14, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rapier moved the adoption of the Committee Substitute to **HB 14**. Agreed.

Representative Rapier moved that **HB 14**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 87, Nays 3. (See January 24, 1994 roll call on **HB 14** - Appendix)

HB 14, by way of Committee Substitute, was passed and the title agreed to.

Representative Rapier moved that the vote by which **HB 14**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 17 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Butler moved that **HB 17** be passed.

On the roll call the vote was: Yeas 88 , Nays 0. (See January 24 , 1994 roll call on **HB 17** - Appendix)

HB 17 was passed and the title agreed to.

Representative Butler moved that the vote by which **HB 17** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 19 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Callahan moved that **HB 19** be passed.

On the roll call the vote was: Yeas 93 , Nays 0. (See January 24 , 1994 roll call on **HB 19** - Appendix)

HB 19 was passed and the title agreed to.

Representative Callahan moved that the vote by which **HB 19** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 72 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative L. Clark moved that **HB 72** be passed.

On the roll call the vote was: Yeas 93 , Nays 0. (See January 24 , 1994 roll call on **HB 72** - Appendix)

HB 72 was passed and the title agreed to.

Representative L. Clark moved that the vote by which **HB 72** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 88, with Committee Amendment and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bowling moved the adoption of Committee Amendment No. 1 to **HB 88**. Agreed.

Representative Bowling moved the adoption of Floor Amendment No. 1 to **HB 88**. Agreed.

Representative Bowling moved that **HB 88**, as amended, be passed.

On the roll call the vote was: Yeas 77, Nays 9. (See January 24, 1994 roll call on **HB 88** - Appendix)

HB 88, as amended, was passed and the title agreed to.

Representative Bowling moved that the vote by which **HB 88**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 40, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Little moved the adoption of Floor Amendment No. 1 to **HB 40**. Agreed.

Representative Little moved that **HB 40**, as amended, be passed.

On the roll call the vote was: Yeas 83, Nays 4. (See January 24, 1993 roll call on **HB 40** - Appendix)

HB 40, as amended, was passed and the title agreed to.

Representative Little moved that the vote by which **HB 40**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 64, with Committee Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Donnermeyer moved the adoption of Committee Amendment No. 1 to **HB 64**. Agreed.

Representative Donnermeyer moved the adoption of Committee Amendment No. 2 to **HB 64**. Agreed

Representative Donnermeyer moved that **HB 64**, as amended, be passed.

On the roll call the vote was: Yeas 90, Nays 1. (See January 24, 1994 roll call on **HB 64** - Appendix)

HB 64, as amended, was passed and the title agreed to.

Representative Donnermeyer moved that the vote by which **HB 64**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 125**, by Representative Harper:

On page 1, line 17, after the number "***159.051***" by inserting a period "***.***" and deleting the remainder of line 17; and

On page 1, line 18, by deleting "***eligibility pursuant to KRS 159.051.***"; and

On page 1, after line 22, by inserting a new subsection (3) to read as follows:

"***(3) Insurance companies issuing motor vehicle policies in the Commonwealth shall be prohibited from raising a policy holder's rates solely because the policy holder has a dependent whose license has been revoked or denied for being academically deficient pursuant to KRS 159.051.***"

Orders of the Day (Continued)

HB 68 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Moberly moved that **HB 68** be passed.

On the roll call the vote was: Yeas 92 , Nays 0. (See January 24 , 1994 roll call on **HB 68** - Appendix)

HB 68 was passed and the title agreed to.

Representative Moberly moved that the vote by which **HB 68** was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that **HB 53** and **HB 152** be recommitted to Appropriations and Revenue. Agreed.

Representative Stumbo moved that **HB 50** be reassigned to the Committee on Rules. Agreed.

Representative Stumbo moved that the rules be suspended for the Introduction of Bills and Resolutions and Committee Reports. Agreed.

Introduction of Bills and Resolutions

HB 306, by Representatives French, Graham, Fox, Adams, Mullinix, Collins, Adkins, Worthington, Stacy, Bowling, Mason, Lyne, Gedling, Sanders, Damron, Lewis, Altman, Walton, Cave, Nesler, Callahan, Scott, Zimmerman, Maggard and Buis: AN ACT relating to corrections.

HB 307, by Representative Long: AN ACT relating to revenue and taxation.

HB 308, by Representative Long: AN ACT relating to financing for education.

HB 309, by Representative Long: AN ACT relating to property tax.

HB 310, by Representative Long: AN ACT relating to income and taxation.

HB 311, by Representative Bowling: AN ACT relating to child support enforcement.

HB 312, by Representative Riggs: AN ACT relating to crimes and punishments.

HB 313, by Representative Riggs: AN ACT relating to child dependency, neglect, and abuse.

HB 314, by Representative Riggs: AN ACT relating to consumer affairs.

HB 315, by Representative Donnermeyer: AN ACT relating to open meetings of public agencies.

HB 316, by Representative R. Smith: AN ACT relating to utilities.

HB 317, by Representative R. Smith: AN ACT relating to utilities.

HB 318, by Representative R. Smith: AN ACT relating to utilities.

HB 319, by Representative R. Smith: AN ACT relating to utilities.

HB 320, by Representative R. Smith: AN ACT relating to utilities.

HB 321, by Representative R. Smith: AN ACT relating to utilities.

HB 322, by Representative R. Smith: AN ACT relating to administrative regulations.

HB 323, by Representatives Johnson and Riggs: AN ACT relating to physician assistants.

HB 324, by Representative Hancock: AN ACT relating to pensions and declaring an emergency.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Business Organizations and Professions: **HB 150**

Banking and Insurance: **HB 273, HB 177, HB 61**

Health and Welfare: **HB 223, HB 127, HB 195, HB 289**

Motions, Petitions and Communications (Continued)

Representative Bentley moved the adoption of the following **Legislative Citation No. 23**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in loving memory of Mae Maggard. The House of Representatives joins Speaker Joe Clarke in expressing its deepest sympathy to The Maggard Family for the loss of your family member. Mae Maggard shall be remembered as a loving wife and mother and a respected member of her community.

Representative Brown moved the adoption of the following **Legislative Citation No. 22**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in loving memory of Edward C. Arnold. The House of Representatives joins Representative Drew Graham in expressing its deepest sympathy to The Arnold Family for the loss of your beloved family member. Edward C. Arnold shall be remembered as a valued friend and respected member of the community.

Representative Brown moved that a call of the roll be taken to show co-sponsors of **Legislative Citation No. 22**. Agreed.

Roll call to show co-sponsors of **Legislative Citation No. 22** is as follows:--Ackerson, Adams, Adkins, Altman, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bryant, Buis, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Cyrus, Damron, Deskins, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Heleringer, Jensen, Johnson, Kerr, Lee, LeMaster, Lewis, Lile, Lindsay, Little, Long, Lyne, Maggard, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Mullinix, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Richards, Ridley, Riggs, Sanders, Scorsone, Scott, Shacklette, Simpson, B.

Smith, R. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman.

Representative Coleman moved the adoption of the following **Legislative Citation No. 21**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in loving memory of Ezra T. Jones. The House of Representatives joins Representative Jack Coleman in expressing its deepest sympathy to The Jones Family for the loss of your affectionate husband, thoughtful father, caring brother and tender grandfather. Ezra T. Jones shall be remembered as a valued friend, dedicated public servant and respected member of the community.

Representative Coleman moved that a call of the roll be taken to show co-sponsors of **Legislative Citation No. 21**. Agreed.

Roll call to show co-sponsors of **Legislative Citation No. 21** is as follows:--Ackerson, Adams, Adkins, Altman, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bryant, Buis, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Coleman, Crenshaw, Cyrus, Damron, Deskins, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Jensen, Johnson, Lee, Lewis, Lile, Lindsay, Little, Long, Lyne, Maggard, Maricle, Marzian, Mason, McElroy, Moberly, Mullinix, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Ridley, Riggs, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, R. Smith, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates.

Representative Nesler moved the adoption of the following **Legislative Citation No. 15**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds your efforts and offers its sincerest congratulations to The 1993 Class AA Champions, Mayfield Fighting Cardinals, for your achievements during your athletic careers. Your contributions have been outstanding, and you have brought a great deal of recognition to Mayfield High School and your community. The House of Representatives joins with Representative Fred Nesler in honoring you on your victory and wishes you every success as you further your academic and athletic careers.

Representative French moved the rules be suspended for the purpose of recording a vote. Agreed.

Representative French moved that he be recorded as voting "yea" on **HB 19** and **HB 17**. Agreed.

Representative Altman moved the rules be suspended for the purpose of recording a vote. Agreed.

Representative Altman moved that he be recorded as voting "yea" on **HB 140**. Agreed.

Representative Barrows moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Barrows moved that he be recorded as voting "yea" on **HB 103**. Agreed.

Representative Burch moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Burch moved that he be recorded as voting "yea" on **HB 65**. Agreed.

Representative Stacy moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Stacy moved that he be recorded as a co-sponsor to **Legislative Citation No. 21**. Agreed.

Representative B. Smith moved that the three day posting requirement be waived on **HB 61** and **HB 177**. Agreed.

Representative Adams moved that **HB 240** be withdrawn. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills and Resolutions: **HB 32**, Representative Maggard and Worthington; **HB 49, HB 50, HB 51, HB 98, HB 153**, Representative L. Clark; **HB 111**, Representative Geveden; **HB 135**, Representative McElroy; **HB 187, HB 279**, Representative Graham; **HB 247**, Representative Sanders; **HCR 4**, Representative Lile.

Representative Trapp moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Trapp moved that he be recorded as voting "yea" on **HB 33**. Agreed.

Recess

Representative Stumbo moved that the House recess until 7:00 p.m.. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Representative Stumbo moved that the rules be suspended to grant floor privileges to the Constitutional Officers and invited guests. Agreed.

Representative Stumbo moved that the House and Senate resolve into Joint Session. Agreed.

Joint Session

The Chief Doorkeeper announced the arrival of the President of the Senate.

The President of the Senate assumed the Chair and called the Joint Session to order.

Prayer by Reverend Jay Ayers, South Frankfort Presbyterian Church, Frankfort.

Representative Stumbo moved to dispense with a call of the roll. Agreed.

The Chief Doorkeeper announced the arrival of the Governor of the Commonwealth of Kentucky.

The Committee of the House, appointed to join with a like Committee of the Senate to wait upon the Governor and escort him to the House chamber to address the Joint Session, appeared with the Governor.

Governor Brereton C. Jones addressed the Joint Session of the General Assembly as follows:

GOVERNOR BRERETON C. JONES

STATE OF THE COMMONWEALTH

AND BUDGET ADDRESS COMBINED

January 24, 1994

Introduction

Lieutenant Governor Patton, President of the Senate Rose, Speaker Clarke, distinguished members of the General Assembly, Mr. Chief Justice Stephens, members of the Supreme Court, honored guests, ladies and gentlemen: Sunday night a week ago, a record snowfall blanketed our state. From Boyd County to Ballard County, the Commonwealth was covered with cold and sleet and snow. Like many of you, we have spent most of our waking hours in the last week making sure that our families and our neighbors were warm and safe. As I reflected on that snow and the incredible difficulties it brought to many families, I was struck once again with a sense of community -- a sense of how connected we all really are -- how much we need each other. That snowstorm reminded me again that all of us are one community, bound together, with common needs.

As thousands of Kentuckians from National Guardsmen to state troopers, from transportation employees to volunteers in trucks and jeeps worked tirelessly to unblock our highways and see that food, fuel, and provisions were able to reach our neighbors, it became clear to me that our job here tonight in this great chamber is very similar. Our job is to move Kentucky ahead, to keep Kentucky moving, to open up, if you will, highways of learning and economic opportunity that have too long remained frozen and blocked for too many of our citizens.

We must be one united community. However, this community of Kentuckians can only be built on a foundation made of equal parts of opportunity and responsibility. The politics of the past will not work anymore!

Rhetoric and good intentions alone will not solve our problems or create the future that our people deserve. We must band together as a team. We must use our united strengths to overcome our individual weaknesses. You and I must stand united for all of Kentucky!

The need to work together has never been greater than it is now that the mistakes of a few individuals have cast a shadow over all of us in public life. In years to come, however, the mistakes of a few will be but a footnote to the four years we will have spent working together. Our efforts will be remembered as years of progress and reform in lean and trying times!

Look at what we have already accomplished together:

We have reduced the maximum campaign contribution from $4,000 to $500 and dramatically reduced the amount of money that will be spent in future elections. We have saved millions of dollars and greatly reduced public stress by eliminating one year of elections out of every four and have given the people the opportunity to have eight years of continuity in the executive branch if a governor is doing a good job.

We have changed the way state contracts are awarded to architects and engineers. We award bond transactions and contracts based on merit--not politics. Through legislation we have changed the focus from politics to qualifications.

We have changed the way trustees are chosen for our universities and have made it nearly impossible to get a bad board.

We have changed our approach to economic development and have created over twice as many new jobs in the last two years as were created in the preceding two years. We have appointed more African -- Americans and women to boards, commissions, judgeships, and cabinet posts than any administration in history.

We have changed the operations of the state racing commissions by combining them into one commission and saving the taxpayers over $400,000. The record shows that we have had eight consecutive years of pari-mutuel increases for thoroughbreds and have increased live racing dates for standardbreds by 62% and their purses by 80%. Absolutely no other state in America has done as much for the standardbred industry.

We have changed the way lobbyists, legislators, and members of the Executive Branch of government interact with each other and the general public because of strong ethics legislation that you passed.

In tight budget times, you and I have kept education reform alive by funding our reform efforts.

We have received a waiver from the federal government that will allow us to obtain health care coverage for an additional 201,000 Kentuckians without any increase in taxes.

We have built more roads and laid more blacktop in the first two years of this administration than the first two years of any administration in history. And we did it with fewer employees in Transportation than they have had in the last two decades.

We established a Quality and Efficiency Commission that has identified innumerable ways to save the taxpayers dollars. This is in addition to the more than 1,400 permanent, full-time jobs we have eliminated through attrition.

Today we have a state government that is leaner, smarter, more efficient, more progressive, and less political than anytime in modern history.

You and I and a host of talented, dedicated people, working together, have made this possible. We have accomplished much these last two years, and we can do even more in the next two!

So where do we go from here? Let me suggest a road map and outline our proposed budget for the coming biennium.

Health Care

Let me begin by saying that there is no greater impediment to our ability to manage our budget than our lack of control of health care costs. If we do not control runaway health care costs, we will not have the necessary money for other needs. This fact still exists and very few would dispute it.

I am confident that we will pass meaningful health care reform in this session of the legislature .

Some say that it would be unfair for a qualified board to have the power to keep our citizens from being charged unreasonable health insurance premiums. I totally disagree! If our health care reform bill does not protect all Kentuckians from unreasonable charges, then we will have failed. I ask you to stand with me on this point!

A centerpiece to the health care financing issue and to the state budget is, of course, the retention of the provider tax. We must collect this amount of money, have it more than tripled in Washington, and give it to providers to pay for the health care of thousands of Kentuckians.

Medicaid Waiver Expansions

We announced last month that the federal government granted Kentucky's request to expand Medicaid coverage to all Kentuckians below the poverty line effective July 1, 1994. More than 201,000 Kentuckians will stand to benefit from this initiative. This program will allow the working poor to have access to health care services in a cost-efficient manner that saves lives and money. Actions have been taken and will continue over the upcoming biennium that will crack down on fraud and abuse and change the way the program is managed. Aggressive managed care and preventive services also will be made part of the Medicaid program to contain costs and assure quality services.

Education

Along with health care, one of our top priorities in this budget continues to be our commitment to education reform and the children of Kentucky. We must be leaders rather than followers, winners rather than losers, in our educational reform efforts.

The proposed recommendation in this budget, when coupled with the General Fund appropriation approved in the 1992 Session, will result in an increase of total General Fund appropriations to the Department of Education during our administration of nearly $300 million.

General Fund support for the SEEK and Tier I program has increased by $150 million during this administration. Perhaps most important, both the 1992 budget and the proposed budget recommend full funding of the Tier I component of SEEK. General Funds appropriated for Tier I have increased from $25 million in fiscal year 1992 to $78.2 million in fiscal year 1994, a three-fold increase. If the proposed budget is adopted, Tier I appropriations will increase another 18 percent during the 1994-96 biennium .

There is no way to build a good school without paying special attention -- and that means money -- to the most important part of our educational system -- the teachers. Teaching today is a very high stress occupation. Teachers in many instances must teach children who are ill prepared to learn who come from broken homes with difficult economic circumstances. Teachers today are not allowed to exert proper discipline in the class, are not given sufficient support, and encouragement to excel. We must do better! The proposed Budget includes a substantial increase in state support for professional development and training from the current $10 million to $14.5 million by the end of the 1994-96 biennium. Additionally, I ask every school board across this state to make teacher pay raises a top priority in every local district!

Recognizing the importance of meaningful training for both practicing and prospective teachers, we appointed a Task Force on Teacher Preparation that issued its report last month. Among its recommendations are the development -- by the Educational Professional Standards Board -- of results expected of teachers, administrators, and other certified school personnel. These results are modeled after the already approved "new teacher outcomes." These outcomes will establish various levels of proficiency for new and experienced teachers alike.

To this end, our budget includes funding for transformation of the current certification system to an outcomes based model and the development of expectations and standards that are realistic, equitable, and in the end hold our teachers accountable.

One of the most important programs is the Family Resource and Youth Service Centers. This program was born from the real life notion that in order for our children to have an opportunity to learn, they cannot be inhibited by social, health, and other problems they bring to school with them. The proposed budget includes a $ 10 million increase in General Fund support in fiscal year 1995 and a $20 million increase in fiscal year 1996 to complete this program. This will provide for a total of 673 centers by the end of the new biennium compared to the current number of 373. If the proposed funding is approved, all currently eligible schools, approximately 1,100 statewide, will be served by a Center.

No discussion regarding educational reform is complete without the state's commitment to the funding of public libraries. In the 1992 Session, we were able to provide our libraries with the 53 cents per capita funding formula for the first time since that standard was adopted in 1986. Because libraries are essential for independent, individual learning over a lifetime, I am proposing that the state aid base grant to public libraries be doubled in this budget. It has been over 40 years since this base grant formula has received budgetary attention. Ignorance is slavery and knowledge is freedom. Our public libraries are essential to our democratic way of life. We must ensure that they flourish.

Higher Education

To compete in the 21st century, our universities, as well as all of state government, likewise must be held accountable. Today, we are too often satisfied with too much duplication and too much mediocrity. There is too much hand wringing and too little forceful leadership; too much blaming, finger pointing, and too little positive action. Part of the problem, of course, is that we have eight public universities and fourteen community colleges in a state with fewer than four million people. There is no central governing body, no one body or person to be held accountable to see that efficient and effective uses of our higher education resources exist.

That is why I created a Commission earlier this year with each college president being a member to devise a plan to put our $700 million annual investment in higher education to better use.

I had hoped the presidents as members of that Committee, with university board chairmen and administration and legislative representatives, would make significant progress toward eliminating duplication in our higher education system and creating a system that emphasizes excellence. They jointly eliminated over 200 programs, but I believe they can do more! The Commission made major progress in devising a plan for financially rewarding universities in the future for measurable results and progress toward agreed upon goals in the area of instruction, public service, and research. While this concept of funding based on results and progress towards goals of excellence will take years to fully implement, it will eliminate inefficiency and wastefulness and provide proper incentives for excellence.

For the new biennium, the higher education budget will provide a two percent net operating increase in the first year and a three percent increase in fiscal year 1996, with all of the second year funding to be earned solely through the new performance based process. If additional money is needed, further reductions of duplication can be achieved by the university presidents.

Few areas in higher education are as critical as engineering. In recognition of this, the proposed budget fully funds the Council on Higher Education's budget request for the engineering education enhancement program.

Engineering education also will be enhanced in the Paducah area. One million dollars ($1,000,000) over the biennium is being added to the University of Kentucky budget for course offerings or other programming in the field of engineering at Paducah Community College. The University of Kentucky will be required to identify $1,000,000 to be spread equally between the two fiscal years, from its internal sources, to match these additional state funds and enhance engineering offerings. Moreover, should local governments in the Paducah area or private fundraising be able to raise up to $2,000,000 per year beyond these amounts for engineering enhancement, I am recommending that these local funds also be matched with up to $2,000,000 each year from the General Fund surplus account, on a contingent basis. This will provide a potential of up to $10,000,000 for the new biennium in new, targeted funding available for the Paducah and Purchase areas for engineering enhancement.

At the University of Kentucky in Lexington, the budget will provide for construction of a new Mechanical Engineering Facility to meet a critical need. Already some $2 million in private funds have been raised, with $4 million as a goal.

Although not currently listed in the proposed budget, we must help the University of Louisville build the badly needed Health Research Facility. In addition to the authorization to spend up to $9 million in private or university funds, if the University of Louisville will commit to raise an additional $5 million in private or university funds, I will propose that the capital budget be amended to allow the expenditure of an additional $ 14 million in state funds .

Additionally, I propose amending the budget to authorize Northern Kentucky University in this biennium to spend as much as $2 million in private or university funds to begin the design of the Sciences Classroom Building, a teaching facility at Northern.

The Community College system will receive a three percent increase in funding each year of the biennium.

Too often in recent years, our higher education administrators have postponed tough management decisions by increasing tuition charges to our students. That is wrong. Our proposed budget will prohibit any further tuition increases in the next biennium at our universities.

Workforce Development

According to the 1990 U.S. Census, the Commonwealth of Kentucky ranks 49th in the number of adults who have completed high school. Among Kentucky's adult population, 36 percent do not possess a high school diploma and, of those, 18 percent did not complete the eighth grade. This intolerable level of illiteracy and lack of preparation for the workforce must stop. Seventy-five percent of our labor force for the year 2010 is already on the job. If our businesses are to achieve and maintain success in a global economy, a workforce of skilled, well educated adults must be created .

Thus, our budget recommendation includes a commitment to the State of Kentucky Investment in Lifelong Learning (called our SKILL) Initiative and increases the total Workforce Development budget by 21 %.

State Workers

Our budget also recognizes and rewards one of our greatest resources -- our state workers .

Most state workers are honest, hardworking people who work for considerably less than their counterparts in the private sector. Instead of constantly bashing these people, we need to join with them as partners, encourage them to economize the expenditures of state money, and challenge them to accomplish even more for all Kentuckians. The Coalition of State Employees represented by Jack Sharp, Sarah Hurst and Marvin Terry did a fabulous job with the Governor's Quality and Efficiency Commission and greatly impressed the other members from the private sector.

Because of the great strides we have made towards a leaner, more efficient government, I am very proud that I can announce that our budget gives state employees a 5% raise in each year of the biennium. I want to mention two categories of dedicated state employees to whom we have given special adjustments in pay. We are raising the entry level salary of correction officers at our prisons and patient aids at state mental retardation facilities by an additional 15%. We have been grossly unfair to these people for far too long.

Human Resources

For Kentucky to compete in the next century, we must demand accountability and a timely and meaningful transition from welfare to the workplace. To provide the health and human services we need, we must reinvent welfare and the government that delivers the programs. We must cut the budgets for central administration and related services within the Cabinet for Human Resources.

Many of you in this chamber and countless Kentuckians across this state have shared my concern that too much money is wasted in programs and in a bureaucracy too often administered by technocrats that is too large, too unaccountable, and too wasteful. We have already made significant changes in this area and we are prepared to make many more.

CHR's original mission was to provide for the health and human service needs of all Kentuckians. Over the past decade, the CHR workforce, however, has grown by 22 percent. This is because when policymakers asked them to assume new responsibilities, they did not require the agency to evaluate the need to continue to provide existing services. As a consequence, CHR simply added more personnel, rather than retraining and redeploying workers. Over the past twenty years, CHR has evolved into a large, multi-layered bureaucracy that frustrates not only the citizens it was created to serve, but the dedicated public servants that struggle to work within it.

Our budget recommends a complete redesign of the entire CHR organizational structure to create a leaner, more productive agency that delivers higher value to Kentucky taxpayers. This will be accomplished through attrition.

Our budget recommends more than $600,000 in each year of the 1994-96 biennium for community services for the mentally ill. These funds will provide a full range of support services including medicines which prevent rehospitalization. New dollars have also been included to provide individual and group therapy for mentally ill and mentally retarded nursing home residents and to expand community-based services to emotionally disturbed children through the Kentucky Impact Program.

Three million dollars ($3,000,000) over the new biennium is recommended for the Supported Living Program, which provides a full array of services to help integrate persons with disabilities into the community.

More than $6 million in the upcoming biennium will be used to keep mentally ill persons undergoing incompetency hearings out of our jails.

Welfare Reform

Many Kentuckians agree that the current system of public assistance -- welfare -- has failed both the people it was intended to serve and the taxpayers who support it. Although Aid to Families with Dependent Children provides for the basic subsistence needs of its beneficiaries and attempts to move recipients into the workforce through the JOBS program, too few parents are successful in making the transition to work. This is unacceptable. Job training is not coordinated and comprehensive; transitional support services are limited; child support payments are sporadic or non-existent; goals are loosely defined and poorly communicated; and sanctions for recipients who refuse to participate in the JOBS program are weak and ineffective.

I strongly believe that it is government's responsibility to help those citizens who are unable to help themselves. However, it is not government's responsibility to help those who are unwilling to help themselves.

If we are to be serious about welfare reform we must develop a program that provides adequate AFDC benefits, childcare, transportation, housing, health care, and education. In return, we must require participation and employment.

I believe that with the proper federal waiver we can create such a program with the welfare legislation we now have. I want to work with Representative Tom Burch, Senator Benny Ray Bailey, and all others who are genuinely interested in this subject. At the present time, we are not being fair to the welfare recipient and we are also not being fair to the Kentucky taxpayer.

Parks

Two years ago I proposed that we revitalize the Kentucky state park system and once again make it the nation's finest. I recommended, and you approved, the issuance of $100 million in state revenue bonds to maintain, renovate, and upgrade our parks system. You endorsed that package of timely improvements, and admonished those of us who were to compile the list of individual projects for your final consideration, to stress basic infrastructure over new construction; roofs and renovations over frills and extras; the existing parks system over additions to that system. I am proud to say that Tourism Secretary Luallen has met your charge with a list of some 71 projects, made public some six weeks ago.

You have seen "the list." It is lengthy and well-considered. It will not have on it all of the park projects you and I might want. I hoped to go farther and to establish some new lodges, but the funds and the priorities simply would not permit this. Thus, with the $100 million investment, we will focus on the basics. However, I will ask the Privatization Commission to explore the feasibility of privatization options for needs not contained on the "list."

This investment to reclaim our parks will be a great economic boost to our entire commonwealth as our bid specifications will require the use of Kentucky products and materials and the payment of the prevailing wage.

Coal Severance

Our coal producing region must increase its efforts to diversify its economic base. We cannot wait until the coal runs out -- the foundation for a diversified economy must be completed now. That's why, as a candidate for Governor, I advocated the return of more coal severance tax dollars to eastern Kentucky as well as to the coal counties in western Kentucky. We increased this amount by 6% in our first budget and increase it by an additional 7% in this budget.

Roads

There is another promise that must be kept that does much for the economies of rural and urban areas throughout the state. The Economic Development Road Bond program you first authorized in the 1990 Session for $600 million of new bond authority, on eight major road systems statewide, must be continued. This budget proposes that the next phase of road construction move forward on schedule with $150 million of bonds to be sold in fiscal year 1995. I realize this is a significant investment. We must understand, however, that there remain many unmet road and bridge needs.

Another program of statewide importance, with strong economic development and environmental implications, is the Kentucky Infrastructure Authority wastewater treatment program. Our budget will include $ 15 million in new state funding that will attract $75 million in federal funds for statewide wastewater treatment plant improvements.

Agriculture

In the last few months, I have engaged in a vigorous debate and candidly taken some heat from several quarters because of plain talk about the future of Kentucky's farmers. We must fight to maintain the viability of the family farm. It is a way of life and living for thousands of Kentuckians and unless we openly and honestly debate its future and find new solutions, it will only continue to decline and diminish. In addition to the debate I called for at the federal level regarding the plowback of a portion of the tobacco tax to help Kentucky farmers, this budget calls for an array of new programs that will help make Kentucky farmers a more viable economic force.

We will authorize the University of Kentucky to develop the Pin Oak Farm property you purchased as a replacement for Coldstream Farm. Progress has been slow to date, and while Coldstream has seen some significant economic activity, there has been no corresponding activity at the old Pin Oak Farm. This budget authorizes and encourages the University of Kentucky to move forward with the Agricultural Economic Development Initiative and the first phase of the development of the Animal Science Research Center to be located at the former Pin Oak #1 Farm. Although the University requested state General Fund support for these projects, the budget provides authority from University funds. It is intended that these funds be generated from the revenues realized by the University from the development of the Coldstream Research Park. It is important to recall that Coldstream Farm was provided to the University specifically for use in the development of the agriculture program. Therefore, it is only appropriate that the University use this impressive resource to replace the agriculture facilities that are being converted to other uses and to further the interests of agriculture. To allow time for a planned transition, it is not intended that the University use the revenues generated by the Coldstream Research Park solely for agricultural purposes.

The budget also includes authorization to create a major farmers market development to be located in Northern Kentucky, in partnership with the federal government, which will provide substantial matching funds. The total development could approach $8 million, including $3 million in state bond support.

Economic Development

In the 1992 Session, House Bill 89 created the Economic Development Partnership Board which for the first time required the creation of a comprehensive strategic plan for economic development for the entire state. This plan will be finished next month. It will only be as good as its execution and implementation. It will be up to all of us, together with Economic Development Secretary Strong, to demand and require accountability in this process as we begin the difficult task of implementing this plan. One of the primary catalysts in this plan will be the funding we propose to create flexible manufacturing and agriculture networks that will encourage Kentucky businesses to share information, technology, marketing strategies, and promote a cooperative environment as we restructure certain of our economic development programs.

We have continued the proven economic development bond program and the significant tax credit programs you authorized in the 1992 General Assembly. In the first two years of this administration we have announced nearly 30,000 new jobs, jobs like the Fidelity Investment in Northern Kentucky and Dana Corporation in Elizabethtown. These programs work. Instead of cash giveaway programs, these programs require a company to earn its way by creating the jobs first.

To create the strong economy we need, we must deal with the workers compensation problem. I support the concept of the compromise reached by labor, business, Secretary Palmore and others. This legislation is currently being drafted and I invite your comments.

Our present patchwork tax code is a deterrent to job creation in this Commonwealth. While we have more than enough on our plate for this session, I ask that you give serious thought to addressing comprehensive tax reform study as soon as this session is completed. With the proper commitment, we could be ready to deal with tax reform immediately after the November elections.

Environmental Protection

Complementing these economic development efforts, our Natural Resources and Environmental Protection Cabinet will continue its efforts to enforce environmental regulations, including full implementation of the Clean Air Act amendments.

Natural Resources forestry experts plan to begin a reorientation of the Division of Forestry so that the wood products industry, and modern forestry management practices supporting sustained growth, can be melded with sound environmental stewardship .

Modeled on the President's National Service Corps, Natural Resources Secretary Phillip Shepherd has requested, and I support in the proposed budget, the creation of a new Kentucky Environmental Service Corps for citizens of all ages beginning in fiscal year 1996. This Service Corps will enlist the time, talent, and energy of Kentuckians who want to be of service in the cause of environmental protection. Initially, 40 positions will be created and the Corps will respond to projects proposed by local governments, businesses, and environmental groups.

We will also expand the Nature Preserves Commission staff to oversee the Commonwealth's resources and unique assets for which they are stewards, and we provide funding to acquire unique areas, such as old growth forests.

Revenue Collection

We intend to support the Revenue Cabinet and Secretary Burse in her efforts to collect the taxes already on the books. In the interests of fairness, equity, and accountability, we must collect what is already due to the State Treasury under the current tax laws. Truthfully, we are not doing the best job of that now. Consequently, I am recommending approval of the budget request from the Revenue Cabinet to increase the collections staff, the audit staff, the field audit program, criminal enforcement activity, and administration of the delinquent tax fund. We will also provide funds for a new infusion of technology that will lead to long-term modernization of our revenue collection activity.

The effort will require an additional 118 workers above the levels you approved in the 1992 Session. Nonetheless, conservative estimates provided by the Revenue Cabinet are that we can reliably expect to collect over $33 million of new General Fund revenue over the biennium from existing tax levies simply with proper collection efforts

Bond Projects

During the 1992 legislative session, I proposed to you a limited capital project agenda to be financed with state revenue bonds. You authorized that proposal in the amount of $439 million in new bonded indebtedness to support the Parks bonds, and a previous installment of the Road bonds, as well as basic infrastructure and a few new projects .

While our economy has improved and our financial position also has improved, now is not a time for extensive borrowing. Therefore, I will again present a limited and carefully selected capital projects agenda. The new projects recommended total $474 million for the biennium, and this is the third lowest total new debt amount approved in any budget in the past 14 years. This level of new debt when coupled with the lowest interest rates in 30 years make this debt package a prudent and sound investment in Kentucky's future.

None of us should embark upon new debt lightly. Neither should we shrink from the responsibility we have to provide public facilities that meet standards of health, safety, and public access. We have sobering responsibilities with respect to criminal justice that must be met and we have a long-term commitment to the development of Kentucky's economy through jobs creation projects and education enhancements.

Among the projects we will be proposing are the following the Commonwealth Library at the University of Kentucky, the Muhlenberg County Prison, Phase ll, the Northern Kentucky Convention Center in Covington, the Commonwealth Convention Center in Louisville, the Kentucky History Center in Frankfort, Hazard Community College Student Performing Arts/Convention Center, Hopkinsville Regional Tech Training Center, Danville Kentucky Tech Facility, Morehead State University - Lappin Hall, Phase ll for a new science facility, Ashland Community College Classroom Building, Phase I of a New Office Building for state government in Frankfort, a $7 million share of the new University of Louisville Football Stadium.

Budget Summary

Let me conclude this budget outline with two observations about the budget process.

Budget Reserve

First, when we took office we inherited a budget that was dramatically out of balance, with a rainy-day account of approximately $23 million.

That problem was only compounded by the impossible task any new governor faces under the current constitutional requirement of an early January legislative session, only 3-4 weeks after inauguration.

Today I propose a truly balanced budget with $130 million in the rainy-day account, the largest budget reserve in history! This has been accomplished without any increase in taxes.

Revenue Forecast

Second, no budget can be built without a responsible revenue forecast. We have endured budget cuts 12 times in the last 14 years in this state. There's no way we can work under these conditions. We have this year for the first time joined forces -- Legislative and Executive Branch together -- to develop a consensus revenue forecast. It is my belief that this new partnership together with a responsible level of spending will allow us to end the cycle of budget cuts our state too often endures. Because of the court's findings in the ARMCO Steel and the Peabody Coal cases, we are proposing technical, corrective legislation to the tax code. It is our judgment that the rationale and interpretation of the courts in these two lawsuits does not comport with original legislative intent and, thus, this $69 million mistake must be corrected and I intend to take the lead on this issue.

As I said, we are proposing a Budget Reserve Trust Fund of $130 million, over five times the size of the rainy day fund we inherited when we took office. This rainy day fund is the biggest in the state's history and is approximately 2 1/2 percent of the annual General Fund.

Now, there are three additional initiatives that are critical to accomplish during the next two years: crime prevention, improvement of the personnel system, and improved utilization of communications technology.

Crime Prevention

All of our efforts to create jobs and economic opportunity for the people of Kentucky mean nothing if our families cannot live in homes and neighborhoods that are free from violence and the fear of violence. A few days ago, I announced my support for significant crime fighting measures that will be introduced in this legislative session. These measures limit the access of juveniles to unsupervised weapons, including depriving juveniles of their ability to obtain assault rifles. Crime control measures need not involve increased costs. Some, in fact, can decrease our costs. Currently, we are unnecessarily incarcerating people better dealt with in other settings, such as community settings. This practice must cease. Some measures do cost money and I am prepared to recommend additional funding. The budget includes over $6 million in construction funds to support the development of a secure juvenile detention facility in Eastern Kentucky and Northern Kentucky, and to design a similar facility for Western Kentucky should that need develop.

We will authorize the Kentucky State Police to attain a trooper strength of 1,000, equaling its highest authorized level ever, an addition of 30 sworn officers.

We will also strongly support Attorney General Chris Gorman's Task Force on Child Sexual Abuse. A full-time Victims Advocate will be authorized for each of the 56 Commonwealth Attorneys offices to assist people who are victims of crime.

Both the State Police Crime Lab and the Cabinet for Human Resources will also receive additional funding in support of the Child Sexual offense initiative.

The budget also contemplates strong support for an often neglected aspect of the criminal justice system. Ever since the Office of Public Advocacy was established in 1972, it has survived from "hand to mouth." In my judgment, this was attributable not only to their often unpopular job of defending poor people charged with crimes, but also from a lack of imagination with respect to seeking financial support.

Under the leadership of Public Protection Secretary Holmes, the Task Force on the Delivery and Funding of Public Defender Services recently concluded its work with a recommendation that the public advocate receive significant additional funding from non – traditional sources. These include an increase in the DUI service fee of $50 and a $40 user fee for those criminal defendants who have the money to help pay for the legal services they receive. These two non – General Fund fees will enable the public advocate substantially to expand services and properly discharge their responsibilities.

Personnel System Improvements

All of these programs are no better than the ability of our state employees to work in a state government that is accountable to the customer, the taxpayers of Kentucky. Recognizing this need, we established earlier last year the Governor's Commission on Quality and Efficiency to review state government operations and chart a new course for Kentucky. The fifty-five members of that Commission, drawn from merit employees and private sector citizens alike, delivered to me approximately six weeks ago the first report of this Commission, a Wake Up Call for Kentucky. The conclusion of the work of that Commission is that Kentucky has all of the resources we need to transform government services and meet peoples' needs. The only question is whether we have the political will to make the tough decisions necessary to prepare for the 21st century. If we do, Kentucky can be a leader in the nation. If we fail in this task, our ability to compete in the next century will be sorely diminished.

The one refrain that this Commission heard over and over again was the crying need to empower our state employees to do their jobs. Our state employees are demanding a career service system that secures their employment free from political whim; provides competitive wages, benefits, and incentives; creates meaningful training and development opportunities; gives them freedom to make decisions and flexibility to manage; and defines measures that recognize success and correct failures. State government is the largest employer in Kentucky. If we are to retain our best and brightest people, we absolutely must follow the model of American business and change our personnel management system to support productive employees. To that end, we have created the Career Service System Task Force that will propose during this General Assembly the creation of pilot programs across this government to begin the process of transforming our personnel system. We can no longer run a government with five different personnel systems and over 1,600 job classifications. That stifles efficiency and creativity.

Technology

No discussion of our vision for Kentucky in the next century would be complete without addressing the issue of technology, what Vice President Gore calls the information superhighway that is coming closer to reality every day. The applications of technology in today's world are only limited by our imagination. Our children will receive much of their education, health care, and the delivery of innumerable essential services on electronic networks of which we can barely conceive. Our proposed budget continues the implementation of this network. Some months ago, I instructed the Finance Cabinet to develop a plan to build and construct an information network to handle all of state government's information needs into the next century and to be accessible to private sector users across the state as well. I have directed that this process be competitively bid and involve as much private sector capital investment as possible. That process is on track and Kentucky will be one of the first states in the nation to begin this exciting and vital effort.

Conclusion

The hour is late and I thank you for your patience. I hope in some measure I have been able to share with you our dream, our vision for Kentucky -- a community where each and every Kentuckian has a chance to be educated, to work, to own a home, to raise a family, and to be secure and safe in their old age. It is a community built on a commitment to opportunity for every Kentuckian and the responsibility of every Kentuckian to carry their own weight. The problems are numerous, but the solutions are available. President Kennedy once said, "Our task is not to fix the blame for the past, but to fix the course for the future." You and I must fix the course. We asked for the job. .so let's get on with it!

Representative Stumbo moved that the Joint Session of the House and Senate be dissolved. Agreed.

The Speaker resumed the Chair.

Announcements

The Clerk announced the following meetings:

Appropriations and Revenue, 10:00 a.m., January 25, 1994

Budget Review Subcommittee on Transportation, 8:30 a.m., January 25, 1994, Room 113

Agriculture and Small Business, 9:00 a.m., January 25, 1994, Room 125

Business Organizations and Professions, 12:30, January 25, 1994

Health and Welfare, 8:00 a.m. and upon adjournment, January 25, 1994

Banking and Insurance, 10:00 a.m., January 25, 1994, Room 125

Appropriations and Revenue Subcommittee on Justice, Corrections, Judiciary, 10:00 a.m., January 26, 1994, Room 125

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Tuesday, January 25, 1994.

On the roll call the vote was **Yeas 80**--Ackerson, Adams, Altman, Ballard, Barrows, Bentley, Bondurant, Brown, Bruce, Bryant, Buis, Butler, Callahan, Cave, L. Clark, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Johnson, Kerr, Lear, Lee, Lewis, Lindsay, Little, Long, Lyne, Maggard, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Nunn, Palumbo, Rapier, Rasche, Richards, Ridley, Riggs, Riner, Scorsone, Scott, Shacklette, Simpson, R. Smith, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Zimmerman. **Nays 3**--Heleringer, LeMaster, Lile.

The motion to adjourn was adopted.

TUESDAY, JANUARY 25, 1994

THIRTEENTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend Chris Kurtz, Family Minister, First Baptist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of January 24, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 12, SB 39, SB 44, SB 46, SB 47, SB 52.** (Time: 2:05 p.m.)

Representative Nunn moved that the rules be suspended to allow floor privileges to special guests and to act upon a Legislative Citation. Agreed.

Representative Nunn moved the adoption of the following **Legislative Citation No. 19**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds your efforts and offers its sincerest congratulations to The Barren County Varsity Cheer leading Squad for winning the National Cheerleaders Association Nations Championship held in Dallas, Texas December 27th through the 29th 1993 at the Dallas Convention Center. You have brought a great deal of recognition to Barren County High School and your community. The House of Representatives joins with Representative Stephen Nunn in honoring you on your many achievements and wishes you every success as you further your academic and athletic careers.

Introduction of Bills and Resolutions

HB 325, by Representative Kerr: AN ACT relating to administrative regulations.

HB 326, by Representative Kerr: AN ACT relating to divorce.

HB 327, by Representative Moberly: AN ACT relating to school-based decision making.

HB 328, by Representative Moberly: AN ACT relating to class size.

HB 329, by Representative Moberly: AN ACT relating to professional development and declaring an emergency.

HB 330, by Representatives Farrow and Hancock: AN ACT relating to community river and stream protection and awareness and making an appropriation therefor.

HB 331, by Representatives Farrow and Hancock: AN ACT relating to river resource and watershed resource management and making an appropriation therefor.

HB 332, by Representative McElroy: AN ACT relating to retirement.

HB 333, by Representatives Nesler and Curd: AN ACT relating to school personnel.

HB 334, by Representative Johnson: AN ACT relating to administrative hearings.

HB 335, by Representatives Ridley and Zimmerman: AN ACT relating to insurance.

HJR 23, by Representatives Rasche and Geveden: A JOINT RESOLUTION directing the naming of the "D.H. Anderson Technical Building."

Representative Stumbo moved that the rules be suspended for the introduction of guests and to communicate with the House. Agreed.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Appropriations and Revenue: **HB 297, HB 298, HB 300, HB 301, HB 302, HB 307, HB 309, HB 310**

Business Organizations and Professions: **HB 314**

Counties and Special Districts: **HB 306**

Economic Development: **HB 322**

Education: **SB 50, SB 62, HB 303, HB 304, HB 308**

Health and Welfare: **HB 311, HB 313, HB 323**

Judiciary: **HB 305, HB 312**

State Government: **HB 299, HB 315, HB 324, HJR 21**

Tourism Development and Energy: **HB 316, HB 317, HB 318, HB 319, HB 320, HB 321**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Judiciary: **HB 36, HB 183, HB 276, HB 23, HB 161, HB 173**

Floor Amendments

Floor Amendment No. 1 to **HB 153**, by Representative Gray:

On page 1, by deleting all of the language of lines 1 through 23, and by substituting therefor the following:
"SECTION 1. A NEW SECTION OF KRS CHAPTER 173 IS CREATED TO READ AS FOLLOWS:

In a county where the county and a city of the first class have in effect a compact under KRS 79.310 to 79.330 and have created a joint city/county library department, the county clerk, when he receives fees pursuant to KRS 64.012, or an application for vehicle registration pursuant to KRS 186.030, shall present the person paying the fee or making the application an opportunity to make a voluntary contribution for the support of the free public library. The clerk shall present the fee payer or applicant with a form by which a donation can be made. If the fee payer or applicant chooses to donate to the library, he or she shall include the donation in the fee. The clerk shall pay the donations to the library department in the same fashion as taxes are paid pursuant to KRS 134.815, and shall be entitled to the same commission as that payable on county taxes pursuant to KRS 134.805. The clerk shall prepare the donation form in consultation with the library department. The form shall state clearly in all capital letters that donations are voluntary. The clerk shall provide a duplicate as a receipt to the donor, and shall make completed forms available for inspection by the director of the library.".

Report of Committees

The Committee on Agriculture and Small Business reported **HB 6**, with Committee Substitute attached thereto with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 6, AN ACT relating to timber.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 364.130 is amended to read as follows:

(1) ***Except as provided in subsection (2) of this section,*** any person who ~~[unlawfully enters upon and]~~ cuts or saws down, or causes to be cut or sawed down~~[,]~~ timber growing upon the land of another and without color of title in himself to the timber~~[,]~~ or to the land upon which the timber was growing~~[,]~~ shall ***pay to the rightful owner of the timber three (3) times the stumpage value of the timber and shall pay*** ~~[be liable]~~ to the rightful owner of the ***property three (3) times the cost of any*** ~~[timber in punitive]~~ damages ***to the property***.

(2) ***If a defendant can certify that prior to cutting:***

(a) An agreement was obtained with adjacent landowners that the trees to be cut were not on the property of

adjacent landowners; or

(b) Adjacent landowners were notified of the pending cut and effort was made to confer with them and to obtain an agreement from them that the trees to be cut were not on their property;

the court may render a judgment for no more than the reasonable value of the timber and actual damages caused to the property.

(3) This section shall not be construed as repealing any of the provisions of Section 514.030 of the Kentucky Revised Statutes and any penalties provided by this chapter shall be considered as additional thereto.

The Committee Substitute to **HB 6** is as follows:

HB 6, AN ACT relating to timber.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 364.130 is amended to read as follows:

(1) ***Except as provided in subsection (2) of this section,*** any person who [~~unlawfully enters upon and~~] cuts or saws down, or causes to be cut or sawed down[~~,~~] timber growing upon the land of another ***without legal right or*** [~~and~~] without color of title in himself to the timber[~~,~~] or to the land upon which the timber was growing[~~,~~] shall ***pay to the rightful owner of the timber three (3) times the stumpage value of the timber and shall pay*** [~~be liable~~] to the rightful owner of the ***property three (3) times the cost of any*** [~~timber in punitive~~] damages ***to the property as well as any legal costs incurred by the owner of the timber***.

(2) ***If a defendant can certify that prior to cutting:***

(a) An agreement was obtained with adjacent landowners that the trees to be cut were not on the property of adjacent landowners; or

(b) Adjacent landowners were notified in writing, delivered by certified mail, of the pending cut and effort was made to confer with them and to obtain an agreement from them that the trees to be cut were not on their property;

the court may render a judgment for no more than the reasonable value of the timber, actual damages caused to the property, and any legal costs incurred by the owner of the timber.

(3) This section shall not be construed as repealing any of the provisions of Section 514.030 of the Kentucky Revised Statutes and any penalties provided by this chapter shall be considered as additional thereto.

The Committee on Counties and Special Districts reported **HB 39,** with Committee Substitute attached thereto, and **HB 119** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 39, AN ACT relating to jails.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

(1) Each county jail and each regional jail shall provide a separate holding facility or cell for persons arrested for failure to appear for trial on a traffic offense, or failure to pay a parking fine, traffic citation, or fine after conviction of a traffic offense. This separate holding facility or cell shall not be within sight and sound of normal prisoners in the jail. Persons confined for the offenses listed in this subsection shall not be required to eat or have contact with other prisoners in the jail nor shall they be strip searched unless a court of competent jurisdiction has issued an order, based upon probable cause, that the individual person should be searched for dangerous contraband. No judge shall issue a blanket order permitting strip searches in a facility covered by this section.

(2) The county shall be liable for civil damages when a person is incarcerated in a manner inconsistent with the requirements of subsection (1). In addition, the county jailer shall be personally liable for any portion of damages assessed against him for violation of the provisions of subsection (1).

The Committee Substitute to **HB 39** is as follows:

HB 39, AN ACT relating to jails.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

(1) No person who is arrested for a nonviolent misdemeanor or violation offense, traffic offense, failure to appear for

trial on a traffic offense, or failure to pay a parking fine, traffic citation, or fine after conviction of a traffic offense shall be strip searched or subjected to a body cavity search unless, based upon probable cause and consistent with applicable court decisions, the individual person should be searched for dangerous contraband. No judge shall issue a blanket order permitting strip searches of persons confined for an offense specified in this subsection. As used in this subsection, "traffic offense" means any charge for violating a provision of KRS Chapter 186, 189, or 189A.

(2) All strip searches regardless of the cause of the detention of the inmate shall be done by an officer of the same sex as the prisoner being searched. Only under emergency conditions can this provision be violated, and the conditions shall be documented in writing along with the reasons that an officer of the same sex could not conduct the search. The reasonableness of searches not using an officer of the same sex shall be subject to court review in an appropriate civil action.

(3) Regardless of the cause of the detention of the inmate, no body cavity search shall be done, except by an officer of the same sex as the prisoner being searched. Officers doing a body cavity search shall have received specific training, certified by the Department of Corrections, prior to the conduct of a body cavity search.

(4) The county shall be liable for civil damages when a person is treated in a manner inconsistent with the requirements of subsection (1), (2), or (3) of this section. In addition, the county jailer shall be personally liable for any portion of damages assessed against him for violation of the provisions of subsection (1), (2), or (3) of this section.

Section 2. Jails shall have one (1) year from the effective date of this Act to comply with the provisions of subsection (3) of Section 1. Searches conducted prior to that date shall not be affected by the provisions of subsection (3) of Section 1.

HB 119, AN ACT relating to zoning map amendments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 100.211 is amended to read as follows:

(1) A proposal for a zoning map amendment may originate with the planning commission of the unit, with any fiscal court or legislative body which is a member of the unit, or with an owner of the property in question. Regardless of the origin of the proposed amendment, it shall be referred to the planning commission before adoption. The planning commission shall then hold at least one (1) public hearing after notice as required by this chapter and make findings of fact and a recommendation of approval or disapproval of the proposed map amendment to the various legislative bodies or fiscal courts involved. The findings of fact and recommendation shall include a summary of the evidence and testimony presented by the proponents and opponents of the proposed amendment. A tie vote shall be subject to further consideration by the planning commission for a period not to exceed thirty (30) days, at the end of which if the tie has not been broken, the application shall be forwarded to the fiscal court or legislative body without a recommendation ~~[of approval or disapproval]~~. It shall take a majority of the entire legislative body or fiscal court to ***approve the planning commission's recommendation, and it shall take a majority of the entire legislative body or fiscal court to*** ~~[override the recommendation of the planning commission and it shall take a majority of the entire legislative body or fiscal court to]~~ adopt a zoning map amendment ~~[whenever the planning commission forwards the application to the fiscal court or legislative body without a recommendation of approval or disapproval due to a tie vote. Unless a majority of the entire legislative body or fiscal court votes to override the planning commission's recommendation, such recommendation shall become final and effective and if a recommendation of approval was made by the planning commission, the ordinance of the fiscal court or legislative body adopting the zoning map amendment shall be deemed to have passed by operation of law]~~.

(2) A proposal to amend the text of any zoning regulation which must be voted upon by the legislative body or fiscal court may originate with the planning commission of the unit or with any fiscal court or legislative body which is a member of the unit. Regardless of the origin of the proposed amendment, it shall be referred to the planning commission before adoption. The planning commission shall hold at least one (1) public hearing after notice as required by KRS Chapter 424 and make a recommendation as to the text of the amendment and whether the amendment shall be approved or disapproved and shall state the reasons for its recommendation. In the case of a proposed amendment originating with a legislative body or fiscal court, the planning commission shall make its recommendation within sixty (60) days of the date of its receipt of the proposed amendment. It shall take an affirmative vote of a majority of the fiscal court or legislative body to adopt the proposed amendment.

(3) Procedures prescribed in KRS 100.207 applicable to the publication of notice also shall apply to any proposed amendment to a zoning regulation text or map; provided that:

(a) Any published notice shall include the street address of the property in question, or if one is not available or practicable due to the number of addresses involved, a geographic description sufficient to locate and identify the property, and the names of two (2) streets on either side of the property which intersect the street on which the property is located; and

(b) When the property in question is located at the intersection of two (2) streets, the notice shall designate the intersection by name of both streets rather than name the two (2) streets on either side of the property.

(4) When a property owner proposes to amend the zoning map of any planning unit other than a planning unit containing a city of the first class, the provisions of KRS 100.212 shall apply in addition to the requirements and procedures prescribed in subsection (3) of this section.

(5) When a property owner proposes to amend the zoning map of any planning unit comprising any portion of a county containing a city of the first class, the provisions of KRS 100.214 shall apply in addition to the requirements and procedures prescribed in subsection (3) of this section.

(6) In addition to the public notice requirements prescribed in subsection (3) of this section, when the planning commission, fiscal court, or legislative body of any planning unit originates a proposal to amend the zoning map of that unit, notice of the public hearing before the planning commission, fiscal court, or legislative body shall be given at least thirty (30) days in advance of the hearing by first class mail to an owner of every parcel of property the classification of which is proposed to be changed. Records by the property valuation administrator may be relied upon to determine the identity and address of said owner.

(7) The fiscal court or legislative body shall take final action upon a proposed zoning map amendment within ninety (90) days of the date upon which the planning commission takes its final action upon such proposal.

Section 2. The following KRS section is repealed:

100.2111 Alternative regulation for zoning map amendment.

The Committee on Health and Welfare reported **HB 95, HB 190** and **HB 207,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 95, AN ACT relating to prosecution of crimes.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 15.760 is amended to read as follows:

(1) Each Commonwealth's attorney shall, during the calendar year 1977 and through June 30, 1978, be entitled to at least the number of assistant Commonwealth's attorney positions, stenographic, secretarial and clerical staff positions, investigative and other personnel positions, which he had or was entitled to at the number and salary level in effect on December 1, 1976.

(2) The number of assistant Commonwealth's attorney positions, stenographic, secretarial and clerical staff positions, investigative and other personnel positions, shall be based on real need to be determined with the advice and consent of the Prosecutors Advisory Council.

(3) All assistant Commonwealth's attorneys shall be licensed practicing attorneys. The full-time assistant Commonwealth's attorneys shall not be allowed to engage in the private practice of law.

(4) All salaries paid to personnel appointed hereunder shall be paid from the State Treasury. ***The*** ~~[Such]~~ salaries shall be commensurate with the appointee's education, experience, training and responsibility, and be based upon the guidelines established by the Prosecutors Advisory Council, which guidelines shall be comparable with the classification and compensation plan for comparable positions maintained by the state Department of Personnel, pursuant to KRS 64.640.

(5) The fiscal court or urban-county government in the county or counties that comprise the judicial circuit shall be responsible for providing the office of the Commonwealth's attorney with an adequate grand jury room and witness rooms.

(6) Each Commonwealth's attorney shall be authorized to employ individually or jointly with one or more other Commonwealth's attorneys at least one (1) victim advocate to counsel and assist crime victims as defined in KRS 421.500. Duties may include, but need not be limited to, participating in criminal prosecutions, assisting in the application for crime victims compensation, and applying for any other services or funds. The creation and funding of any new personnel position shall be reviewed and approved by the Prosecutors Advisory Council.

SECTION 2. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

The Prosecutors Advisory Council may apply for and receive funds, public or private, for the purpose of assisting Commonwealth's and county attorneys in providing crime victim assistance or in criminal prosecution. The council may provide matching funds as a condition of any grant.

SECTION 3. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

Pursuant to KRS 431.600, each Commonwealth's attorney and each county attorney shall assist any child sexual abuse multidisciplinary team established in his circuit or county, unless the Prosecutors Advisory Council has voted to relieve him of this responsibility.

SECTION 4. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The Prosecutors Advisory Council shall collect data regarding the investigation, prosecution, dismissal, conviction, or acquittal of any person charged with committing, attempting to commit, or complicity to a sexual offense defined

by KRS Chapter 510 involving a minor, incest involving a minor, use of a minor in a sexual performance, or unlawful transaction with a minor.

(2) Each Commonwealth's attorney, each county attorney, the secretary of the Cabinet for Human Resources, the commissioner of the Kentucky State Police, each Circuit Court clerk, and the Administrative Office of the Courts shall provide any data requested by the council for this purpose, on a form prescribed by the council, at intervals as the council may direct.

(3) The council may contract with any other public agency to collect the data in lieu of collecting the data itself.

(4) Commonwealth's attorneys and county attorneys shall keep records on all cases reported to their offices alleging sexual offenses against children. Each Commonwealth's attorney and county attorney shall collect information as directed by the Prosecutors Advisory Council on these cases. The information may include but is not limited to:

(a) Name of the victim;

(b) Date of receipt of report;

(c) County of occurrence;

(d) Charges, if any;

(e) Brief explanation if not charged;

(f) Grand jury action including naming of offenses;

(g) Disposition of case including plea and trial; and

(h) Sentence, if convicted or pleaded.

(5) The Prosecutors Advisory Council may promulgate administrative regulations to specify further information to be reported.

(6) The information required to be reported by this section shall be provided by each Commonwealth's attorney and county attorney at the end of each quarter of the calendar year or as otherwise directed by the Prosecutors Advisory Council.

(7) The Prosecutors Advisory Council and the Office of the Attorney General shall compile the information by county and issue a public report at least annually.

(8) The public report shall not contain the name or identifying information of a victim or person not formally charged with the commission of child sexual abuse. Information collected by the Commonwealth's attorney or county attorney or by the Prosecutors Advisory Council containing data which cannot be published shall be excluded from inspection, unless by court order, from the Open Records Law.

(9) Any Commonwealth's attorney or any county attorney who fails to report information as defined by this section or administrative regulation shall be subject to salary reduction as authorized by KRS 61.120.

HB 190, AN ACT relating to the Kentucky Multidisciplinary Commission on Child Sexual Abuse.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Multidisciplinary Commission on Child Sexual Abuse is hereby created.

(2) The commission shall be comprised of one (1) employee from the Department for Social Services and one (1) employee from the Department for Mental Health and Mental Retardation Services, each appointed by the secretary of the Cabinet for Human Resources; one (1) employee of the Justice Cabinet appointed by the Secretary of the Justice Cabinet; one (1) employee of the Administrative Office of the Courts appointed by the Chief Justice of the Supreme Court of Kentucky; two (2) employees of the Attorney General's Office appointed by the Attorney General; and one (1) former victim of a sexual offense appointed by the Governor.

(3) Appointees shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.

(4) An executive director for the commission shall be appointed by the Governor. The executive director shall serve at the pleasure of the Governor but shall not serve longer than four (4) years without reappointment.

(5) Employees of the commission shall be appointed by the executive director to serve at the pleasure of the executive director.

SECTION 2. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

The Kentucky Multidisciplinary Commission on Child Sexual Abuse shall:

(1) Prepare and issue a model protocol for local multidisciplinary teams regarding investigation and prosecution of child sexual abuse.

(2) Review and approve protocols prepared by local multidisciplinary teams.

(3) Advise local multidisciplinary teams on the investigation and prosecution of child sexual abuse.

(4) Receive data on child sexual abuse cases collected by the Prosecutors Advisory Council and issue annual reports.

(5) Collect data on the operation of local multidisciplinary teams.

(6) Seek funding to support special projects relating to the operation of local multidisciplinary teams.

(7) Receive and review complaints regarding local multidisciplinary teams, and make appropriate recommendations.

(8) Recommend to the Governor, Legislative Research Commission, and Supreme Court changes in state programs, legislation, administrative regulations, policies, budgets, and treatment and service standards which may facilitate effective intervention of child sexual abuse cases and the investigation and prosecution of perpetrators of child sexual abuse, and which may improve the opportunity for victims of child sexual abuse to receive treatment.

SECTION 3. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

For administrative purposes only, the Kentucky Multidisciplinary Commission on Child Sexual Abuse shall be attached to the Office of the Attorney General.

HB 207, AN ACT relating to the treatment of the mentally ill, and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 202A.011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Authorized staff physician" means a physician who is a bona fide member of the hospital's medical staff;

(2) "Danger" or "threat of danger to self, family or others" means substantial physical harm or threat of substantial physical harm upon self, family or others, including actions which deprive self, family or others of the basic means of survival including provision for reasonable shelter, food or clothing;

(3) "Cabinet" means the Kentucky Cabinet for Human Resources;

(4) ***"Psychiatric facility" means any facility licensed by the cabinet and which provides inpatient, outpatient, psychosocial rehabilitation, emergency, and consultation and education services for the diagnosis and treatment of persons who have a mental illness;***

(5) "Forensic psychiatric facility" means a mental institution or facility, or part thereof, designated by the secretary for the purpose and function of providing in-patient evaluation, care and treatment for mentally ill or mentally retarded persons who have been charged with or convicted of a felony;

(6)[~~(5)~~] "Hospital" means:

(a) A state mental hospital or institution or other licensed public or private hospital, institution, health care facility, or part thereof, approved by the Kentucky Cabinet for Human Resources as equipped to provide full-time residential care and treatment for mentally ill or mentally retarded persons;

(b) A hospital, institution or health care facility of the government of the United States equipped to provide residential care and treatment for mentally ill or mentally retarded persons;

(7)[~~(6)~~] "Judge" means any judge or justice of the Court of Justice or a trial commissioner of the District Court acting under authority of SCR 5.030;

(8)[~~(7)~~] "Least restrictive alternative mode of treatment" means that treatment which will give a mentally ill individual a realistic opportunity to improve ***the individual's*** [~~his~~] level of functioning, consistent with accepted professional practice in the least confining setting available;

(9)[~~(8)~~] "Mentally ill person" means a person with substantially impaired capacity to use self-control, judgment or discretion in the conduct of ***the person's*** [~~his~~] affairs and social relations, associated with maladaptive behavior or recognized emotional symptoms where impaired capacity, maladaptive behavior or emotional symptoms can be related to physiological, psychological or social factors;

(10)[~~(9)~~] "Patient" means a person under observation, care or treatment in a hospital pursuant to the provisions of this chapter;

(11)[~~(10)~~] "Petitioner" means a person who institutes a proceeding under this chapter;

(12)[~~(11)~~] "Qualified mental health professional" means:

(a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of [~~his~~] official duties;

(b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of [~~his~~] official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(c) A psychologist licensed at the doctoral level or a psychologist or psychological associate certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under this chapter;

(d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse, with a bachelor's degree in nursing from an accredited institution, who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community mental health and mental retardation program; or

(e) A certified social worker licensed for the independent practice of clinical social work under the provisions of KRS Chapter 335, or a certified social worker under the provisions of KRS Chapter 335 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work [~~following certification~~] and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community mental health and mental retardation program;

(13)[~~(12)~~] "Residence" means legal residence as determined by applicable principles governing conflicts of law;

(14)[~~(13)~~] "Respondent" means a person alleged in a hearing under this chapter to be a mentally ill or mentally retarded person;

(15)[~~(14)~~] "Secretary" means the secretary of the Cabinet for Human Resources.

Section 2. KRS 202A.028 is amended to read as follows:

(1) Following an examination by a qualified mental health professional and a certification by that professional that the person meets the criteria for involuntary hospitalization, a judge may order the person hospitalized for a period not to exceed seventy-two (72) hours, excluding weekends and holidays. For the purposes of this section, [~~if the hospital to be utilized is one operated by the cabinet,~~] the qualified mental health professional shall be a staff member of a regional community mental ***health*** or mental retardation program.

(2) Any person who has been admitted to a hospital under subsection (1) of this section shall be released from the hospital within seventy-two (72) hours, excluding weekends and holidays, unless further ***held*** [~~detained~~] under the applicable provisions of this chapter.

(3) Any person admitted to ***a*** [~~the~~] hospital under subsection (1) of this section or ***transferred to a hospital while ordered hospitalized*** [~~released~~] under subsection ***(1)*** [~~(2)~~] of this section shall be transported [~~to and~~] from ***the*** [~~such~~] person's home county by the sheriff of that county ***or other peace officer as ordered by the court. The sheriff or other peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the person to the hospital. The transportation costs of the sheriff, other peace officer, ambulance service, or other private agency on contract with the cabinet shall be paid by the cabinet in accordance with an administrative regulation promulgated by the cabinet, pursuant to KRS Chapter 13A***.

(4) ***Any person released from the hospital under subsection (2) of this section shall be transported to the person's county of discharge by a sheriff or other peace officer, by an ambulance service designated by the cabinet, or by other appropriate means of transportation which is consistent with the treatment plan of that person. The transportation cost of transporting the patient to the patient's county of discharge when performed by a peace officer, ambulance service, or other private agency on contract with the cabinet shall be paid by the cabinet in accordance with an administrative regulation issued by the cabinet pursuant to KRS Chapter 13A*** [~~A person who has been detained under this section shall not remain in jail in excess of forty-eight (48) hours pending evaluation and transportation to the hospital~~].

(5) No person who has been held under subsection (1) of this section shall be held in jail pending evaluation and transportation to the hospital.

Section 3. KRS 202A.041 is amended to read as follows:

(1) Any peace officer who has reasonable grounds to believe that an individual is mentally ill and presents a danger or threat of danger to self, family***,*** or others if not restrained shall ***take the individual into custody and transport the individual without unnecessary delay to a hospital or psychiatric facility designated by the cabinet for the purpose of an evaluation to be conducted by a qualified mental health professional. Upon transport of the person to the hospital or psychiatric facility, the peace officer shall provide written documentation which describes the behavior of the person which caused the peace officer to take the person into custody. If, after evaluation, the qualified mental health professional finds that the person does not meet the criteria for involuntary hospitalization, the person shall be released immediately and transported back to the person's home county by an appropriate means of transportation***

as provided in KRS 202A.101. If, after evaluation, the qualified mental health professional finds that the person meets the criteria for involuntary hospitalization, appropriate proceedings under this chapter shall be initiated. The person may be held pending certification by a qualified mental health professional and implementation of procedures as provided in KRS 202A.028, 202A.031, or 202A.051 for a period not to exceed eighteen (18) hours.

(2) If, after the evaluation, the qualified mental health professional finds that the person does not meet the criteria for involuntary hospitalization and the peace officer has probable cause to believe that the person has committed a criminal offense, the peace officer may swear out a warrant and take the arrested person without unnecessary delay before a judge [~~detain that person without a warrant. The peace officer shall, if no other party can be found, swear out a warrant and take the arrested person without unnecessary delay before a judge. Only in exceptional cases should the delay exceed twelve (12) hours. The judge shall release the individual if no warrant has been taken out. The judge shall, unless either the court or one (1) of the parties objects, implement the procedures as provided in KRS 202A.028 and order the person to be examined without unnecessary delay by a qualified mental health professional. Following that, the procedures as provided in KRS 202A.028 shall be carried out. Otherwise, the court shall order the person arrested to be examined without unnecessary delay by two (2) qualified mental health professionals, at least one (1) of whom shall be a physician. The qualified mental health professionals shall certify to the court, within twenty-four (24) hours of the examination, their findings and opinions as to whether the person should be involuntarily hospitalized.~~

~~(2) If the criteria for involuntary hospitalization are certified by two (2) qualified mental health professionals, the court shall set a preliminary hearing within six (6) days from the date of arrest (excluding weekends and holidays) to determine if there is probable cause to believe the person should be involuntarily hospitalized.~~

~~(3) Prior to the preliminary hearing, the court shall notify the respondent, his legal guardian, if any and if known, and his spouse, parents, or nearest known relative or friend concerning the involuntary hospitalization proceedings and the date and purpose of the preliminary hearing; and the name, address and telephone number of the attorney appointed to represent the respondent.~~

~~(4) If upon completion of the preliminary hearing, the court finds there is probable cause to believe the person should be involuntarily hospitalized, the court shall order a final hearing within twenty one (21) days from the date of the arrest to determine if the person should be involuntarily hospitalized for a period of sixty (60) days.~~

~~(5) Prior to the final hearing, the county attorney shall file in the record and serve a copy thereof upon the respondent, a statement setting forth the alleged factual reasons or basis upon which the Commonwealth intends to rely in seeking the involuntary hospitalization of the respondent. The required statement shall be served upon the respondent at the earliest practical time, in any event, sufficiently in advance of the final hearing to permit preparation for the hearing by respondent.~~

~~(6) If upon completion of the final hearing, the court finds the person should be involuntarily hospitalized, the court shall order the person hospitalized in a hospital where treatment is available for a period not to exceed sixty (60) consecutive days from the date of the court order~~].

Section 4. KRS 202A.051 is amended to read as follows:

(1) Proceedings for sixty (60) days or three hundred sixty (360) days ***of*** involuntary hospitalization of an individual shall be initiated by the filing of a verified petition in District Court.

(2) The petition and all subsequent court documents shall be entitled: "In the interest of (name of respondent)."

(3) The petition shall be filed by a qualified mental health professional, peace officer, county attorney, Commonwealth's attorney, spouse, relative, friend***,*** or guardian of the individual concerning whom the petition is filed.

(4) The petition shall set forth:

(a) Petitioner's relationship to the respondent;

(b) Respondent's name, residence***,*** and current location, if known;

(c) The name and residence of respondent's parents, if living and if known, or respondent's legal guardian, if any and if known;

(d) The name and residence of respondent's husband or wife, if any and if known;

(e) The name and residence of the person having custody of the respondent, if any, or if no such person is known, the name and residence of a near relative or that ***the*** [~~such~~] person is unknown;

(f) Petitioner's belief, including the factual basis therefor, that the respondent is mentally ill and presents a danger or threat of danger to self, family or others if not restrained; and

(g) If the petition seeks a three hundred sixty (360) day involuntary hospitalization of the respondent, the petition shall further set forth that the respondent has been hospitalized in a hospital or a forensic psychiatric facility for a period of thirty (30) days under the provisions of this chapter or KRS Chapter 504 within the preceding six (6) months.

(5) Upon receipt of the petition, the court shall examine the petitioner under oath as to the contents of the petition. If the petitioner is a qualified mental health professional, the court may dispense with ***the*** [~~such~~] examination.

(6) If after reviewing the allegations contained in the petition and examining the petitioner under oath, it appears to the court that there is probable cause to believe the respondent should be involuntarily hospitalized, the court shall, unless either the court or one (1) of the parties objects, implement the procedures provided in KRS 202A.028 and order the individual to be examined without unnecessary delay by a qualified mental health professional. ***If the person is not being held under the provisions of this chapter, the court may order that the sheriff of the county or other peace officer transport the person to a hospital or psychiatric facility designated by the cabinet for the purpose of the evaluation. The sheriff or other peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the person to a hospital or psychiatric facility.*** Following that, the procedures as set forth in KRS 202A.028 shall be carried out. Otherwise, the court shall:

(a) Set a date for a preliminary hearing ***within six (6) days from the date of holding the person under the provisions of this section (excluding holidays and weekends) to determine if there is probable cause to believe the person should be involuntarily hospitalized***;

(b) Notify the respondent, ***the*** [~~his~~] legal guardian, if any, and if known, and ***the*** [~~his~~] spouse, parents, or nearest relative or friend ***of the respondent*** concerning the allegations and contents of the petition and the date and purpose of the preliminary hearing; and the name, address***,*** and telephone number of the attorney appointed to represent the respondent; and

(c) Cause the respondent to be examined without unnecessary delay by two (2) qualified mental health professionals, at least one (1) of whom is a physician. The qualified mental health professionals shall certify within twenty-four (24) hours (excluding weekends and holidays) their findings.

(7) (a) If the respondent is being presently ***held*** [~~detained~~] under the provisions of this chapter, the court may order further ***holding*** [~~detention~~] of the respondent to accomplish the examination ordered by the court.

(b) If the respondent is not being presently ***held*** [~~detained~~] under the provisions of this chapter, the court may ***order that the sheriff of the county or a peace officer transport the respondent to a hospital or a psychiatric facility designated by the cabinet so*** [~~issue a warrant for the arrest of the respondent commanding therein~~] that the respondent ***shall*** be examined without unnecessary delay by two (2) qualified mental health professionals, at least one (1) of whom is a physician. ***The sheriff or other peace officer may authorize, upon agreement of a person authorized by the peace officer, the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the person to a hospital or psychiatric facility.***

(8) When the court is authorized to issue ***an order that the respondent be transported to a hospital or psychiatric facility*** [~~a warrant for the arrest of the respondent~~], the court may, in its discretion, issue a summons. A summons so issued shall be directed to the respondent, shall command the respondent to appear at a time and place therein specified where the respondent shall be there examined by two (2) qualified mental health professionals, at least one (1) of whom is a physician, and shall command the respondent's appearance at the preliminary hearing. If a respondent who has been summoned fails to appear for such examination or at the preliminary hearing, ***the court may order that the sheriff of the county or a peace officer transport the respondent to a hospital or psychiatric facility designated by the cabinet for the purpose of an evaluation*** [~~a warrant may then be issued~~].

(9) If upon completion of the preliminary hearing, the court finds there is probable cause to believe the respondent should be involuntarily hospitalized, the court shall order a final hearing ***within twenty-one (21) days from the date of holding the respondent under the provisions of this section*** to determine if the respondent should be involuntarily hospitalized.

(10) If the court finds there is no probable cause, the proceedings against the respondent shall be dismissed, and the respondent shall be released from any ***holding*** [~~detention~~].

(11) If upon completion of the final hearing, the court finds the respondent should be involuntarily hospitalized, the court shall order the respondent hospitalized in a hospital for a period not to exceed sixty (60) consecutive days from the date of the court order or a period not to exceed three hundred sixty (360) consecutive days from the date of the court order, whatever was the period of time that was requested in the petition.

Section 5. KRS 202A.071 is amended to read as follows:

(1) The preliminary hearing shall be held not later than six (6) days (excluding weekends and holidays) from the time of respondent's ***holding*** [~~detention~~] under these proceedings. If the respondent is not ***held*** [~~detained~~] under these proceedings, the preliminary hearing shall be held not later than six (6) days (excluding weekends and holidays) from the time of the examination of the respondent.

(2) The final hearing shall be held within twenty-one (21) days of the date of the ***holding*** [~~detention~~] or from the date of the examination, if not ***held*** [~~detained~~].

Section 6. KRS 202A.081 is amended to read as follows:

(1) Following the preliminary hearing but prior to the completion of the final hearing, the court may order the person ***held*** [~~detained in jail, or~~] in a hospital approved by the ***cabinet*** [~~secretary~~] for such purpose for the committing judicial district, or released, upon application and agreement of the parties, for the purpose of community-based outpatient

treatment. ***No person held under this section shall be held in jail unless criminal charges are also pending*** [~~A person detained in jail under this section shall be detained therein no more than forty-eight (48) hours~~].

(2) A hospital shall discharge a patient there ***held*** [~~detained~~] and notify the court and attorneys of record if any authorized staff physician determines that the patient no longer meets the criteria for involuntary hospitalization.

(3) If a patient is discharged by the hospital pursuant to subsection (2) of this section, then the proceedings against the patient shall be dismissed.

(4) The release of the person pursuant to subsection (1) of this section for the purpose of community-based outpatient treatment does not terminate the proceedings against the person, and the court ordering such release may order the immediate ***holding*** [~~detention~~] of the person at any time with or without notice if the court believes from an affidavit filed with the court that it is to the best interest of the person or others that the person be ***held*** [~~detained~~] pending the final hearing, which shall be held within twenty-one (21) days of the person's further ***holding*** [~~detention~~].

(5) If the person is released pursuant to subsection (1) of this section for the purpose of community-based outpatient treatment, the final hearing may be continued for a period not to exceed sixty (60) days if a provider of outpatient care accepts the respondent for specified outpatient treatment. Community-based outpatient treatment may be ordered for an additional period not to exceed sixty (60) days upon application and agreement of the parties.

Section 7. KRS 202A.101 is amended to read as follows:

(1) The court which orders any person to ***the receiving*** [~~a~~] hospital ***or psychiatric facility***, under the provisions of this chapter, shall at once notify the cabinet that such order has been made, advising of the sex and condition of the person.

(2) After the ***facility*** [~~cabinet~~] has been so notified, the court shall order the sheriff of the county ***or other peace officer*** to transport the patient within forty-eight (48) hours (excluding weekends and holidays) from the county in which the person is located to the hospital ***or psychiatric facility*** designated by the cabinet. ***The sheriff or other peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the person to the hospital*** [~~The actual traveling expenses of persons transporting the patient to the institution shall be paid by the cabinet. Each female committed to an institution shall be accompanied by a female attendant, unless accompanied by her mother, father, sister, brother, husband, daughter, or son~~].

(3) ***The transportation costs of transporting a person to a hospital or psychiatric facility, when performed by a peace officer, an ambulance service, or other private agency on contract with the cabinet shall be paid by the cabinet in accordance with administrative regulation promulgated by the cabinet under the provisions of KRS Chapter 13A.***

(4) In returning any patient to the county from which ***the patient*** [~~he~~] is sent, the ***transportation*** cost of ***the sheriff or other peace officer, the ambulance service, or the other agency on contract with the cabinet transporting the patient*** [~~returning him~~] shall be paid ***as provided in Section 2(4) of this Act*** [~~in the same manner~~], when necessary.

(5)[~~(4)~~] Whenever an individual is involuntarily hospitalized by a court order the patient shall be transported to the hospital designated by the cabinet and accompanied by the following documents:

(a) A copy of the petition for involuntary hospitalization, unless hospitalization takes place pursuant to KRS 202A.041;

(b) The certificate of qualified mental health professionals; and

(c) The order of involuntary hospitalization.

(6)[~~(5)~~] The hospital may refuse to receive any person who has been ordered to be involuntarily hospitalized by a court order if the papers presented with such person at the hospital do not comply with the provisions of this chapter or if it does not receive notification of the order of involuntary hospitalization as required by this chapter.

Section 8. KRS 202A.141 is amended to read as follows:

(1) Hospitals ordered to receive an involuntarily hospitalized person shall have standing to petition the District Court for any necessary clarification or modification of orders or judgments entered in proceedings under this chapter and to appeal to the Circuit Court from final judgments or orders entered in proceedings which have not complied with the provisions of this chapter.

(2) Appeals from the final orders or judgments of the District Court made and entered in proceedings under this chapter shall be taken in the same manner as other appeals from District Court to Circuit Court. This appeal shall be advanced on the Circuit Court docket without motion or notice.

SECTION 9. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

No person held under the provisions of this chapter shall be detained in jail unless criminal charges are also pending. No peace officer or any other person shall place criminal charges against a person who is mentally ill and in need of hospitalization pursuant to this chapter solely or primarily for the purpose of avoiding transporting the person to a hospital or psychiatric facility.

Section 10. KRS 202B.170 is amended to read as follows:

(1) Following the preliminary hearing but prior to the completion of the final hearing, the court may order the respondent to reside in an ICF/MR approved by the secretary for that purpose for the committing judicial district in a community program approved by the secretary ***or***[~~,~~] in a hospital[~~, or in jail for a period not to exceed forty-eight (48) hours if no other alternative exists~~]. The respondent may be released, upon application and agreement of the parties, for the purpose of community-based outpatient treatment.

(2) A physician of an ICF/MR or a hospital shall discharge a respondent residing therein and notify the court and attorneys of record, if the interdisciplinary team of the ICF/MR or an authorized staff physician of the hospital determines that the respondent no longer meets the criteria for involuntary admission.

(3) If a respondent is discharged by the ICF/MR or hospital pursuant to subsection (2) of this section, the proceedings against the respondent shall be dismissed.

Section 11. KRS 202B.200 is amended to read as follows:

(1) The court which orders any person to an ICF/MR under the provisions of this chapter, shall at once notify the cabinet that the order has been made, advising of the sex and condition of the person.

(2) The ICF/MR may refuse to receive any person who has been ordered to be involuntarily admitted by a court order if appropriate programs and space are not available or the papers presented with the person at the ICF/MR do not comply with the provisions of this chapter or if it does not receive notification of the order of involuntary admission as required by this chapter.

(3) After the cabinet has been so notified, the court may order the sheriff of the county to transport the person [~~within forty-eight (48) hours, excluding weekends and holidays,~~] from the county in which the person is located to the ICF/MR designated by the cabinet. The actual traveling expenses of persons transporting the person to the institution shall be paid by the cabinet. Each female admitted to an ICF/MR shall be accompanied by a female attendant, unless accompanied by her mother, father, sister, brother, husband, daughter, or son.

(4) In returning any person to the county from which that person is sent, the cost of returning the person shall be paid in the same manner, when necessary.

(5) If a person is involuntarily admitted by a court order, the person shall be transported to the ICF/MR designated by the cabinet and accompanied by the following documents:

(a) A copy of the petition for involuntary admission;

(b) The certificate of qualified mental retardation professionals; and

(c) The order of involuntary admission.

SECTION 12. A NEW SECTION OF KRS CHAPTER 504 IS CREATED TO READ AS FOLLOWS:

A forensic psychiatric facility or psychiatric facility as those terms are defined in Section 1 of this Act shall have standing to petition the court for any necessary clarification or modification of orders or judgments entered in proceedings under this chapter and to appeal from final orders or judgments entered in proceedings which have not complied with the provisions of this chapter.

Section 13. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

(1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian or other person exercising custodial control or supervision of the child: inflicts or allows to be inflicted upon the child physical or emotional injury by other than accidental means; creates or allows to be created a risk of physical or emotional injury to the child by other than accidental means; commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child; creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child; abandons or exploits such child; does not provide the child with adequate care, supervision, food, clothing, shelter and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing his religious beliefs shall not be considered a negligent parent solely because he fails to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;

(2) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the cabinet for the placement of children committed to the cabinet;

(3) "Cabinet" means the Cabinet for Human Resources;

(4) "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Justice Cabinet after consultation with the Cabinet for Human Resources and other appropriate state agencies;

(5) "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;

(6) "Child-caring facility" means any facility or group home other than a state facility, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour

basis to children not related by blood, adoption or marriage to the person maintaining the facility;

(7) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;

(8) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;

(9) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Human Resources or another facility or agency until the child attains the age of eighteen (18) unless the committing court terminates or extends the order;

(10) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;

(11) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;

(12) "Court" means the juvenile session of District Court;

(13) "Court designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into and supervising diversion agreements and performing such other functions as authorized by law or court order;

(14) "Department" means the Department for Social Services;

(15) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

(16) "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, or a secure juvenile detention facility;

(17) "Diversion agreement" means an agreement entered into between a court designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;

(18) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;

(19) "Emotional harm" means harm to the mental or psychological capacity or emotional stability of a child as testified to by a qualified mental health professional. The age and development of the child shall be considered together with the child's culture or environment in the diagnosis and determination of emotional harm;

(20) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in his ability to function within a normal range of performance and behavior with due regard to his age, development, culture and environment;

(21) "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;

(22) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;

(23) "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;

(24) "Habitual truant" means any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period;

(25) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;

(26) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;

(27) "Informal adjustment" means an agreement reached among the parties after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;

(28) "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;

(29) "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from

all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;

(30) "Juvenile holding facility" means a physically secure setting, approved by the Justice Cabinet, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Justice Cabinet may supervise juvenile as well as adult prisoners;

(31) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; and is conducted at the suitable available facility closest to the child's place of residence;

(32) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;

(33) "Parent" means the biological or adoptive mother or father of a child;

(34) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

(35) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;

(36) "Physical injury" means substantial physical pain or any impairment of physical condition;

(37) "Public offense action" means an action brought in the interest of a child who is accused of committing a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a moving motor vehicle offense;

(38) "Qualified mental health professional" means:

(a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of [~~his~~] official duties;

(b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of [~~his~~] official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;

(d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or

(e) A certified clinical social worker licensed for the independent practice of clinical social work under the provisions of KRS Chapter 335, or a certified social worker licensed under the provisions of KRS Chapter 335 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work [~~following certification~~] and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(39) "Residential treatment facility" means a facility with more than eight (8) beds designated by the cabinet for the treatment of children;

(40) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court designated worker for the purpose of making preliminary inquiries;

(41) "School personnel" means those certified persons under the supervision of the local public or private education agency;

(42) "Secretary" means the secretary of the Cabinet for Human Resources;

(43) "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lock-up, intermittent holding facility, or any building which is a part of, or attached to, any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined;

(44) "Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;

(45) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ;

(46) "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions between a child and an adult in which the parent, guardian or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

(47) "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;

(48) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;

(49) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;

(50) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed; and

(51) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 640 and who is subsequently convicted in Circuit Court.

Section 14. KRS 645.020 is amended to read as follows:

The definitions in KRS Chapter 600 shall apply to this chapter. In addition, unless the context requires otherwise:

(1) "Convalescent leave" means an authorized release not to exceed ninety (90) days of a child admitted to a hospital under this chapter;

(2) "Danger to ***self*** [~~himself~~] or others" means that it is shown by substantial proof that in the near future the child may attempt suicide or may cause substantial physical harm or threat of substantial physical harm to ***self*** [~~himself~~] or others, as evidenced by recent threats or overt acts, including acts by which ***the child*** [~~he~~] deprives ***self*** [~~himself~~] or others of the basic means of survival, including reasonable shelter, food or clothing. In determining whether a child presents a danger to ***self*** [~~himself~~], factors to be considered shall include, but shall not be limited to, an established pattern of past dangerous behavior;

(3) "Hospital" means a licensed private or public institution, health care facility, or part thereof, approved by the cabinet to treat children who are mentally ill;

(4) "Least restrictive alternative" means the treatment and conditions of treatment for a child which, separately and in combination:

(a) Are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment objectives for the child; and

(b) Involve no inpatient care restrictions on physical movement except as reasonably necessary for the administration of treatment or for the protection of the child or others from physical injury.

In determining the least restrictive alternative, factors to be considered shall include, but not be limited to, the likelihood, based on ***the child's*** [~~his~~] prior outpatient treatment, that ***the child*** [~~he~~] will benefit from outpatient treatment;

(5) "Mental health ***facility*** [~~care program~~]" means a ***residential or*** nonresidential service providing children psychological or psychiatric treatment for emotional, mental, or behavioral problems;

(6) "Mental health group home" means a community-based facility established to serve not less than four (4) nor more than eight (8) mentally ill children with a treatment program developed and supervised by a qualified mental health professional. Mental health group homes shall not be adjacent to or part of a residential treatment facility or a hospital; and

(7) "Mentally ill child" means that considering the child's age and development, ***the child*** [~~he~~] has a substantially impaired capacity to use self-control, judgment or discretion in the conduct of ***the child's*** [~~his~~] affairs and social relations, ***the child's*** [~~his~~] behavior is maladaptive or ***the child*** [~~he~~] exhibits recognized emotional symptoms which can be related to physiological, psychological or social factors.

Section 15. KRS 645.120 is amended to read as follows:

(1) If, as a result of mental illness, a child appears in need of immediate hospitalization for observation, diagnosis, or treatment, a peace officer or any interested person may either take the child to a hospital, ***mental health facility*** [~~secure juvenile detention facility, juvenile holding facility~~], or another less restrictive alternative or file a petition for emergency hospitalization. Upon filing a petition, a peace officer may place a child up to twenty-four (24) hours, excluding weekends and holidays, in a ***hospital or*** mental health facility[~~, if one (1) is available, or if such facility is not~~

~~available, secure juvenile detention facility, juvenile holding facility~~] or another less restrictive alternative. The peace officer shall notify the court designated worker of the child's placement[~~, unless he takes the child to a hospital~~]. Within twelve (12) hours, the peace officer shall, if no other party can be found, file a petition, unless the child has been taken to a hospital. ***No child held under this section shall be held in a secure juvenile detention facility or juvenile holding facility unless a status offense action or public offense action is also pending.***

(2) On the basis of a prompt examination and any other available information concerning a child who is present at or presented at a hospital, an authorized staff physician shall determine within twenty-four (24) hours if the child needs immediate hospitalization after which the child shall be released within seventy-two (72) hours unless ***the child*** [~~he~~] is held pursuant to other provisions of this chapter.

(a) The hospital may accept physical custody of the child and may request the person who brought the child to remain on the premises until the authorized staff physician makes a determination;

(b) If the authorized staff physician determines that the child, as a result of mental illness, appears to need immediate hospitalization, ***the physician*** [~~he~~] shall admit the child for observation, diagnosis, and treatment, and shall, if he deems it appropriate, file a certification petition. If the proponent of emergency hospitalization is not the child's legal custodian, the hospital shall immediately notify the child's parent or other person exercising custodial control or supervision including, if applicable, the state; and

(c) If the authorized staff physician determines the child does not need immediate hospitalization, ***the physician*** [~~he~~] shall release the child to a parent, person exercising custodial control or supervision***,*** or an agency having custody of the child and make whatever recommendations or referrals ***the physician*** [~~he~~] deems appropriate.

(3) The petition for emergency hospitalization shall state the petitioner's belief, including its factual basis, that the child, as a result of mental illness, needs immediate hospitalization for observation, diagnosis, and treatment. Within twenty-four (24) hours of the filing, exclusive of weekends and holidays, the court shall on an ex parte basis, which may be by telephone:

(a) Deny the petition; or

(b) Issue an order authorizing a peace officer to transport the child to a designated hospital ***or mental health facility*** for evaluation for emergency hospitalization, at which time two (2) qualified mental health professionals, at least one (1) of whom is an authorized staff physician, shall follow the procedures specified in subsection (2) of this section. If the child is committed to the cabinet or will be treated by the cabinet, the court shall notify the cabinet of its order at once and shall also advise the cabinet of the sex and condition of the child who is to be transported. ***The peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the child to a hospital or mental health facility.*** The cabinet shall pay the ***transportation costs*** [~~actual traveling expenses~~] of the child and the official transporting ***the child,*** [~~him~~] both to and from the designated hospital ***or mental health facility, in accordance with an administrative regulation promulgated under KRS Chapter 13A. If, after evaluation, the qualified mental health professional finds that the child does not meet the criteria for involuntary hospitalization, the child shall be released immediately and transported back to the child's home county by an appropriate means of transportation***.

(4) An emergency hospitalization of a child may not exceed seven (7) days, exclusive of weekends and holidays, unless a certification petition is filed before the seven (7) days expire.

[~~(5) If it appears that a child committed to the cabinet is mentally ill, the cabinet may use state mental hospital facilities or other resources for observation of mental conditions. This period of observation shall not exceed thirty (30) days. If a qualified mental health professional not employed by the cabinet finds that the child does not meet the definition of a "mentally ill child" under KRS 645.020(7), the child shall be discharged. During the thirty (30) days, a child who is at least sixteen (16) years of age may apply for admission as a voluntary patient. During the thirty (30) days, voluntary admission of a child who is under sixteen (16) years of age may be applied for by a parent, physician or other person exercising custodial control or supervision. After thirty (30) days, the child shall be removed or a certification petition shall be filed under this chapter.~~]

SECTION 16. A NEW SECTION OF KRS CHAPTER 645 IS CREATED TO READ AS FOLLOWS:

(1) No child held under the provisions of this chapter shall be held in a secure juvenile detention facility or juvenile holding facility unless a status offense action or public offense action is also pending. No peace officer or any other person shall bring a status offense action or a public offense action against a child who is mentally ill and in need of hospitalization pursuant to this chapter solely or primarily for the purpose of avoiding transporting the child to a hospital, mental health facility, or other less restrictive alternative.

(2) If, after evaluation, the qualified mental health professional finds that the child does not meet the criteria for involuntary hospitalization and the peace officer has probable cause to believe that the child has committed a status offense action or public offense action, the peace officer may swear out a warrant and take the arrested child without unnecessary delay before a judge.

Section 17. KRS 387.540 is amended to read as follows:

(1) Prior to a hearing on a petition for a determination of partial disability or disability and the appointment of a limited guardian, guardian, limited conservator, or conservator, an interdisciplinary evaluation report shall be filed with the court. The report may be filed as a single and joint report of the interdisciplinary evaluation team, or it may otherwise be constituted by the separate reports filed by each individual of the team. If the court and all parties to the proceeding and their attorneys agree to the admissibility of the report or reports, the report or reports shall be admitted into evidence and shall be considered by the jury. The report shall be compiled by at least three (3) individuals, including a physician, a psychologist licensed or certified under the provisions of KRS Chapter 319, and a person licensed or certified as a social worker or an employee of the Cabinet for Human Resources who meets the qualifications of KRS 335.080(1)(a), (b), and (c) or 335.090(1)(a), (b), and (c). The social worker shall, when possible, be chosen from among employees of the Cabinet for Human Resources residing or working in the area, and there shall be no additional compensation for their service on the interdisciplinary evaluation team.

(2) At least one (1) person participating in the compilation of the report shall have knowledge of the particular disability which the respondent is alleged to have or knowledge of the skills required of the respondent to care for himself and his estate.

(3) If the respondent is alleged to be partially disabled or disabled due to mental illness, at least one (1) person participating in the compilation of the interdisciplinary evaluation report shall be a qualified mental health professional as defined in KRS 202A.011***(12)***[~~(11)~~]. If the respondent is alleged to be partially disabled or disabled due to mental retardation, at least one (1) person participating in the compilation of the evaluation report shall be a qualified mental retardation professional as defined in KRS 202B.010(12).

(4) The interdisciplinary evaluation report shall contain:

  (a) A description of the nature and extent of the respondent's disabilities, if any;

  (b) Current evaluations of the respondent's social, intellectual, physical, and educational condition, adaptive behavior, and social skills. Such evaluations may be based on prior evaluations not more than three (3) months old, except that evaluations of the respondent's intellectual condition may be based on individual intelligence test scores not more than one (1) year old;

  (c) An opinion as to whether guardianship or conservatorship is needed, the type of guardianship or conservatorship needed, if any, and the reasons therefor;

  (d) An opinion as to the length of time guardianship or conservatorship will be needed by the respondent, if at all, and the reasons therefor;

  (e) If limited guardianship or conservatorship is recommended, a further recommendation as to the scope of the guardianship or conservatorship, specifying particularly the rights to be limited and the corresponding powers and duties of the limited guardian or limited conservator;

  (f) A description of the social, educational, medical, and rehabilitative services currently being utilized by the respondent, if any;

  (g) A determination whether alternatives to guardianship or conservatorship are available;

  (h) A recommendation as to the most appropriate treatment or rehabilitation plan and living arrangement for the respondent and the reasons therefor;

  (i) A listing of all medications the respondent is receiving, the dosage, and a description of the impact of the medication upon the respondent's mental and physical condition and behavior;

  (j) An opinion whether attending a hearing on a petition filed under KRS 387.530 would subject the respondent to serious risk of harm;

  (k) The names and addresses of all individuals who examined or interviewed the respondent or otherwise participated in the evaluation; and

  (l) Any dissenting opinions or other comments by the evaluators.

(5) The evaluation report may be compiled by a community mental health-mental retardation center, a licensed facility for mentally ill or developmentally disabled persons, if the respondent is a resident of such facility, or a similar agency.

(6) In all cases where the respondent is a resident of a licensed facility for mentally ill or developmentally disabled persons and the petition is filed by an employee of that facility, the petition shall be accompanied by an interdisciplinary evaluation report prepared by the facility.

(7) Except as provided in subsection (6) of this section, the court shall order appropriate evaluations to be performed by qualified persons or a qualified agency. The report shall be prepared and filed with the court and copies mailed to the attorneys for both parties at least ten (10) days prior to the hearing. All items specified in subsection (4) of this section shall be included in the report.

(8) If the person evaluated is a poor person as defined in KRS 453.190, the examiners shall be paid by the county in which the petition is filed upon an order of allowance entered by the court. Payment shall be in an amount which is reasonable as determined by the court, except no payment shall be required of the county for an evaluation performed by a salaried

employee of a state agency for an evaluation performed within the course of his employment. Additionally, no payment shall be required of the county for an evaluation performed by a salaried employee of a community mental health-mental retardation center or private facility or agency where the costs incurred by the center, facility, or agency are reimbursable through third-party payors. Affidavits or other competent evidence shall be admissible to prove the services rendered but not to prove their value.

(9) The respondent may file a response to the evaluation report no later than five (5) days prior to the hearing.

(10) The respondent may secure an independent evaluation. If the respondent is unable to pay for the evaluation, compensation for the independent evaluation may be paid by the county in an amount which is reasonable as determined by the court.

SECTION 18. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

The cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A in order to carry out the provisions of this chapter.

Section 19. There is appropriated from the general fund of the State Treasury $2,531,175 in fiscal year 1995 and $2,657,735 in fiscal year 1996 to the Department for Mental Health and Mental Retardation Services of the Cabinet for Human Resources for the purpose of implementing this Act.

The Committee Substitute to **HB 207** is as follows:

HB 207, AN ACT relating to the treatment of the mentally ill, and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 202A.011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Authorized staff physician" means a physician who is a bona fide member of the hospital's medical staff;

(2) "Danger" or "threat of danger to self, family or others" means substantial physical harm or threat of substantial physical harm upon self, family or others, including actions which deprive self, family or others of the basic means of survival including provision for reasonable shelter, food or clothing;

(3) "Cabinet" means the Kentucky Cabinet for Human Resources;

(4) ***"Psychiatric facility" means any facility licensed by the cabinet and which provides inpatient, outpatient, psychosocial rehabilitation, emergency, and consultation and education services for the diagnosis and treatment of persons who have a mental illness;***

(5) "Forensic psychiatric facility" means a mental institution or facility, or part thereof, designated by the secretary for the purpose and function of providing in-patient evaluation, care and treatment for mentally ill or mentally retarded persons who have been charged with or convicted of a felony;

(6)[~~(5)~~] "Hospital" means:

(a) A state mental hospital or institution or other licensed public or private hospital, institution, health care facility, or part thereof, approved by the Kentucky Cabinet for Human Resources as equipped to provide full-time residential care and treatment for mentally ill or mentally retarded persons;

(b) A hospital, institution or health care facility of the government of the United States equipped to provide residential care and treatment for mentally ill or mentally retarded persons;

(7)[~~(6)~~] "Judge" means any judge or justice of the Court of Justice or a trial commissioner of the District Court acting under authority of SCR 5.030;

(8)[~~(7)~~] "Least restrictive alternative mode of treatment" means that treatment which will give a mentally ill individual a realistic opportunity to improve ***the individual's*** [~~his~~] level of functioning, consistent with accepted professional practice in the least confining setting available;

(9)[~~(8)~~] "Mentally ill person" means a person with substantially impaired capacity to use self-control, judgment or discretion in the conduct of ***the person's*** [~~his~~] affairs and social relations, associated with maladaptive behavior or recognized emotional symptoms where impaired capacity, maladaptive behavior or emotional symptoms can be related to physiological, psychological or social factors;

(10)[~~(9)~~] "Patient" means a person under observation, care or treatment in a hospital pursuant to the provisions of this chapter;

(11)[~~(10)~~] "Petitioner" means a person who institutes a proceeding under this chapter;

(12)[~~(11)~~] "Qualified mental health professional" means:

(a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of [~~his~~] official duties;

(b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of [~~his~~] official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(c) A psychologist licensed at the doctoral level or a psychologist or psychological associate certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under this chapter;

(d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse, with a bachelor's degree in nursing from an accredited institution, who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community mental health and mental retardation program; or

(e) A certified social worker licensed for the independent practice of clinical social work under the provisions of KRS Chapter 335, or a certified social worker under the provisions of KRS Chapter 335 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work [~~following certification~~] and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community mental health and mental retardation program;

(13)[~~(12~~]) "Residence" means legal residence as determined by applicable principles governing conflicts of law;

(14)[~~(13)~~] "Respondent" means a person alleged in a hearing under this chapter to be a mentally ill or mentally retarded person;

(15)[~~(14)~~] "Secretary" means the secretary of the Cabinet for Human Resources.

Section 2. KRS 202A.028 is amended to read as follows:

(1) Following an examination by a qualified mental health professional and a certification by that professional that the person meets the criteria for involuntary hospitalization, a judge may order the person hospitalized for a period not to exceed seventy-two (72) hours, excluding weekends and holidays. For the purposes of this section, [~~if the hospital to be utilized is one operated by the cabinet,~~] the qualified mental health professional shall be a staff member of a regional community mental ***health*** or mental retardation program.

(2) Any person who has been admitted to a hospital under subsection (1) of this section shall be released from the hospital within seventy-two (72) hours, excluding weekends and holidays, unless further ***held*** [~~detained~~] under the applicable provisions of this chapter.

(3) Any person admitted to ***a*** [~~the~~] hospital under subsection (1) of this section or ***transferred to a hospital while ordered hospitalized*** [~~released~~] under subsection ***(1)*** [~~(2)~~] of this section shall be transported [~~to and~~] from ***the*** [~~such~~] person's home county by the sheriff of that county ***or other peace officer as ordered by the court. The sheriff or other peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the person to the hospital. The transportation costs of the sheriff, other peace officer, ambulance service, or other private agency on contract with the cabinet shall be paid by the cabinet in accordance with an administrative regulation promulgated by the cabinet, pursuant to KRS Chapter 13A***.

(4) ***Any person released from the hospital under subsection (2) of this section shall be transported to the person's county of discharge by a sheriff or other peace officer, by an ambulance service designated by the cabinet, or by other appropriate means of transportation which is consistent with the treatment plan of that person. The transportation cost of transporting the patient to the patient's county of discharge when performed by a peace officer, ambulance service, or other private agency on contract with the cabinet shall be paid by the cabinet in accordance with an administrative regulation issued by the cabinet pursuant to KRS Chapter 13A*** [~~A person who has been detained under this section shall not remain in jail in excess of forty-eight (48) hours pending evaluation and transportation to the hospital~~].

(5) No person who has been held under subsection (1) of this section shall be held in jail pending evaluation and transportation to the hospital.

Section 3. KRS 202A.041 is amended to read as follows:

(1) Any peace officer who has reasonable grounds to believe that an individual is mentally ill and presents a danger or threat of danger to self, family, or others if not restrained shall ***take the individual into custody and transport the individual without unnecessary delay to a hospital or psychiatric facility designated by the cabinet for the purpose of an evaluation to be conducted by a qualified mental health professional. Upon transport of the person to the hospital or psychiatric facility, the peace officer shall provide written documentation which describes the behavior of the person which caused the peace officer to take the person into custody. If, after evaluation, the qualified mental health***

professional finds that the person does not meet the criteria for involuntary hospitalization, the person shall be released immediately and transported back to the person's home county by an appropriate means of transportation as provided in KRS 202A.101. If, after evaluation, the qualified mental health professional finds that the person meets the criteria for involuntary hospitalization, appropriate proceedings under this chapter shall be initiated. The person may be held pending certification by a qualified mental health professional and implementation of procedures as provided in KRS 202A.028, 202A.031, or 202A.051 for a period not to exceed eighteen (18) hours.

(2) ***If, after the evaluation, the qualified mental health professional finds that the person does not meet the criteria for involuntary hospitalization and the peace officer has probable cause to believe that the person has committed a criminal offense, the peace officer may swear out a warrant and take the arrested person without unnecessary delay before a judge*** [~~detain that person without a warrant. The peace officer shall, if no other party can be found, swear out a warrant and take the arrested person without unnecessary delay before a judge. Only in exceptional cases should the delay exceed twelve (12) hours. The judge shall release the individual if no warrant has been taken out. The judge shall, unless either the court or one (1) of the parties objects, implement the procedures as provided in KRS 202A.028 and order the person to be examined without unnecessary delay by a qualified mental health professional. Following that, the procedures as provided in KRS 202A.028 shall be carried out. Otherwise, the court shall order the person arrested to be examined without unnecessary delay by two (2) qualified mental health professionals, at least one (1) of whom shall be a physician. The qualified mental health professionals shall certify to the court, within twenty-four (24) hours of the examination, their findings and opinions as to whether the person should be involuntarily hospitalized.~~

~~(2) If the criteria for involuntary hospitalization are certified by two (2) qualified mental health professionals, the court shall set a preliminary hearing within six (6) days from the date of arrest (excluding weekends and holidays) to determine if there is probable cause to believe the person should be involuntarily hospitalized.~~

~~(3) Prior to the preliminary hearing, the court shall notify the respondent, his legal guardian, if any and if known, and his spouse, parents, or nearest known relative or friend concerning the involuntary hospitalization proceedings and the date and purpose of the preliminary hearing; and the name, address and telephone number of the attorney appointed to represent the respondent.~~

~~(4) If upon completion of the preliminary hearing, the court finds there is probable cause to believe the person should be involuntarily hospitalized, the court shall order a final hearing within twenty-one (21) days from the date of the arrest to determine if the person should be involuntarily hospitalized for a period of sixty (60) days.~~

~~(5) Prior to the final hearing, the county attorney shall file in the record and serve a copy thereof upon the respondent, a statement setting forth the alleged factual reasons or basis upon which the Commonwealth intends to rely in seeking the involuntary hospitalization of the respondent. The required statement shall be served upon the respondent at the earliest practical time, in any event, sufficiently in advance of the final hearing to permit preparation for the hearing by respondent.~~

~~(6) If upon completion of the final hearing, the court finds the person should be involuntarily hospitalized, the court shall order the person hospitalized in a hospital where treatment is available for a period not to exceed sixty (60) consecutive days from the date of the court order~~].

Section 4. KRS 202A.051 is amended to read as follows:

(1) Proceedings for sixty (60) days or three hundred sixty (360) days ***of*** involuntary hospitalization of an individual shall be initiated by the filing of a verified petition in District Court.

(2) The petition and all subsequent court documents shall be entitled: "In the interest of (name of respondent)."

(3) The petition shall be filed by a qualified mental health professional, peace officer, county attorney, Commonwealth's attorney, spouse, relative, friend***,*** or guardian of the individual concerning whom the petition is filed.

(4) The petition shall set forth:

   (a) Petitioner's relationship to the respondent;

   (b) Respondent's name, residence***,*** and current location, if known;

   (c) The name and residence of respondent's parents, if living and if known, or respondent's legal guardian, if any and if known;

   (d) The name and residence of respondent's husband or wife, if any and if known;

   (e) The name and residence of the person having custody of the respondent, if any, or if no such person is known, the name and residence of a near relative or that ***the*** [~~such~~] person is unknown;

   (f) Petitioner's belief, including the factual basis therefor, that the respondent is mentally ill and presents a danger or threat of danger to self, family or others if not restrained; and

   (g) If the petition seeks a three hundred sixty (360) day involuntary hospitalization of the respondent, the petition shall further set forth that the respondent has been hospitalized in a hospital or a forensic psychiatric facility for a period of thirty (30) days under the provisions of this chapter or KRS Chapter 504 within the preceding six (6) months.

(5) Upon receipt of the petition, the court shall examine the petitioner under oath as to the contents of the petition. If the petitioner is a qualified mental health professional, the court may dispense with ***the*** [~~such~~] examination.

(6) If after reviewing the allegations contained in the petition and examining the petitioner under oath, it appears to the court that there is probable cause to believe the respondent should be involuntarily hospitalized, the court shall, unless either the court or one (1) of the parties objects, implement the procedures provided in KRS 202A.028 and order the individual to be examined without unnecessary delay by a qualified mental health professional. ***If the person is not being held under the provisions of this chapter, the court may order that the sheriff of the county or other peace officer transport the person to a hospital or psychiatric facility designated by the cabinet for the purpose of the evaluation. The sheriff or other peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the person to a hospital or psychiatric facility.*** Following that, the procedures as set forth in KRS 202A.028 shall be carried out. Otherwise, the court shall:

(a) Set a date for a preliminary hearing ***within six (6) days from the date of holding the person under the provisions of this section (excluding holidays and weekends) to determine if there is probable cause to believe the person should be involuntarily hospitalized***;

(b) Notify the respondent, ***the*** [~~his~~] legal guardian, if any, and if known, and ***the*** [~~his~~] spouse, parents, or nearest relative or friend ***of the respondent*** concerning the allegations and contents of the petition and the date and purpose of the preliminary hearing; and the name, address***,*** and telephone number of the attorney appointed to represent the respondent; and

(c) Cause the respondent to be examined without unnecessary delay by two (2) qualified mental health professionals, at least one (1) of whom is a physician. The qualified mental health professionals shall certify within twenty-four (24) hours (excluding weekends and holidays) their findings.

(7) (a) If the respondent is being presently ***held*** [~~detained~~] under the provisions of this chapter, the court may order further ***holding*** [~~detention~~] of the respondent to accomplish the examination ordered by the court.

(b) If the respondent is not being presently ***held*** [~~detained~~] under the provisions of this chapter, the court may ***order that the sheriff of the county or a peace officer transport the respondent to a hospital or a psychiatric facility designated by the cabinet so*** [~~issue a warrant for the arrest of the respondent commanding therein~~] that the respondent ***shall*** be examined without unnecessary delay by two (2) qualified mental health professionals, at least one (1) of whom is a physician. ***The sheriff or other peace officer may authorize, upon agreement of a person authorized by the peace officer, the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the person to a hospital or psychiatric facility.***

(8) When the court is authorized to issue ***an order that the respondent be transported to a hospital or psychiatric facility*** [~~a warrant for the arrest of the respondent~~], the court may, in its discretion, issue a summons. A summons so issued shall be directed to the respondent, shall command the respondent to appear at a time and place therein specified where the respondent shall be there examined by two (2) qualified mental health professionals, at least one (1) of whom is a physician, and shall command the respondent's appearance at the preliminary hearing. If a respondent who has been summoned fails to appear for such examination or at the preliminary hearing, ***the court may order that the sheriff of the county or a peace officer transport the respondent to a hospital or psychiatric facility designated by the cabinet for the purpose of an evaluation*** [~~a warrant may then be issued~~].

(9) If upon completion of the preliminary hearing, the court finds there is probable cause to believe the respondent should be involuntarily hospitalized, the court shall order a final hearing ***within twenty-one (21) days from the date of holding the respondent under the provisions of this section*** to determine if the respondent should be involuntarily hospitalized.

(10) If the court finds there is no probable cause, the proceedings against the respondent shall be dismissed, and the respondent shall be released from any ***holding*** [~~detention~~].

(11) If upon completion of the final hearing, the court finds the respondent should be involuntarily hospitalized, the court shall order the respondent hospitalized in a hospital for a period not to exceed sixty (60) consecutive days from the date of the court order or a period not to exceed three hundred sixty (360) consecutive days from the date of the court order, whatever was the period of time that was requested in the petition.

Section 5. KRS 202A.071 is amended to read as follows:

(1) The preliminary hearing shall be held not later than six (6) days (excluding weekends and holidays) from the time of respondent's ***holding*** [~~detention~~] under these proceedings. If the respondent is not ***held*** [~~detained~~] under these proceedings, the preliminary hearing shall be held not later than six (6) days (excluding weekends and holidays) from the time of the examination of the respondent.

(2) The final hearing shall be held within twenty-one (21) days of the date of the ***holding*** [~~detention~~] or from the date of the examination, if not ***held*** [~~detained~~].

Section 6. KRS 202A.081 is amended to read as follows:

(1) Following the preliminary hearing but prior to the completion of the final hearing, the court may order the person ***held*** [~~detained in jail, or~~] in a hospital approved by the ***cabinet*** [~~secretary~~] for such purpose for the committing judicial district, or released, upon application and agreement of the parties, for the purpose of community-based outpatient treatment. ***No person held under this section shall be held in jail unless criminal charges are also pending*** [~~A person detained in jail under this section shall be detained therein no more than forty-eight (48) hours~~].

(2) A hospital shall discharge a patient there ***held*** [~~detained~~] and notify the court and attorneys of record if any authorized staff physician determines that the patient no longer meets the criteria for involuntary hospitalization.

(3) If a patient is discharged by the hospital pursuant to subsection (2) of this section, then the proceedings against the patient shall be dismissed.

(4) The release of the person pursuant to subsection (1) of this section for the purpose of community-based outpatient treatment does not terminate the proceedings against the person, and the court ordering such release may order the immediate ***holding*** [~~detention~~] of the person at any time with or without notice if the court believes from an affidavit filed with the court that it is to the best interest of the person or others that the person be ***held*** [~~detained~~] pending the final hearing, which shall be held within twenty-one (21) days of the person's further ***holding*** [~~detention~~].

(5) If the person is released pursuant to subsection (1) of this section for the purpose of community-based outpatient treatment, the final hearing may be continued for a period not to exceed sixty (60) days if a provider of outpatient care accepts the respondent for specified outpatient treatment. Community-based outpatient treatment may be ordered for an additional period not to exceed sixty (60) days upon application and agreement of the parties.

Section 7. KRS 202A.101 is amended to read as follows:

(1) The court which orders any person to ***the receiving*** [~~a~~] hospital ***or psychiatric facility***, under the provisions of this chapter, shall at once notify the ***receiving hospital or psychiatric facility*** [~~cabinet~~] that such order has been made, advising of the sex and condition of the person.

(2) After the ***facility*** [~~cabinet~~] has been so notified, the court shall order the sheriff of the county ***or other peace officer*** to transport the patient within forty-eight (48) hours (excluding weekends and holidays) from the county in which the person is located to the hospital ***or psychiatric facility*** designated by the cabinet. ***The sheriff or other peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the person to the hospital*** [~~The actual traveling expenses of persons transporting the patient to the institution shall be paid by the cabinet. Each female committed to an institution shall be accompanied by a female attendant, unless accompanied by her mother, father, sister, brother, husband, daughter, or son~~].

(3) ***The transportation costs of transporting a person to a hospital or psychiatric facility, when performed by a peace officer, an ambulance service, or other private agency on contract with the cabinet shall be paid by the cabinet in accordance with administrative regulation promulgated by the cabinet under the provisions of KRS Chapter 13A.***

(4) In returning any patient to the county from which ***the patient*** [~~he~~] is sent, the ***transportation*** cost of ***the sheriff or other peace officer, the ambulance service, or the other agency on contract with the cabinet transporting the patient*** [~~returning him~~] shall be paid ***as provided in Section 2(4) of this Act*** [~~in the same manner~~], when necessary.

(5)[~~(4)~~] Whenever an individual is involuntarily hospitalized by a court order the patient shall be transported to the hospital designated by the cabinet and accompanied by the following documents:

(a) A copy of the petition for involuntary hospitalization, unless hospitalization takes place pursuant to KRS 202A.041;

(b) The certificate of qualified mental health professionals; and

(c) The order of involuntary hospitalization.

(6)[~~(5)~~] The hospital may refuse to receive any person who has been ordered to be involuntarily hospitalized by a court order if the papers presented with such person at the hospital do not comply with the provisions of this chapter or if it does not receive notification of the order of involuntary hospitalization as required by this chapter.

Section 8. KRS 202A.141 is amended to read as follows:

(1) Hospitals ordered to receive an involuntarily hospitalized person shall have standing to petition the District Court for any necessary clarification or modification of orders or judgments entered in proceedings under this chapter and to appeal to the Circuit Court from final judgments or orders entered in proceedings which have not complied with the provisions of this chapter. A copy shall be sent to the involuntarily hospitalized person and the person's attorney of record, if any, of whatever pleadings are filed by the hospital.

(2) Appeals from the final orders or judgments of the District Court made and entered in proceedings under this chapter shall be taken in the same manner as other appeals from District Court to Circuit Court. This appeal shall be advanced on the Circuit Court docket without motion or notice.

SECTION 9. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

No person held under the provisions of this chapter shall be detained in jail unless criminal charges are also pending. No peace officer or any other person shall place criminal charges against a person who is mentally ill and in need of hospitalization pursuant to this chapter solely or primarily for the purpose of avoiding transporting the person to a hospital or psychiatric facility.

Section 10. KRS 202B.170 is amended to read as follows:

(1) Following the preliminary hearing but prior to the completion of the final hearing, the court may order the respondent to reside in an ICF/MR approved by the secretary for that purpose for the committing judicial district in a community program approved by the secretary ***or***[~~,~~] in a hospital[~~, or in jail for a period not to exceed forty-eight (48) hours if no other alternative exists~~]. The respondent may be released, upon application and agreement of the parties, for the purpose of community-based outpatient treatment.

(2) A physician of an ICF/MR or a hospital shall discharge a respondent residing therein and notify the court and attorneys of record, if the interdisciplinary team of the ICF/MR or an authorized staff physician of the hospital determines that the respondent no longer meets the criteria for involuntary admission.

(3) If a respondent is discharged by the ICF/MR or hospital pursuant to subsection (2) of this section, the proceedings against the respondent shall be dismissed.

Section 11. KRS 202B.200 is amended to read as follows:

(1) The court which orders any person to an ICF/MR under the provisions of this chapter, shall at once notify the cabinet that the order has been made, advising of the sex and condition of the person.

(2) The ICF/MR may refuse to receive any person who has been ordered to be involuntarily admitted by a court order if appropriate programs and space are not available or the papers presented with the person at the ICF/MR do not comply with the provisions of this chapter or if it does not receive notification of the order of involuntary admission as required by this chapter.

(3) After the cabinet has been so notified, the court may order the sheriff of the county to transport the person [~~within forty-eight (48) hours, excluding weekends and holidays,~~] from the county in which the person is located to the ICF/MR designated by the cabinet. The actual traveling expenses of persons transporting the person to the institution shall be paid by the cabinet. Each female admitted to an ICF/MR shall be accompanied by a female attendant, unless accompanied by her mother, father, sister, brother, husband, daughter, or son.

(4) In returning any person to the county from which that person is sent, the cost of returning the person shall be paid in the same manner, when necessary.

(5) If a person is involuntarily admitted by a court order, the person shall be transported to the ICF/MR designated by the cabinet and accompanied by the following documents:

(a) A copy of the petition for involuntary admission;

(b) The certificate of qualified mental retardation professionals; and

(c) The order of involuntary admission.

SECTION 12. A NEW SECTION OF KRS CHAPTER 504 IS CREATED TO READ AS FOLLOWS:

A forensic psychiatric facility or psychiatric facility as those terms are defined in Section 1 of this Act shall have standing to petition the court for any necessary clarification or modification of orders or judgments entered in proceedings under this chapter and to appeal from final orders or judgments entered in proceedings which have not complied with the provisions of this chapter. A copy shall be sent to the mentally ill or mentally retarded person who has been charged with or convicted of a felony and to the person's attorney of record, if any, of whatever pleadings are filed by the forensic psychiatric facility or psychiatric facility.

Section 13. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

(1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian or other person exercising custodial control or supervision of the child: inflicts or allows to be inflicted upon the child physical or emotional injury by other than accidental means; creates or allows to be created a risk of physical or emotional injury to the child by other than accidental means; commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child; creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child; abandons or exploits such child; does not provide the child with adequate care, supervision, food, clothing, shelter and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing his religious beliefs shall not be considered a negligent parent solely because he fails to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;

(2) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the cabinet for the placement of children committed to the cabinet;

(3) "Cabinet" means the Cabinet for Human Resources;

(4) "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Justice Cabinet after consultation with the Cabinet for Human Resources and other appropriate state agencies;

(5) "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;

(6) "Child-caring facility" means any facility or group home other than a state facility, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption or marriage to the person maintaining the facility;

(7) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;

(8) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;

(9) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Human Resources or another facility or agency until the child attains the age of eighteen (18) unless the committing court terminates or extends the order;

(10) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;

(11) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;

(12) "Court" means the juvenile session of District Court;

(13) "Court designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into and supervising diversion agreements and performing such other functions as authorized by law or court order;

(14) "Department" means the Department for Social Services;

(15) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

(16) "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, or a secure juvenile detention facility;

(17) "Diversion agreement" means an agreement entered into between a court designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;

(18) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;

(19) "Emotional harm" means harm to the mental or psychological capacity or emotional stability of a child as testified to by a qualified mental health professional. The age and development of the child shall be considered together with the child's culture or environment in the diagnosis and determination of emotional harm;

(20) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in his ability to function within a normal range of performance and behavior with due regard to his age, development, culture and environment;

(21) "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;

(22) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;

(23) "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;

(24) "Habitual truant" means any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period;

(25) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;

(26) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;

(27) "Informal adjustment" means an agreement reached among the parties after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;

(28) "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;

(29) "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;

(30) "Juvenile holding facility" means a physically secure setting, approved by the Justice Cabinet, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Justice Cabinet may supervise juvenile as well as adult prisoners;

(31) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; and is conducted at the suitable available facility closest to the child's place of residence;

(32) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;

(33) "Parent" means the biological or adoptive mother or father of a child;

(34) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

(35) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;

(36) "Physical injury" means substantial physical pain or any impairment of physical condition;

(37) "Public offense action" means an action brought in the interest of a child who is accused of committing a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a moving motor vehicle offense;

(38) "Qualified mental health professional" means:

(a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of [~~this~~] official duties;

(b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of [~~this~~] official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;

(d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or

(e) A certified clinical social worker licensed for the independent practice of clinical social work under the provisions of KRS Chapter 335, or a certified social worker licensed under the provisions of KRS Chapter 335 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work [~~following certification~~] and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(39) "Residential treatment facility" means a facility with more than eight (8) beds designated by the cabinet for the treatment of children;

(40) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court designated worker for the purpose of making preliminary inquiries;

(41) "School personnel" means those certified persons under the supervision of the local public or private education agency;

(42) "Secretary" means the secretary of the Cabinet for Human Resources;

(43) "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police

station, lock-up, intermittent holding facility, or any building which is a part of, or attached to, any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined;

(44) "Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;

(45) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ;

(46) "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions between a child and an adult in which the parent, guardian or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

(47) "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;

(48) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;

(49) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;

(50) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed; and

(51) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 640 and who is subsequently convicted in Circuit Court.

Section 14. KRS 645.020 is amended to read as follows:

The definitions in KRS Chapter 600 shall apply to this chapter. In addition, unless the context requires otherwise:

(1) "Convalescent leave" means an authorized release not to exceed ninety (90) days of a child admitted to a hospital under this chapter;

(2) "Danger to ***self*** [~~himself~~] or others" means that it is shown by substantial proof that in the near future the child may attempt suicide or may cause substantial physical harm or threat of substantial physical harm to ***self*** [~~himself~~] or others, as evidenced by recent threats or overt acts, including acts by which ***the child*** [~~he~~] deprives ***self*** [~~himself~~] or others of the basic means of survival, including reasonable shelter, food or clothing. In determining whether a child presents a danger to ***self*** [~~himself~~], factors to be considered shall include, but shall not be limited to, an established pattern of past dangerous behavior;

(3) "Hospital" means a licensed private or public institution, health care facility, or part thereof, approved by the cabinet to treat children who are mentally ill;

(4) "Least restrictive alternative" means the treatment and conditions of treatment for a child which, separately and in combination:

(a) Are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment objectives for the child; and

(b) Involve no inpatient care restrictions on physical movement except as reasonably necessary for the administration of treatment or for the protection of the child or others from physical injury.

In determining the least restrictive alternative, factors to be considered shall include, but not be limited to, the likelihood, based on ***the child's*** [~~his~~] prior outpatient treatment, that ***the child*** [~~he~~] will benefit from outpatient treatment;

(5) "Mental health ***facility*** [~~care program~~]" means a ***residential or*** nonresidential service providing children psychological or psychiatric treatment for emotional, mental, or behavioral problems;

(6) "Mental health group home" means a community-based facility established to serve not less than four (4) nor more than eight (8) mentally ill children with a treatment program developed and supervised by a qualified mental health professional. Mental health group homes shall not be adjacent to or part of a residential treatment facility or a hospital; and

(7) "Mentally ill child" means that considering the child's age and development, ***the child*** [~~he~~] has a substantially impaired capacity to use self-control, judgment or discretion in the conduct of ***the child's*** [~~his~~] affairs and social relations, ***the child's*** [~~his~~] behavior is maladaptive or ***the child*** [~~he~~] exhibits recognized emotional symptoms which can be related to

physiological, psychological or social factors.

Section 15. KRS 645.120 is amended to read as follows:

(1) If, as a result of mental illness, a child appears in need of immediate hospitalization for observation, diagnosis, or treatment, a peace officer or any interested person may either take the child to a hospital, ***mental health facility*** [~~secure juvenile detention facility, juvenile holding facility~~], or another less restrictive alternative or file a petition for emergency hospitalization. Upon filing a petition, a peace officer may place a child up to twenty-four (24) hours, excluding weekends and holidays, in a ***hospital or*** mental health facility[~~, if one (1) is available, or if such facility is not available, secure juvenile detention facility, juvenile holding facility~~] or another less restrictive alternative. The peace officer shall notify the court designated worker of the child's placement[~~, unless he takes the child to a hospital~~]. Within twelve (12) hours, the peace officer shall, if no other party can be found, file a petition, unless the child has been taken to a hospital. ***No child held under this section shall be held in a secure juvenile detention facility or juvenile holding facility unless a status offense action or public offense action is also pending.***

(2) On the basis of a prompt examination and any other available information concerning a child who is present at or presented at a hospital, an authorized staff physician shall determine within twenty-four (24) hours if the child needs immediate hospitalization after which the child shall be released within seventy-two (72) hours unless ***the child*** [~~he~~] is held pursuant to other provisions of this chapter.

(a) The hospital may accept physical custody of the child and may request the person who brought the child to remain on the premises until the authorized staff physician makes a determination;

(b) If the authorized staff physician determines that the child, as a result of mental illness, appears to need immediate hospitalization, ***the physician*** [~~he~~] shall admit the child for observation, diagnosis, and treatment, and shall, if he deems it appropriate, file a certification petition. If the proponent of emergency hospitalization is not the child's legal custodian, the hospital shall immediately notify the child's parent or other person exercising custodial control or supervision including, if applicable, the state; and

(c) If the authorized staff physician determines the child does not need immediate hospitalization, ***the physician*** [~~he~~] shall release the child to a parent, person exercising custodial control or supervision***,*** or an agency having custody of the child and make whatever recommendations or referrals ***the physician*** [~~he~~] deems appropriate.

(3) The petition for emergency hospitalization shall state the petitioner's belief, including its factual basis, that the child, as a result of mental illness, needs immediate hospitalization for observation, diagnosis, and treatment. Within twenty-four (24) hours of the filing, exclusive of weekends and holidays, the court shall on an ex parte basis, which may be by telephone:

(a) Deny the petition; or

(b) Issue an order authorizing a peace officer to transport the child to a designated hospital ***or mental health facility*** for evaluation for emergency hospitalization, at which time two (2) qualified mental health professionals, at least one (1) of whom is an authorized staff physician, shall follow the procedures specified in subsection (2) of this section. If the child is committed to the cabinet or will be treated by the cabinet, the court shall notify the cabinet of its order at once and shall also advise the cabinet of the sex and condition of the child who is to be transported. ***The peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the child to a hospital or mental health facility.*** The cabinet shall pay the ***transportation costs*** [~~actual traveling expenses~~] of the child and the official transporting ***the child,*** [~~him~~] both to and from the designated hospital ***or mental health facility, in accordance with an administrative regulation promulgated under KRS Chapter 13A. If, after evaluation, the qualified mental health professional finds that the child does not meet the criteria for involuntary hospitalization, the child shall be released immediately and transported back to the child's home county by an appropriate means of transportation***.

(4) An emergency hospitalization of a child may not exceed seven (7) days, exclusive of weekends and holidays, unless a certification petition is filed before the seven (7) days expire.

[~~(5) If it appears that a child committed to the cabinet is mentally ill, the cabinet may use state mental hospital facilities or other resources for observation of mental conditions. This period of observation shall not exceed thirty (30) days. If a qualified mental health professional not employed by the cabinet finds that the child does not meet the definition of a "mentally ill child" under KRS 645.020(7), the child shall be discharged. During the thirty (30) days, a child who is at least sixteen (16) years of age may apply for admission as a voluntary patient. During the thirty (30) days, voluntary admission of a child who is under sixteen (16) years of age may be applied for by a parent, physician or other person exercising custodial control or supervision. After thirty (30) days, the child shall be removed or a certification petition shall be filed under this chapter.~~]

SECTION 16. A NEW SECTION OF KRS CHAPTER 645 IS CREATED TO READ AS FOLLOWS:

(1) No child held under the provisions of this chapter shall be held in a secure juvenile detention facility or juvenile holding facility unless a status offense action or public offense action is also pending. No peace officer or any other person shall bring a status offense action or a public offense action against a child who is mentally ill and in need of

hospitalization pursuant to this chapter solely or primarily for the purpose of avoiding transporting the child to a hospital, mental health facility, or other less restrictive alternative.

(2) If, after evaluation, the qualified mental health professional finds that the child does not meet the criteria for involuntary hospitalization and the peace officer has reason to believe that the child has committed a status offense or public offense, the peace officer may take the child into custody and deliver the child, without unnecessary delay, to a court-designated worker.

Section 17. KRS 387.540 is amended to read as follows:

(1) Prior to a hearing on a petition for a determination of partial disability or disability and the appointment of a limited guardian, guardian, limited conservator, or conservator, an interdisciplinary evaluation report shall be filed with the court. The report may be filed as a single and joint report of the interdisciplinary evaluation team, or it may otherwise be constituted by the separate reports filed by each individual of the team. If the court and all parties to the proceeding and their attorneys agree to the admissibility of the report or reports, the report or reports shall be admitted into evidence and shall be considered by the jury. The report shall be compiled by at least three (3) individuals, including a physician, a psychologist licensed or certified under the provisions of KRS Chapter 319, and a person licensed or certified as a social worker or an employee of the Cabinet for Human Resources who meets the qualifications of KRS 335.080(1)(a), (b), and (c) or 335.090(1)(a), (b), and (c). The social worker shall, when possible, be chosen from among employees of the Cabinet for Human Resources residing or working in the area, and there shall be no additional compensation for their service on the interdisciplinary evaluation team.

(2) At least one (1) person participating in the compilation of the report shall have knowledge of the particular disability which the respondent is alleged to have or knowledge of the skills required of the respondent to care for himself and his estate.

(3) If the respondent is alleged to be partially disabled or disabled due to mental illness, at least one (1) person participating in the compilation of the interdisciplinary evaluation report shall be a qualified mental health professional as defined in KRS 202A.011***(12)***[~~(11)~~]. If the respondent is alleged to be partially disabled or disabled due to mental retardation, at least one (1) person participating in the compilation of the evaluation report shall be a qualified mental retardation professional as defined in KRS 202B.010(12).

(4) The interdisciplinary evaluation report shall contain:

(a) A description of the nature and extent of the respondent's disabilities, if any;

(b) Current evaluations of the respondent's social, intellectual, physical, and educational condition, adaptive behavior, and social skills. Such evaluations may be based on prior evaluations not more than three (3) months old, except that evaluations of the respondent's intellectual condition may be based on individual intelligence test scores not more than one (1) year old;

(c) An opinion as to whether guardianship or conservatorship is needed, the type of guardianship or conservatorship needed, if any, and the reasons therefor;

(d) An opinion as to the length of time guardianship or conservatorship will be needed by the respondent, if at all, and the reasons therefor;

(e) If limited guardianship or conservatorship is recommended, a further recommendation as to the scope of the guardianship or conservatorship, specifying particularly the rights to be limited and the corresponding powers and duties of the limited guardian or limited conservator;

(f) A description of the social, educational, medical, and rehabilitative services currently being utilized by the respondent, if any;

(g) A determination whether alternatives to guardianship or conservatorship are available;

(h) A recommendation as to the most appropriate treatment or rehabilitation plan and living arrangement for the respondent and the reasons therefor;

(i) A listing of all medications the respondent is receiving, the dosage, and a description of the impact of the medication upon the respondent's mental and physical condition and behavior;

(j) An opinion whether attending a hearing on a petition filed under KRS 387.530 would subject the respondent to serious risk of harm;

(k) The names and addresses of all individuals who examined or interviewed the respondent or otherwise participated in the evaluation; and

(l) Any dissenting opinions or other comments by the evaluators.

(5) The evaluation report may be compiled by a community mental health-mental retardation center, a licensed facility for mentally ill or developmentally disabled persons, if the respondent is a resident of such facility, or a similar agency.

(6) In all cases where the respondent is a resident of a licensed facility for mentally ill or developmentally disabled persons and the petition is filed by an employee of that facility, the petition shall be accompanied by an interdisciplinary evaluation report prepared by the facility.

(7) Except as provided in subsection (6) of this section, the court shall order appropriate evaluations to be performed by qualified persons or a qualified agency. The report shall be prepared and filed with the court and copies mailed to the attorneys for both parties at least ten (10) days prior to the hearing. All items specified in subsection (4) of this section shall be included in the report.

(8) If the person evaluated is a poor person as defined in KRS 453.190, the examiners shall be paid by the county in which the petition is filed upon an order of allowance entered by the court. Payment shall be in an amount which is reasonable as determined by the court, except no payment shall be required of the county for an evaluation performed by a salaried employee of a state agency for an evaluation performed within the course of his employment. Additionally, no payment shall be required of the county for an evaluation performed by a salaried employee of a community mental health-mental retardation center or private facility or agency where the costs incurred by the center, facility, or agency are reimbursable through third-party payors. Affidavits or other competent evidence shall be admissible to prove the services rendered but not to prove their value.

(9) The respondent may file a response to the evaluation report no later than five (5) days prior to the hearing.

(10) The respondent may secure an independent evaluation. If the respondent is unable to pay for the evaluation, compensation for the independent evaluation may be paid by the county in an amount which is reasonable as determined by the court.

SECTION 18. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

The cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A in order to carry out the provisions of this chapter.

Section 19. There is appropriated from the general fund of the State Treasury $2,531,175 in fiscal year 1995 and $2,657,735 in fiscal year 1996 to the Department for Mental Health and Mental Retardation Services of the Cabinet for Human Resources for the purpose of implementing this Act.

The Committee on Business Organizations and Professions reported **HB 7**, with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 7, AN ACT relating to heating, ventilation, and air conditioning contractors.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 21 of this Act, unless the context requires otherwise:

(1) "Air conditioning or cooling system" means a system in which heat is removed from air, surrounding surfaces, or both;

(2) "Apprentice heating, ventilation, and air conditioning mechanic" means an individual in the process of learning the heating, ventilation, and air conditioning trade who assists and is under the supervision of a master heating, ventilation, and air conditioning contractor and a journeyman heating, ventilation, and air conditioning mechanic;

(3) "Board" means the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors;

(4) "Burner service" means the servicing of oil or gas burners used for heating air or water for purposes other than the transmission of heat;

(5) "Certificate" means a document issued by the board to an apprentice heating, ventilation, and air conditioning mechanic to assist a master heating, ventilation, and air conditioning contractor or a journeyman heating, ventilation or air conditioning mechanic;

(6) "Commissioner" means the commissioner of the Department of Housing, Buildings and Construction;

(7) "Department" means the Department of Housing, Buildings and Construction;

(8) "Heating system" means a system in which heat is transmitted by radiation, conduction, convection, or a combination of any of these methods to air, surrounding surfaces, or both, but shall not include fireplaces and free-standing stoves not incorporated into a primary heating system;

(9) "Hydronic system" means a heating and cooling system using liquids to transmit or remove heat;

(10) "Journeyman heating, ventilation, and air conditioning mechanic" means an individual who is licensed by the board to perform heating, ventilation, and air conditioning work under the supervision, direction, and responsibility of a master heating, ventilation, and air conditioning contractor;

(11) "Maintenance person" means a person employed full time by a firm to perform routine maintenance which shall not include the replacement of heating, ventilation, or air conditioning systems;

(12) "Master heating, ventilation, and air conditioning contractor" means a heating, ventilation, and air conditioning contractor who is licensed by the board to advertise and practice heating, ventilation, and air conditioning contracting in this Commonwealth;

(13) "Practice of heating, ventilation, and air conditioning contracting" means the installation, maintenance, altering, remodeling, or repair of heating systems, ventilation systems, hydronic systems, burner service, or cooling systems; and

(14) "Ventilation system" means a natural or mechanical system of supplying air to or removing air from any space.

SECTION 2. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors is hereby created, which shall be attached to the Department of Housing, Buildings and Construction for administrative purposes. The board shall consist of eight (8) members, one (1) of whom shall be a member of the Home Builders Association of Kentucky; one (1) of whom shall be a member of the Kentucky Society of Professional Engineers; one (1) of whom shall be a member of the Kentucky Association of Plumbing-Heating-Cooling Contractors; one (1) of whom shall be a member of the Mechanical Contractors Association of Kentucky; one (1) of whom shall be a heating, ventilation, or air conditioning contractor; one (1) of whom shall represent the public and shall not be associated with or financially interested in heating, ventilation, and air conditioning contracting; one (1) of whom shall be the commissioner of the Department of Housing, Buildings and Construction or his designee; and one (1) of whom shall be a local government official or employee, who shall have a background in the heating, ventilation, or air conditioning industry. Each member of the board shall be a citizen and resident of the Commonwealth of Kentucky.

(2) All members of the board, except those who represent the public, local government, the Department of Housing, Buildings and Construction, and the Kentucky Society of Professional Engineers, shall:

(a) For initial appointments to these positions, have been actively engaged in the heating, ventilation, and air conditioning contracting business for not less than five (5) years immediately preceding the date of the appointment to the board;

(b) For subsequent appointments to these positions for terms beginning prior to July 1, 2000, have been actively engaged in the heating, ventilation, and air conditioning contracting business for not less than five (5) years immediately preceding the date of the appointment to the board and hold a valid license or certificate as a master heating, ventilation, and air conditioning contractor; and

(c) For subsequent appointments to these positions for terms beginning on or after July 1, 2000, have been actively engaged in the heating, ventilation, and air conditioning contracting business as a master heating, ventilation, and air conditioning contractor for not less than five (5) years immediately preceding the date of the appointment to the board and shall hold a valid license or certificate for that status.

(3) Except for the commissioner, who shall serve for so long as he holds his appointment as commissioner, the terms of the board members shall be as follows. The remaining seven (7) board members shall be appointed by the Governor with initial appointments for three (3) members for terms of three (3) years, two (2) members for terms of two (2) years, and two (2) members for terms of one (1) year. All appointments shall expire on June 30 of the last year of the terms. Thereafter, these members shall be appointed by the Governor for terms of three (3) years. No person shall serve more than two (2) full consecutive terms. Members shall serve until their successors are appointed.

(4) The commissioner of the Department of Housing, Buildings and Construction, or his designee, shall serve as chairman of the board. A majority of the board shall constitute a quorum to conduct business. The board shall meet at least once each calendar quarter in a location designated by the chairman or commissioner and upon special call by the chairman, the commissioner, or a majority of the board.

(5) Each member of the board, except the commissioner, shall receive twenty-five dollars ($25) per day for attending each meeting and shall be reimbursed for all necessary expenses incurred in the performance of his official duties.

(6) Vacancies in the membership of the board for any cause shall be filled by appointment by the Governor for the balance of the unexpired term.

SECTION 3. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The board shall promulgate administrative regulations to administer, coordinate, and enforce the provisions of Sections 1 to 21 of this Act; conduct examinations; maintain a list of all licensees and certificate holders; keep minutes of board meetings and a record of its proceedings; and register and keep records of all apprentices.

(2) The board, or its designee, may issue subpoenas, administer oaths, examine witnesses, conduct disciplinary proceedings, investigate allegations of wrongdoing under Sections 1 to 21 of this Act, issue licenses and certificates, and seek injunctive relief to enforce the provisions of Sections 1 to 21 of this Act. In seeking injunctive relief, the board shall not be required to post any bond.

SECTION 4. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

Except as otherwise provided in Sections 1 to 21 of this Act:

(1) No person shall hold himself out as a master heating, ventilation, and air conditioning contractor or assume or use any title, designation, or abbreviation likely to create the impression of this licensure, unless he is the holder of a valid master heating, ventilation, and air conditioning contractor's license issued in accordance with the provisions

of Sections 1 to 21 of this Act. The holder of a valid master heating, ventilation, and air conditioning contractor's license shall be entitled to practice heating, ventilation, and air conditioning contracting, including the obtaining of any necessary permits in connection with the practice of heating ventilation and air conditioning contracting, and shall be primarily responsible for the heating ventilation, and air conditioning work performed;

(2) No person shall hold himself out as a journeyman heating, ventilation, and air conditioning mechanic or assume or use any title, designation, or abbreviation likely to create the impression of this licensure, unless he is the holder of a valid journeyman heating, ventilation, and air conditioning mechanic's license issued in accordance with the provisions of Sections 1 to 21 of this Act;

(3) No person shall hold himself out as an apprentice heating, ventilation, and air conditioning mechanic or assume or use any title, designation, or abbreviation likely to create the impression of certification, unless he is the holder of a valid apprentice heating, ventilation, and air conditioning mechanic's certificate issued in accordance with the provisions of Sections 1 to 21 of this Act; and

(4) No person shall practice heating ventilation and air conditioning contracting, unless he is otherwise qualified according to the provisions of Sections 1 to 21 of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The board shall issue a master heating, ventilation, and air conditioning contractor's license to any person who:

(a) Is at least eighteen (18) years of age;

(b) Has been regularly and principally employed or engaged in the heating, ventilation, and air conditioning trades as a journeyman heating, ventilation, and air conditioning mechanic for not less than two (2) years, under the direction and supervision of a master heating, ventilation, and air conditioning contractor; and

(c) Has passed a written examination prescribed by the board to determine competency to practice heating, ventilation, and air conditioning contracting.

(2) The board shall issue a journeyman heating, ventilation, and air conditioning mechanic's license to any person who:

(a) Is at least eighteen (18) years of age;

(b) Has been regularly and principally employed or engaged in the heating, ventilation, and air conditioning trades for not less than two (2) years, under the direction and supervision of a master heating, ventilation, and air conditioning contractor, or who prior to July 1, 1995, under the direction and supervision of a person who qualifies under Section 7 of this Act; and

(c) Has passed a written examination prescribed by the board to determine competency to install, maintain, and repair heating and cooling systems, heating and cooling service, burner service, and hydronic systems.

(3) The board shall issue an apprentice heating, ventilation, and air conditioning mechanic's certificate to any person who is registered with the board.

(a) The board shall establish by administrative regulation the minimum number of hours of experience required by apprentices and shall maintain an apprentice register to credit an apprentice for hours worked under the supervision of a master heating, ventilation, and air conditioning contractor and journeyman heating, ventilation, and air conditioning mechanic.

(b) The apprentice register shall include the name, address, Social Security number, employer, and dates of employment of the apprentice.

(c) The apprentice shall notify the board in writing of any change in address or employer.

(4) The satisfactory completion of one (1) academic year of a board approved curriculum or one (1) year of professional training in heating, ventilation, and air conditioning work may be considered as equivalent to one (1) year of employment required by subsection (2)(b) of this section, not to exceed one (1) year.

SECTION 6. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) Applications for examination shall be in writing and shall contain all information required by the board. Applications shall be filed not less than forty-five (45) days prior to the examination date.

(a) Not less than ten (10) days prior to an examination date, the board shall send written notice of the date, hour, and place of the examination to each applicant for licensure or certification.

(b) Each application for licensure or certification shall be accompanied by a nonrefundable application fee.

(2) Examinations shall be given at least two (2) times during each calendar year at those times and places within the Commonwealth prescribed by the board. No applicant may take an examination until the examination fee is paid.

(3) Notice of passing or failing an examination shall be provided to each applicant as soon as practicable.

SECTION 7. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) Upon application made prior to July 1, 1995, and payment of a fee as determined by the board, any person who has been principally engaged and lawfully established as a heating, ventilation, and air conditioning contractor in this

Commonwealth for not less than three (3) years immediately prior to July 1, 1994, or any person holding a valid heating, ventilation, and air conditioning license or similar license, issued by a city, county, or urban-county government of this Commonwealth prior to July 1, 1994, may be issued a master heating, ventilation, and air conditioning contractor's license which shall entitle him to practice heating, ventilation, and air conditioning contracting, subject to approval of the board, in any jurisdiction in the Commonwealth. The prescribed fee and proof of eligibility required by the board shall accompany the application.

(2) Upon application made prior to July 1, 1995, and payment of a fee as determined by the board, any person who has been principally engaged and lawfully qualified as a journeyman heating, ventilation, and air conditioning mechanic in this Commonwealth under the supervision of a heating, ventilation, and air conditioning contractor for not less than three (3) years immediately prior to July 1, 1994, may be issued a journeyman heating, ventilation, and air conditioning mechanic's license, subject to approval of the board.

(3) After July 1, 1995, all applicants for a master heating, ventilation, and air conditioning contractor's license or a journeyman heating, ventilation, and air conditioning mechanic's license shall be required to comply with Section 5 of this Act.

SECTION 8. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) Every master heating, ventilation, and air conditioning contractor's license and journeyman heating, ventilation, and air conditioning mechanic's license issued by the board shall expire on June 30 of each year and may be renewed upon payment of a renewal fee prior to July 1 of each year. Failure to renew shall cause the license to expire.

(2) Applications for restoration may be made within ninety (90) days of expiration of a license upon payment of the renewal fee, payment of a restoration fee, and if applicable proof of insurance as required by Section 10 of this Act.

(3) Those persons previously licensed by the board as a master heating, ventilation, and air conditioning contractor and not engaged in the practice of heating, ventilating, and air conditioning contracting in the Commonwealth may apply and be granted inactive status by the board in accordance with administrative regulations promulgated by the board. Licensees granted inactive status shall not retain the right to statewide practice of heating, ventilation, and air conditioning contracting. An inactive license shall not be a valid license. A licensee on inactive status may petition the board for restoration of a license to practice actively. The petitioner shall pay a reactivation fee, provide proof of the satisfaction of all other requirements as determined by the board, and obtain the insurance as required by Section 10 of this Act.

SECTION 9. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

Any person who has been issued a license in another state which has licensing, educational, and experience requirements substantially equal to or greater than those of this state and which grants equal licensing privileges to persons licensed in this state, may be issued an equivalent license in this state upon terms and conditions determined by the board.

SECTION 10. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) No person, firm, or corporation shall practice heating, ventilation, and air conditioning contracting unless that person, firm, or corporation maintains general liability insurance in an amount not less than five hundred thousand dollars ($500,000) and property damage insurance in an amount not less than three hundred thousand dollars ($300,000) underwritten by an insurance carrier licensed and approved by the Kentucky Department of Insurance.

(2) Proof of insurance shall be submitted to the board prior to issuance or renewal of a license.

(3) Proof of insurance as required by subsection (1) of this section, shall exempt licensees from the requirement of obtaining separate insurance in local jurisdictions under any local licensing laws.

(4) No license shall be valid without insurance as provided in this section. Insurance carriers shall notify the board upon cancellation of the insurance of any licensee required to maintain insurance.

SECTION 11. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

No person shall advertise or hold himself out as a master heating, ventilation, and air conditioning contractor, unless he is so licensed as such by the board according to the provisions of Sections 1 to 21 of this Act. The license number shall appear in all advertising and on all vehicles used by the licensee for heating, ventilation, and air conditioning contracting work.

SECTION 12. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The board may revoke, suspend, place on probation, or restrict the license or certificate of any licensee or certificate holder; refuse to issue or renew a license or certificate; or reprimand, censure, or fine a licensee or certificate holder for any of the following reasons:

(1) Fraud or deceit in obtaining licensure or certification;

(2) Transfer of the authority granted by the license or certificate to another person;

(3) Unfair or deceptive trade practices;

(4) Willful or deliberate disregard and violation of building codes, electrical codes, or related laws and ordinances of

this Commonwealth or any city, county, or urban-county government;

(5) Aiding or abetting any person attempting to evade the provisions of Sections 1 to 21 of this Act;

(6) Conspiracy or knowingly combining with any person, to allow a license or certificate to be used by an unlicensed or uncertified person, firm, or corporation with intent to evade the provisions of Sections 1 to 21 of this Act. Allowing a license or certificate to be used by more than one (1) person shall be prima facie evidence of intent to evade the provisions of Sections 1 to 21 of this Act;

(7) Willful or deliberate disregard of disciplinary actions taken by the board, or of a city, county, or urban-county government;

(8) Negligence or incompetence in compliance with applicable codes and standards of practice;

(9) Violation of any of the provisions of Sections 1 to 21 of this Act or any administrative regulation promulgated by the board; or

(10) Conviction of a felony or of any crime an element of which is dishonesty or fraud, under the laws of any state or of the United States.

SECTION 13. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

Sections 1 to 21 of this Act shall not apply to:

(1) Employees of any master heating, ventilation, and air conditioning contractor who are subordinates of the licensee, if those employees are not journeyman heating, ventilation, and air conditioning mechanics or apprentice heating, ventilation, and air conditioning mechanics and do not engage in heating, ventilation, and air conditioning contracting, except as an employee;

(2) An employee of the United States government while practicing heating, ventilation, and air conditioning contracting on or within property owned by the United States government.

(3) An individual owner of real property while practicing heating, ventilation, and air conditioning work on or within property owned and occupied by the individual;

(4) A person employed in the installation, maintenance, repair, or replacement of residential window air conditioning units;

(5) A person licensed under KRS Chapter 236, if he is installing, servicing, repairing, or replacing boiler devices;

(6) A person licensed under KRS Chapter 322, if he is preparing plans or conducting construction inspections; or

(7) A full-time maintenance person performing routine maintenance on any heating, ventilation, or air conditioning unit in connection with his employment.

SECTION 14. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The board shall establish by administrative regulation and collect the following fees, not to exceed the cost of the licensing program:

  (a) Initial application fee for:

    1. Master heating, ventilation, and air conditioning contractor;

    2. Journeyman heating, ventilation, and air conditioning mechanic; and

    3. Apprentice heating, ventilation, and air conditioning mechanic.

  (b) Examination fee for:

    1. Master heating, ventilation, and air conditioning contractor;

    2. Journeyman heating, ventilation, and air conditioning mechanic; and

    3. Apprentice heating, ventilation, and air conditioning mechanic.

  (c) License renewal fee.

  (d) Certificate renewal fee.

  (e) Duplicate license or certificate fee.

  (f) Inactive status fee.

  (g) Restoration fee.

  (h) Reactivation fee.

  (i) Change of information fee.

(2) All fees and charges collected by the board under the provisions of this section shall be paid into a trust and agency account in the State Treasury. All expenses incurred by the board under the provisions of Sections 1 to 21 of this Act, including compensation to the board members, shall be paid out of this account, subject to approval of the board.

SECTION 15. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) No firm, company, or corporation may engage in the practice of heating, ventilation, and air conditioning contracting in any county of the Commonwealth, unless the person in responsible charge of the heating, ventilation, and air conditioning work is a master heating, ventilation, and air conditioning contractor and is an employee or subcontractor of the firm, company, or corporation.

(2) Each master heating, ventilation, and air conditioning contractor who is employed by a firm, company, or corporation engaged in the practice of heating, ventilation, and air conditioning contracting shall notify the board of that employment and upon termination of the employment.

(3) No master heating, ventilation, and air conditioning contractor shall represent more than one (1) firm, company, or corporation.

SECTION 16. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) With the exception of those persons appointed to the board pursuant to Section 2 of this Act, no person appointed or employed by the Commonwealth, a county, city, or other jurisdiction to administer, regulate, or inspect heating, ventilation, and air conditioning work shall have any pecuniary interest in any heating, ventilation, and air conditioning business during the person's employment with the government or other jurisdiction.

(2) Upon the holder's appointment or employment as an inspector, that person's license or certificate shall become inactive. Upon termination of the appointment or employment as an inspector, the person's license or certificate may be reactivated without examination, by written request to the board and payment of a reactivation fee.

SECTION 17. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The revocation, suspension, restriction, lapse, or voluntary surrender of a license or certificate issued by the board shall not deprive the board of jurisdiction to investigate allegations of wrongdoing under Sections 1 to 21 of this Act or conduct disciplinary proceedings against a licensee or certificate holder.

(2) The board shall, within thirty (30) days of the action, notify all appropriate local building officials, permit offices, or other authorized persons of license and certificate revocations, suspensions, probations, restrictions, and restorations.

SECTION 18. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The board may adopt by administrative regulation standards for continuing education for licensees and certificate holders.

SECTION 19. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

Effective July 1, 1995, any person for whom licensure or certification is required who is not licensed or certified by the board and practices heating, ventilation, and air conditioning contracting services shall be guilty of a Class A misdemeanor. Each violation shall be regarded as a separate offense.

SECTION 20. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The installation, maintenance, alteration, or repair of heating systems, ventilation systems, hydronic systems, burner service, or cooling systems governed by Sections 1 to 21 of this Act shall be made in conformity with applicable standards of the Uniform State Building Code.

SECTION 21. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

Sections 1 to 21 of this Act may be cited as the Heating, Ventilation, and Air Conditioning Contractors' Act.

The Committee Substitute to **HB 7** is as follows:

HB 7, AN ACT relating to heating, ventilation, and air conditioning contractors.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 21 of this Act, unless the context requires otherwise:

(1) "Air conditioning or cooling system" means a system in which heat is removed from air, surrounding surfaces, or both;

(2) "Apprentice heating, ventilation, and air conditioning mechanic" means an individual in the process of learning the heating, ventilation, and air conditioning trade who assists and is under the supervision of a master heating, ventilation, and air conditioning contractor and a journeyman heating, ventilation, and air conditioning mechanic;

(3) "Board" means the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors;

(4) "Burner service" means the servicing of oil or gas burners used for heating air or water for purposes other than the transmission of heat;

(5) "Certificate" means a document issued by the board to an apprentice heating, ventilation, and air conditioning

mechanic to assist a master heating, ventilation, and air conditioning contractor or a journeyman heating, ventilation or air conditioning mechanic;

(6) "Commissioner" means the commissioner of the Department of Housing, Buildings and Construction;

(7) "Department" means the Department of Housing, Buildings and Construction;

(8) "Heating system" means a system in which heat is transmitted by radiation, conduction, convection, or a combination of any of these methods to air, surrounding surfaces, or both. "Heating system" does not include fireplaces and free-standing stoves not incorporated into a primary heating system, electric thermal storage units, electric ceiling cable heating systems, or electric baseboard heating units;

(9) "Hydronic system" means a heating and cooling system using liquids to transmit or remove heat;

(10) "Journeyman heating, ventilation, and air conditioning mechanic" means an individual who is licensed by the board to perform heating, ventilation, and air conditioning work under the supervision, direction, and responsibility of a master heating, ventilation, and air conditioning contractor;

(11) "Maintenance person or maintenance engineer" means a person who is a regular and bona fide full-time employee or agent of a property owner, property lessor, property management company, or firm, not in the heating, ventilating, and air conditioning business that has jurisdiction of property where the routine maintenance of heating, ventilating, and air conditioning is being performed, provided the maintenance shall not include replacement of heating, ventilation, or air conditioning systems;

(12) "Master heating, ventilation, and air conditioning contractor" means a heating, ventilation, and air conditioning contractor who is licensed by the board to advertise and practice heating, ventilation, and air conditioning contracting in this Commonwealth;

(13) "Practice of heating, ventilation, and air conditioning contracting" means the installation, maintenance, altering, remodeling, or repair of heating systems, ventilation systems, hydronic systems, burner service, or cooling systems;

(14) "Routine maintenance of heating, ventilation, or air conditioning" means the routine and periodic servicing of heating, ventilation, and air conditioning systems, including cleaning, inspection, and adjustments to insure the proper operation, and the removal and replacement of component parts. Routine maintenance of heating, ventilation, or air conditioning shall not include the installation of complete new heating, ventilation, or air conditioning systems; and

(15) "Ventilation system" means a natural or mechanical system of supplying air to or removing air from any space.

SECTION 2. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors is hereby created, which shall be attached to the Department of Housing, Buildings and Construction for administrative purposes. The board shall consist of eight (8) members, one (1) of whom shall be a member of the Home Builders Association of Kentucky; one (1) of whom shall be a member of the Kentucky Society of Professional Engineers; one (1) of whom shall be a member of the Kentucky Association of Plumbing-Heating-Cooling Contractors; one (1) of whom shall be a member of the Mechanical Contractors Association of Kentucky; one (1) of whom shall be a heating, ventilation, or air conditioning contractor; one (1) of whom shall represent the public and shall not be associated with or financially interested in heating, ventilation, and air conditioning contracting; one (1) of whom shall be the commissioner of the Department of Housing, Buildings and Construction or his designee; and one (1) of whom shall be a local government official or employee, who shall have a background in the heating, ventilation, or air conditioning industry. Each member of the board shall be a citizen and resident of the Commonwealth of Kentucky.

(2) All members of the board, except those who represent the public, local government, the Department of Housing, Buildings and Construction, and the Kentucky Society of Professional Engineers, shall:

(a) For initial appointments to these positions, have been actively engaged in the heating, ventilation, and air conditioning contracting business for not less than five (5) years immediately preceding the date of the appointment to the board;

(b) For subsequent appointments to these positions for terms beginning prior to July 1, 2000, have been actively engaged in the heating, ventilation, and air conditioning contracting business for not less than five (5) years immediately preceding the date of the appointment to the board and hold a valid license or certificate as a master heating, ventilation, and air conditioning contractor; and

(c) For subsequent appointments to these positions for terms beginning on or after July 1, 2000, have been actively engaged in the heating, ventilation, and air conditioning contracting business as a master heating, ventilation, and air conditioning contractor for not less than five (5) years immediately preceding the date of the appointment to the board and shall hold a valid license or certificate for that status.

(3) Except for the commissioner, who shall serve for so long as he holds his appointment as commissioner, the terms of the board members shall be as follows. The remaining seven (7) board members shall be appointed by the Governor with initial appointments for three (3) members for terms of three (3) years, two (2) members for terms of two (2)

years, and two (2) members for terms of one (1) year. All appointments shall expire on June 30 of the last year of the terms. Thereafter, these members shall be appointed by the Governor for terms of three (3) years. No person shall serve more than two (2) full consecutive terms. Members shall serve until their successors are appointed.

(4) The commissioner of the Department of Housing, Buildings and Construction, or his designee, shall serve as chairman of the board. A majority of the board shall constitute a quorum to conduct business. The board shall meet at least once each calendar quarter in a location designated by the chairman or commissioner. The board may meet upon special call by the chairman, the commissioner, or a majority of the board.

(5) Each member of the board, except the commissioner, shall receive twenty-five dollars ($25) per day for attending each meeting and shall be reimbursed for all necessary expenses incurred in the performance of his official duties.

(6) Vacancies in the membership of the board for any cause shall be filled by appointment by the Governor for the balance of the unexpired term.

SECTION 3. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The board shall promulgate administrative regulations to administer, coordinate, and enforce the provisions of Sections 1 to 21 of this Act; conduct examinations; maintain a list of all licensees and certificate holders; keep minutes of board meetings and a record of its proceedings; and register and keep records of all apprentices.

(2) The board, or its designee, may issue subpoenas, administer oaths, examine witnesses, conduct disciplinary proceedings, investigate allegations of wrongdoing under Sections 1 to 21 of this Act, issue licenses and certificates, and seek injunctive relief to enforce the provisions of Sections 1 to 21 of this Act. In seeking injunctive relief, the board shall not be required to post any bond.

SECTION 4. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

Except as otherwise provided in Sections 1 to 21 of this Act:

(1) No person shall hold himself out as a master heating, ventilation, and air conditioning contractor or assume or use any title, designation, or abbreviation likely to create the impression of this licensure, unless he is the holder of a valid master heating, ventilation, and air conditioning contractor's license issued in accordance with the provisions of Sections 1 to 21 of this Act. The holder of a valid master heating, ventilation, and air conditioning contractor's license shall be entitled to practice heating, ventilation, and air conditioning contracting, including the obtaining of any necessary permits in connection with the practice of heating ventilation and air conditioning contracting, and shall be primarily responsible for the heating ventilation, and air conditioning work performed;

(2) No person shall hold himself out as a journeyman heating, ventilation, and air conditioning mechanic or assume or use any title, designation, or abbreviation likely to create the impression of this licensure, unless he is the holder of a valid journeyman heating, ventilation, and air conditioning mechanic's license issued in accordance with the provisions of Sections 1 to 21 of this Act;

(3) No person shall hold himself out as an apprentice heating, ventilation, and air conditioning mechanic or assume or use any title, designation, or abbreviation likely to create the impression of certification, unless he is the holder of a valid apprentice heating, ventilation, and air conditioning mechanic's certificate issued in accordance with the provisions of Sections 1 to 21 of this Act; and

(4) No person shall practice heating ventilation and air conditioning contracting, unless he is otherwise qualified according to the provisions of Sections 1 to 21 of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The board shall issue a master heating, ventilation, and air conditioning contractor's license to any person who:

- *(a) Is at least eighteen (18) years of age;*
- *(b) Has been regularly and principally employed or engaged in the heating, ventilation, and air conditioning trades as a journeyman heating, ventilation, and air conditioning mechanic for not less than two (2) years, under the direction and supervision of a master heating, ventilation, and air conditioning contractor; and*
- *(c) Has passed an examination prescribed by the board to determine competency to practice heating, ventilation, and air conditioning contracting.*

(2) The board shall issue a journeyman heating, ventilation, and air conditioning mechanic's license to any person who:

- *(a) Is at least eighteen (18) years of age;*
- *(b) Has been regularly and principally employed or engaged in the heating, ventilation, and air conditioning trades for not less than two (2) years, under the direction and supervision of a master heating, ventilation, and air conditioning contractor, or who prior to July 1, 1995, under the direction and supervision of a person who qualifies under Section 7 of this Act; and*
- *(c) Has passed an examination prescribed by the board to determine competency to install, maintain, and repair heating and cooling systems, heating and cooling service, burner service, and hydronic systems.*

(3) The board shall issue an apprentice heating, ventilation, and air conditioning mechanic's certificate to any person who is registered with the board.

(a) The board shall establish by administrative regulation the minimum number of hours of experience required by apprentices and shall maintain an apprentice register to credit an apprentice for hours worked under the supervision of a master heating, ventilation, and air conditioning contractor and journeyman heating, ventilation, and air conditioning mechanic.

(b) The apprentice register shall include the name, address, Social Security number, employer, and dates of employment of the apprentice.

(c) The apprentice shall notify the board in writing of any change in address or employer.

(4) The satisfactory completion of one (1) academic year of a board approved curriculum or one (1) year of professional training in heating, ventilation, and air conditioning work may be considered as equivalent to one (1) year of employment required by subsection (2)(b) of this section, not to exceed one (1) year.

SECTION 6. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) Applications for examination shall be in writing and shall contain all information required by the board. Applications shall be filed not less than forty-five (45) days prior to the examination date.

(a) Not less than ten (10) days prior to an examination date, the board shall send written notice of the date, hour, and place of the examination to each applicant for licensure or certification.

(b) Each application for licensure or certification shall be accompanied by a nonrefundable application fee.

(2) Examinations shall be given at least two (2) times during each calendar year at those times and places within the Commonwealth prescribed by the board. No applicant may take an examination until the examination fee is paid.

(3) Notice of passing or failing an examination shall be provided to each applicant as soon as practicable.

SECTION 7. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) Upon application made prior to July 1, 1995, and payment of a fee as determined by the board, any person who has been actively engaged and lawfully established as a heating, ventilation, and air conditioning contractor in this Commonwealth for not less than three (3) years immediately prior to July 1, 1994, or any person holding a valid heating, ventilation, and air conditioning license or similar license, issued by a city, county, or urban-county government of this Commonwealth prior to July 1, 1994, may be issued a master heating, ventilation, and air conditioning contractor's license which shall entitle him to practice heating, ventilation, and air conditioning contracting, subject to approval of the board, in any jurisdiction in the Commonwealth. The prescribed fee and proof of eligibility required by the board shall accompany the application.

(2) Upon application made prior to July 1, 1995, and payment of a fee as determined by the board, any person who has been actively engaged and lawfully qualified as a journeyman heating, ventilation, and air conditioning mechanic in this Commonwealth under the supervision of a heating, ventilation, and air conditioning contractor for not less than three (3) years immediately prior to July 1, 1994, may be issued a journeyman heating, ventilation, and air conditioning mechanic's license, subject to approval of the board.

(3) After July 1, 1995, all applicants for a master heating, ventilation, and air conditioning contractor's license or a journeyman heating, ventilation, and air conditioning mechanic's license shall be required to comply with Section 5 of this Act.

(4) Upon application made prior to July 1, 1994, and payment of a fee as determined by the board, any person who has been actively engaged in the practice of heating, ventilation, and air conditioning contracting in the public schools or has been actively engaged in the routine maintenance of heating, ventilation, or air conditioning in the public schools, for not less than eight (8) years immediately prior to July 1, 1994, may be issued a masters heating, ventilation, and air conditioning contractor's license, subject to the approval of the board.

SECTION 8. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) Every master heating, ventilation, and air conditioning contractor's license and journeyman heating, ventilation, and air conditioning mechanic's license issued by the board shall expire on June 30 of each year and may be renewed upon payment of a renewal fee prior to July 1 of each year. Failure to renew shall cause the license to expire.

(2) Applications for restoration may be made within ninety (90) days of expiration of a license upon payment of the renewal fee, payment of a restoration fee, and if applicable proof of insurance as required by Section 10 of this Act.

(3) Those persons previously licensed by the board as a master heating, ventilation, and air conditioning contractor and not engaged in the practice of heating, ventilating, and air conditioning contracting in the Commonwealth may apply and be granted inactive status by the board in accordance with administrative regulations promulgated by the board. Licensees granted inactive status shall not retain the right to statewide practice of heating, ventilation, and air conditioning contracting. An inactive license shall not be a valid license. A licensee on inactive status may

petition the board for restoration of a license to practice actively. The petitioner shall pay a reactivation fee, provide proof of the satisfaction of all other requirements as determined by the board, and obtain the insurance as required by Section 10 of this Act.

SECTION 9. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

Any person who has been issued a license in another state which has licensing, educational, and experience requirements substantially equal to or greater than those of this state and which grants equal licensing privileges to persons licensed in this state, may be issued an equivalent license in this state upon terms and conditions determined by the board.

SECTION 10. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) No person, firm, or corporation shall practice heating, ventilation, and air conditioning contracting unless that person, firm, or corporation maintains general liability insurance in an amount not less than five hundred thousand dollars ($500,000) and property damage insurance in an amount not less than three hundred thousand dollars ($300,000) underwritten by an insurance carrier licensed and approved by the Kentucky Department of Insurance.

(2) Proof of insurance shall be submitted to the board prior to issuance or renewal of a license.

(3) Proof of insurance, as required by subsection (1) of this section, shall exempt licensees from the requirement of obtaining separate insurance in local jurisdictions under any local licensing laws.

(4) No license shall be valid without insurance as provided in this section. Insurance carriers shall notify the board upon cancellation of the insurance of any licensee required to maintain insurance.

SECTION 11. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

No person shall advertise or hold himself out as a master heating, ventilation, and air conditioning contractor, unless he is licensed as such by the board according to the provisions of Sections 1 to 21 of this Act. The license number shall appear in all advertising and on all vehicles used by the licensee for heating, ventilation, and air conditioning contracting work.

SECTION 12. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The board may revoke, suspend, place on probation, or restrict the license or certificate of any licensee or certificate holder; refuse to issue or renew a license or certificate; or reprimand, censure, or fine a licensee or certificate holder for any of the following reasons:

(1) Fraud or deceit in obtaining licensure or certification;

(2) Transfer of the authority granted by the license or certificate to another person;

(3) Unfair or deceptive trade practices;

(4) Willful or deliberate disregard and violation of building codes, electrical codes, or related laws and ordinances of this Commonwealth or any city, county, or urban-county government;

(5) Aiding or abetting any person attempting to evade the provisions of Sections 1 to 21 of this Act;

(6) Conspiracy or knowingly combining with any person, to allow a license or certificate to be used by an unlicensed or uncertified person, firm, or corporation with intent to evade the provisions of Sections 1 to 21 of this Act. Allowing a license or certificate to be used by more than one (1) person shall be prima facie evidence of intent to evade the provisions of Sections 1 to 21 of this Act;

(7) Willful or deliberate disregard of disciplinary actions taken by the board, or of a city, county, or urban-county government;

(8) Negligence or incompetence in compliance with applicable codes and standards of practice;

(9) Violation of any of the provisions of Sections 1 to 21 of this Act or any administrative regulation promulgated by the board; or

(10) Conviction of a felony or of any crime an element of which is dishonesty or fraud, under the laws of any state or of the United States.

SECTION 13. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

Sections 1 to 21 of this Act shall not apply to:

(1) Employees of any master heating, ventilation, and air conditioning contractor who are subordinates of the licensee, if those employees are not journeyman heating, ventilation, and air conditioning mechanics or apprentice heating, ventilation, and air conditioning mechanics and do not engage in heating, ventilation, and air conditioning contracting, except as an employee;

(2) An employee of the United States government while practicing heating, ventilation, and air conditioning contracting on or within property owned by the United States government.

(3) An individual owner of real property while practicing heating, ventilation, and air conditioning work on or within property owned and occupied by the individual;

(4) A person employed in the installation, maintenance, repair, or replacement of residential window air conditioning

units;

(5) A person licensed under KRS Chapter 236, if he is installing, servicing, repairing, or replacing boiler devices;

(6) A person licensed under KRS Chapter 322, if he is preparing plans or conducting construction inspections;

(7) A full-time maintenance person or maintenance engineer performing routine maintenance of heating, ventilation, or air conditioning in connection with his employment;

(8) Contractors or employees while installing or maintaining heating, cooling, air conditioning, ventilation, or burner services on any property or site owned or operated by any entity:

(a) Subject to the jurisdiction of KRS Chapter 278; or

(b) Of any municipal electric, water, gas, or sewer utility operating pursuant to any of the provisions of KRS Chapter 96;

(9) The adjustment of an air flow device performed by any entity specified in subsection (8) of this section, if the adjustment is performed in conjunction with the installation, replacement, or repair of a gas distribution line;

(10) A person licensed or certified pursuant to KRS 227.570, or the administrative regulations promulgated thereunder, upon initial installation of air conditioning units incorporated with the original sale of a manufactured housing unit;

(11) A general retailer whose primary business is not the practice of heating, ventilation, and air conditioning contracting, if that general retailer uses only licensed subcontractors that comply with the provisions of Sections 1 to 21 of this Act. The provisions of this subsection shall not exclude or limit the liability of the general retailer, or exempt the general retailer from the insurance requirements as established in Section 10 of this Act, if the general retailer is engaging in the practice of heating, ventilation, and air conditioning contracting;

(12) The installation, service, repair, or replacement of electrical units on any heating, ventilation, or air conditioning system; or

(13) An employee or agent of the Commonwealth of Kentucky while practicing heating and ventilation contracting in connection with weatherization assistance for low income persons pursuant to 903 KAR 6:020.

SECTION 14. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The board shall establish by administrative regulation and collect the following fees, not to exceed the cost of the licensing program:

(a) Initial application fee for:

1. Master heating, ventilation, and air conditioning contractor;

2. Journeyman heating, ventilation, and air conditioning mechanic; and

3. Apprentice heating, ventilation, and air conditioning mechanic.

(b) Examination fee for:

1. Master heating, ventilation, and air conditioning contractor;

2. Journeyman heating, ventilation, and air conditioning mechanic; and

3. Apprentice heating, ventilation, and air conditioning mechanic.

(c) License renewal fee.

(d) Certificate renewal fee.

(e) Duplicate license or certificate fee.

(f) Inactive status fee.

(g) Restoration fee.

(h) Reactivation fee.

(i) Change of information fee.

(2) All fees and charges collected by the board under the provisions of this section shall be paid into a trust and agency account in the State Treasury. All expenses incurred by the board under the provisions of Sections 1 to 21 of this Act, including compensation to the board members, shall be paid out of this account, subject to approval of the board.

SECTION 15. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) No firm, company, or corporation may engage in the practice of heating, ventilation, and air conditioning contracting in any county of the Commonwealth, unless the person in responsible charge of the heating, ventilation, and air conditioning work is a master heating, ventilation, and air conditioning contractor and is an employee or subcontractor of the firm, company, or corporation.

(2) Each master heating, ventilation, and air conditioning contractor who is employed by a firm, company, or

corporation engaged in the practice of heating, ventilation, and air conditioning contracting shall notify the board of that employment and upon termination of the employment.

(3) No master heating, ventilation, and air conditioning contractor shall represent more than one (1) firm, company, or corporation.

SECTION 16. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) With the exception of those persons appointed to the board pursuant to Section 2 of this Act, no person appointed or employed by the Commonwealth, a county, city, or other jurisdiction to administer, regulate, or inspect heating, ventilation, and air conditioning work shall have any pecuniary interest in any heating, ventilation, and air conditioning business during the person's employment with the government or other jurisdiction.

(2) Upon the holder's appointment or employment as an inspector, that person's license or certificate shall become inactive. Upon termination of the appointment or employment as an inspector, the person's license or certificate may be reactivated without examination, by written request to the board and payment of a reactivation fee.

SECTION 17. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The revocation, suspension, restriction, lapse, or voluntary surrender of a license or certificate issued by the board shall not deprive the board of jurisdiction to investigate allegations of wrongdoing under Sections 1 to 21 of this Act or conduct disciplinary proceedings against a licensee or certificate holder.

(2) The board shall, within thirty (30) days of the action, notify all appropriate local building officials, permit offices, or other authorized persons of license and certificate revocations, suspensions, probations, restrictions, and restorations.

SECTION 18. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The board may adopt by administrative regulation standards for continuing education for licensees and certificate holders.

SECTION 19. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

Effective July 1, 1995, any person for whom licensure or certification is required who is not licensed or certified by the board and practices heating, ventilation, and air conditioning contracting services shall be guilty of a Class A misdemeanor. Each violation shall be regarded as a separate offense.

SECTION 20. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The installation, maintenance, alteration, or repair of heating systems, ventilation systems, hydronic systems, burner service, or cooling systems governed by Sections 1 to 21 of this Act shall be made in conformity with applicable standards of the Uniform State Building Code.

SECTION 21. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

Sections 1 to 21 of this Act may be cited as the Heating, Ventilation, and Air Conditioning Contractors' Act.

The Committee on Agriculture and Small Business reported **HB 18** and **HB 135**, with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 18, AN ACT relating to tobacco.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The following KRS section is repealed:

248.470 Deduction from sales of tobacco for tobacco labor fund -- Use of tobacco labor fund -- Refund -- Fine.

HB 135, AN ACT relating to the quality of motor fuels and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 363 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 5 of this Act, unless the context clearly requires otherwise:

(1) "ASTM standard" means the latest standards and specifications as set forth by the American Society for Testing and Materials in accordance with the most recent version of ASTM specifications for automotive gasoline, or ASTM specifications for diesel fuel oils;

(2) "Commissioner" means the Commissioner of Agriculture or a departmental employee designated by the Commissioner to act on his behalf for the purposes of Sections 1 to 5 of this Act;

(3) "Department" means the Kentucky Department of Agriculture;

(4) "Diesel fuel" means refined oil commonly used in internal combustion engines and defined as diesel fuel under the ASTM standard classification of diesel fuel oils;

(5) "Division" means the Division of Weights and Measures in the Kentucky Department of Agriculture;

(6) "Gasoline" means gasoline as defined in KRS 138.210;

(7) "Motor fuel" means any product used for the generation of power in an internal combustion or turbine engine and includes, but is not limited to, gasoline, diesel fuel, gasoline-alcohol blend, or special fuels;

(8) "Retail facility" means a facility that sells motor fuels to the general public; and

(9) "Special fuels" means special fuels as defined in KRS 138.210.

SECTION 2. A NEW SECTION OF KRS CHAPTER 363 IS CREATED TO READ AS FOLLOWS:

(1) The Commissioner or his authorized agent shall implement and administer an inspection and testing program for motor fuels to ensure compliance with Sections 1 to 5 of this Act.

(2) For the purposes of administering and giving effect to the provisions of Sections 1 to 5 of this Act, the standards set forth in the annual book of ASTM standards, supplements, and revisions shall be applied.

(3) In administering Sections 1 to 5 of this Act, the department shall conform to any provisions of federal law or regulations which impose requirements in conflict with the ASTM standard.

(4) The department may promulgate administrative regulations to implement and enforce Sections 1 to 5 of this Act.

SECTION 3. A NEW SECTION OF KRS CHAPTER 363 IS CREATED TO READ AS FOLLOWS:

(1) No article or commodity shall be sold or offered for sale and use in Kentucky as motor fuel unless it conforms to the following:

(a) The motor fuel shall be labeled and posted in accordance with applicable federal and state laws; and

(b) The motor fuel shall conform to the latest ASTM specifications for that particular type, class, and grade of motor fuel, except:

1. As provided by Subsection (3) of Section 2 of this Act; and

2. For gasoline containing up to ten percent (10%) ethanol, in which case the vapor pressure limit for each class shall be increased by one (1) pound per square inch, the minimum temperature for fifty percent (50%) distillation shall be one hundred fifty-eight (158) degrees Fahrenheit, and ASTM V/L (vapor to liquid ratio) specification is waived.

(2) The motor fuel compliance with ASTM shall be determined in accordance with the test methods prescribed in the latest ASTM publications.

(3) All shipments of motor fuel shall state on either the bill of lading or invoice the destination of the shipment and that the shipment meets the standards and specifications required in this section. The division may obtain a sample of any shipment of motor fuel for testing. Motor fuel blending components shall be exempt from this section until they are offered for sale as motor fuel by the refiner or manufacturer.

SECTION 4. A NEW SECTION OF KRS CHAPTER 363 IS CREATED TO READ AS FOLLOWS:

The department shall levy and collect annual fees in the amount of fifty dollars ($50) per facility from the owner or operator of a retail facility for the purpose of funding the administration of the motor fuels quality program. The fees shall be deposited into an interest-bearing account in the State Treasury. Money unexpended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year for future use. The department shall collect a fee for calendar year 1994 to start the administration of Sections 1 to 5 of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 363 IS CREATED TO READ AS FOLLOWS:

(1) Any person who violates any provisions of Sections 1 to 4 of this Act or any administrative regulation promulgated pursuant to Sections 1 to 4 of this Act shall pay a civil penalty of not more than five thousand dollars ($5,000).

(2) It shall be the duty of the department or, upon the request of the Commissioner, the Attorney General to bring an action for the recovery of the penalties provided for in this section and to bring an action for an injunction against any person violating or threatening to violate any provision of Sections 1 to 5 of this Act or violating or threatening to violate any administrative regulation or order of the department promulgated pursuant to Sections 1 to 5 of this Act. In that action, any previous fine or finding of the department shall be prima facie evidence of the facts found therein.

Section 6. Whereas this is a need to protect the citizens of the Commonwealth from motor fuels of substandard quality, an emergency is declared to exist, and the provisions of Section 4 of this Act shall become effective immediately upon this Act's passage and approval by the Governor.

The Committee Amendment No. 1 to **HB 135** is as follows:

On page 1, line 19, after "includes," by deleting "but is not limited to,"; and

On line 20, after "fuel," by inserting "or", and after "blend" by deleting ", or special", and after "fuels;" by inserting "and"; and

On line 21, after "public" by deleting "; and"; and

On line 22, by deleting "(9) "Special fuels" means special fuels as defined in KRS 138.210".

Orders of the Day

HB 125, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Harper moved the adoption of Floor Amendment No. 1 to **HB 125**. Agreed.

Representative Hancock moved that **HB 125**, as amended, be passed.

On the roll call the vote was: Yeas 96, Nays 0. (See January 25, 1994 roll call on **HB 125** - Appendix)

HB 125, as amended, was passed and the title agreed to.

Representative Hancock moved that the vote by which **HB 125**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 99, with Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of Floor Amendment No. 1 to **HB 99**. Agreed.

Representative Bentley moved the adoption of Floor Amendment No. 2 to **HB 99.**

Representative Ford inquired if a fiscal impact study had been done on Floor Amendment No. 2 to **HB 99**.

Representative Long stated that no study had been done.

Representative Long inquired if a Floor Amendment No. 2 to **HB 99** could be filed without a fiscal note.

The Speaker ruled that Floor Amendment No. 2 to **HB 99** was out of order.

Representative Ford moved that **HB 99** be laid on the Clerk's Desk.

On the roll call the vote was **Yeas 45**--Ackerson, Adkins, Allen, Altman, Ballard, Barrows, Bentley, Bryant, Buis, Cave, Collins, Cyrus, DeWeese, Donnermeyer, Farley, Ford, Fox, Gee, Graham, Hampton, Harper, Heleringer, Jensen, Keith, Lee, Lile, Maggard, Maricle, Mullinix, Napier, Nelson, Noland, Rapier, Rasche, Reinhardt, Ridley, Sanders, R. Smith, Stengel, Stumbo, Todd, Treesh, Turner, Worthington, Zimmerman. **Nays 50**--Adams, Arnold, Bondurant, Bowling, Burch, Butler, Callahan, L. Clark, P. Clark, Clarke, Coleman, Crenshaw, Curd, Damron, Deskins, Farrow, French, Geveden, Gray, Hancock, Hatcher, Johnson, Kerr, Lear, LeMaster, Lewis, Little, Long, Lyne, Marzian, Mason, McElroy, Moberly, Morris, Nesler, Northup, Nunn, Palumbo, Richards, Riggs, Riner, Scorsone, Scott, Shacklette, Simpson, B. Smith, Trapp, Walton, Wayne, Yates.

The motion that **HB 99** be laid on the Clerk's Desk was rejected.

Representative Long moved that **HB 99**, as amended, be passed.

On the roll call the vote was: Yeas 27, Nays 67. (See January 25, 1994 roll call on **HB 99** - Appendix)

HB 99, as amended, was defeated.

Representative Long moved that the vote by which **HB 99**, as amended, was defeated be reconsidered and said motion be placed on the table. Agreed.

HB 3 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Keith moved that **HB 3** be passed.

On the roll call the vote was: Yeas 96 , Nays 0. (See January 25 , 1994 roll call on **HB 3** - Appendix)

HB 3 was passed and the title agreed to.

Representative Keith moved that the vote by which **HB 3** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 106 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved that **HB 106** be passed.

On the roll call the vote was: Yeas 79 , Nays 14. (See January 25 , 1994 roll call on **HB 106** - Appendix)

HB 106 was passed and the title agreed to.

Representative Long moved that the vote by which **HB 106** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 52, with Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Donnermeyer moved the adoption of Floor Amendment No. 2 to **HB 52**. Agreed.

Representative Donnermeyer moved that **HB 52**, as amended, be passed.

On the roll call the vote was: Yeas 97, Nays 1. (See January 25, 1993 roll call on **HB 52** - Appendix)

HB 52, as amended, was passed and the title agreed to.

Representative Donnermeyer moved that the vote by which **HB 52**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 93, with Committee Amendment, Committee Title Amendment and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Morris moved the adoption of Floor Amendment No. 2 to **HB 93**. Agreed.

Representative Harper moved the adoption of Floor Amendment No. 1 to **HB 93**. Agreed.

Representative Bowling moved that **HB 93**, as amended, be passed.

On the roll call the vote was: Yeas 94, Nays 0. (See January 25, 1994 roll call on **HB 93** - Appendix)

HB 93, as amended, was passed.

Representative Bowling moved the adoption of the Committee Title Amendment to **HB 93**. Agreed; and the title was agreed to.

Representative Bowling moved that the vote by which **HB 93**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 162, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Johnson moved the adoption of the Committee Substitute to **HB 162**. Agreed.

Representative Johnson moved that **HB 162**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 97, Nays 0. (See January 25, 1994 roll call on **HB 162** - Appendix)

HB 162, by way of Committee Substitute, was passed and the title agreed to.

Representative Johnson moved that the vote by which **HB 162**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 167 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bowling moved that **HB 167** be passed.

On the roll call the vote was: Yeas 94 , Nays 2. (See January 25 , 1994 roll call on **HB 167** - Appendix)

HB 167 was passed and the title agreed to.

Representative Bowling moved that the vote by which **HB 167** was passed be reconsidered and said motion be placed on

the table. Agreed.

HJR 3 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Trapp moved that **HJR 3** be adopted.

On the roll call the vote was: Yeas 96 , Nays 0. (See January 25 , 1994 roll call on **HJR 3** - Appendix)

HJR 3 was adopted.

Representative Trapp moved that the vote by which **HJR 3** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 4 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Ballard moved that **HCR 4** be adopted.

On the roll call the vote was: Yeas 97 , Nays 1. (See January 25 , 1994 roll call on **HCR 4** - Appendix)

HCR 4 was adopted.

Representative Stumbo moved that the vote by which **HCR 4** was adopted be reconsidered and said motion be placed on the table. Agreed.

HJR 13, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Collins moved the adoption of Committee Amendment No. 1 to **HJR 13**. Agreed.

Representative Collins moved that **HJR 13**, as amended, be adopted.

On the roll call the vote was: Yeas 89, Nays 0. (See January 25, 1994 roll call on **HJR 13** - Appendix)

HJR 13, as amended, was adopted.

Representative Collins moved that the vote by which **HJR 13**, as amended, was adopted be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended to take **HB 294** from the Committee on Natural Resources and Environmental Protection and reassign **HB 294** to the Committee on Agriculture and Small Business. Agreed.

Representative Stumbo moved that the rules be suspended for the Introduction of Bills and Resolutions and Committee Reports. Agreed.

Introduction of Bills and Resolutions

HB 336, by Representative Hatcher: AN ACT relating to elementary and secondary school teachers.

HB 337, by Representative Long: AN ACT relating to mineral severance and processing tax.

HB 338, by Representative Little: AN ACT relating to the protection and replacement of water resources affected by mining.

HB 339, by Representative Stumbo: AN ACT relating to the court of justice and declaring an emergency.

HB 340, by Representative Stumbo: AN ACT relating to license plates.

HB 341, by Representative Johnson: AN ACT relating to commercial driver's licenses.

HB 342, by Representatives Farrow and Gedling: AN ACT relating to soil and water conservation.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Transportation: **HB 136, HB 155, HB 208**

Motions, Petitions and Communications (Continued)

The following members filed requests to have their names added as co-sponsors to Bills under the rules previously suspended.: **HB 48, HB 56, HB 64**, Representative Butler; **HB 190**, Representatives Donnermeyer, Lile; **HB 227**, Representative McElroy, Ridley.

Representative Bentley moved that the vote by which **HB 99** was defeated be reconsidered and that the bill be placed in the Orders of the Day. Agreed.

Representative Lyne moved the adoption of the following **Legislative Citation No. 26**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors Karl Dawson in recognition of his retirement retiring Logan County Property Valuation Administrator, who has served his county and The Commonwealth for twelve terms in this office, with honor and distinction. The entire membership joins Representative June Lyne in saluting Karl Dawson for having served forty-four years in this role, which gives him a Kentucky record for longevity as Property Valuation Administrator.

Representative Farrow moved the adoption of the following **Legislative Citation No. 24**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors Joe Hall and The Scott County Recycling Center for your time and energy in collecting recyclable goods. The entire membership joins Representative Mark Farrow in commending your efforts by collecting tabs all over Scott County and donating the money to The Indian Summer Camp, a Kentucky camp for children with cancer. The entire membership extends its very best wishes on this memorable occasion and expresses the hope for continued good fortune.

Representative Farrow moved the adoption of the following **Legislative Citation No. 25**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to Ben and Jane Clifford for placing second in the Farm Bureau's Young Farm Family Contest. The entire membership joins Representative Mark Farrow in extending its very best wishes on this memorable occasion and expresses the hope for continued good fortune.

Representative Gray moved the adoption of the following **Legislative Citation No. 27**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes the illustrious Representative Larry Clark in recognition of his 10th anniversary as a house member. The members of this honorable body join with Representative Leonard Gray in expressing their profound thankfulness to Representative Larry Clark for his infinite contributions to the state of Kentucky. This distinguished body extends its sincerest wishes for the successful future endeavors of the eminent Representative Larry Clark.

Representative Bowling moved that the rules be suspended to withdraw **HB 94** and **HB 286**. Agreed.

Representative Zimmerman moved that the rules be suspended to withdraw **HB 63**. Agreed.

Representative McElroy moved that the rules be suspended to withdraw **HB 253**. Agreed.

Representative Stacy moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Stacy moved that he be recorded as voting "yea" on **HB 125**. Agreed.

Representative Barrows moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Barrows moved that his vote be changed from "yea" to "nay" on **HB 52**. Agreed.

Representative Deskins moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Deskins moved that he be recorded as voting "yea" on **HB 162** and **HB 125**. Agreed.

Representative Lewis moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Lewis moved that his vote be changed from "nay" to "yea" on **HCR 4**. Agreed.

Announcements

The Clerk announced the following meetings:

Cities, 9:00 a.m., January 26, 1994, Room 131

Budget Review Subcommittee on Economic Development and Natural Resources, 10:00 a.m., January 27, 1994

Health and Welfare, one-half hour upon adjournment today

Tourism Development and Energy, regular meeting, January 26, 1994

Natural Resources and Environmental Protection, meeting upon adjournment postponed

Economic Development, canceled, January 26, 1994

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Wednesday, January 26, 1994.

On the roll call the vote was **Yeas 89**--Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Buis, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Crenshaw, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Jensen, Johnson, Keith, Kerr, Lear, Lee, Lewis, Lindsay, Little, Long, Lyne, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riggs, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, R. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 4**--, Heleringer, LeMaster, Lile, Maggard.

The motion to adjourn was adopted.

WEDNESDAY, JANUARY 26, 1994

FOURTEENTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Father Theodore Keller, Church of the Good Shepherd, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present.

Representative McElroy moved that the reading of the Journal of January 25, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 4, SB 60, SB 70, SB 72, SB 73, SB 76, SB 77, SB 78**. (Time: 2:05 p.m.)

Introduction of Bills and Resolutions

HB 343, by Representative Bowling: AN ACT relating to child support.

HB 344, by Representative McElroy: AN ACT relating to members of the General Assembly.

HB 345, by Representative Geveden: AN ACT relating to domestic relations.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolution:

Agriculture and Small Business: **HB 342**

Appropriations and Revenue: **HB 337**

Banking and Insurance: **HB 335**

Education: **SB 12, HJR 23, HB 327, HB 328, HB 329, HB 333, HB 336**

Judiciary: **SB 39, SB 47, HB 326**

Natural Resources and Environment: **SB 52, HB 330, HB 331, HB 338**

State Government: **SB 44, SB 46, HB 325, HB 332, HB 334, HB 339**

Transportation: **HB 340, HB 341**

Report of Committees

The Committee on Cities reported **HB 123**, with Committee Amendment attached thereto, and **HB 238**, with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 123, AN ACT relating to the duties of the mayor in cities of the first class.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 83.580 is amended to read as follows:

(1) The mayor shall:

(a) Cause the ordinances of the city and the laws of the state to be executed and enforced;

(b) Communicate to the board of aldermen at least once a year a statement of the finances and general condition of the affairs of the city, and such information in relation thereto as the board of aldermen requires;

(c) Recommend, by written message to the board of aldermen, the measures he deems expedient;

(d) Fill, with the consent of the board of aldermen, all vacancies in executive and ministerial offices and the filling of which is not otherwise provided for;

(e) Exercise a general supervision over all the executive and ministerial officers of the city, and see that their official duties are honestly performed; and

(f) No later than January 31 of each year, mail to the Department of Local Government a list containing current city information including, but not limited to the following:

1. The correct name of the mayor, members of the board of aldermen, and the following appointed officials who are serving as of January 1 of each year:
    - a. Clerk of the board of aldermen;
    - b. City treasurer;
    - c. City attorney;
    - d. Finance director;
    - e. Police chief;
    - f. Fire chief; and
    - g. Public works director;
2. The correct name of the city, mailing address for city hall, and the telephone number of city hall; and
3. The name and telephone number of either an elected or appointed official to serve as a contact person that may be reached during normal business hours of 8:00 a.m. to 4:30 p.m.

(2) ***The mayor shall appoint to those seats which are not subject to prior qualification on a board or commission an equal number of members from each district, as created pursuant to KRS 67.045, into which the authority of the board or commission extends. If there are more districts than members of a particular board or commission, the mayor shall not appoint more than one (1) member from any district. If there are more members of a particular board or commission than there are districts, the mayor shall equalize appointments from among districts to the extent possible. The mayor shall not be required, but shall use his best efforts, to balance appointments from among districts on a board or commission if the appointments are to be made from nominees submitted by other groups or individuals, or if nominees shall have a professional or technical background, expertise, or membership. The mayor shall attempt to balance appointments from among districts on all boards and commissions to equalize representation of all districts over the entire range of boards and commissions.***

(3) The mayor may:

(a) Remove from office, by a written order, any officer appointed by him, unless otherwise provided by law;

(b) Appoint his own staff, and remove them at pleasure;

(c) Require from any executive or ministerial officer of the city or joint agency of the city a statement in writing concerning the discharge of his duties; and

(d) Exercise the same power to administer oaths that justices of the peace and other judicial officers of the state have.

(4)[~~(3)~~] The Department of Local Government shall immediately forward one (1) copy of the information received from the mayor to the Legislative Research Commission.

The Committee Amendment No. 1 to **HB 123** is as follows:

On page 2, line 8, after "each", by inserting the following:
"county commissioner's".

HB 238, AN ACT relating to the establishment of codes of ethics in cities and counties.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) No later than January 1, 1995, the governing body of each city and county, including urban counties, shall adopt, by ordinance, a code of ethics which shall apply to all elected officials of the city or county, and to appointed officials and employees of the city or county government as specified in the code of ethics.

(2) Any city or county may enter into an agreement with one (1) or more other cities or counties, pursuant to the provisions of the Interlocal Cooperation Act, KRS 65.210 to 65.300, for joint adoption of a code of ethics which shall apply to all elected officials of the cities or counties, and to appointed officials and employees as specified by each of the cities or counties which enters into the agreement.

(3) Each code of ethics adopted pursuant to subsection (1) or (2) of this section shall include, but not be limited to,

provisions which set forth:

(a) Standards of conduct for elected and appointed officials and employees;

(b) Requirements for creation of financial disclosure statements, which shall be filed annually by all elected officials of each city and county government, and other officials or employees of the city or county government, as specified in the code of ethics, and which shall be filed with the person or group responsible for enforcement of the code of ethics;

(c) A policy on the employment of members of the families of officials or employees of the city or county government, as specified in the code of ethics;

(d) The designation of a person or group who shall be responsible for enforcement of the code of ethics, including maintenance of financial disclosure statements, all of which shall be available for public inspection, receipt of complaints alleging possible violations of the code of ethics, issuance of opinions in response to inquiries relating to the code of ethics, investigation of possible violations of the code of ethics, and imposition of penalties provided in the code of ethics.

(4) The code of ethics ordinance adopted by a city or county may be amended but shall not be repealed.

(5) (a) Within twenty-one (21) days of the adoption of the code of ethics required by this section, each city and county shall deliver a copy of the ordinance by which the code was adopted and proof of publication pursuant to KRS Chapter 424 to the Department of Local Government. The department shall maintain the ordinances as public records and shall maintain a list of city and county governments which have adopted a code of ethics and a list of those which have not adopted a code of ethics.

(b) Within twenty-one (21) days of the amendment of a code of ethics required by this section, each city or county shall deliver a copy of the ordinance by which the code was amended and proof of publication pursuant to KRS Chapter 424 to the Department of Local Government, which shall maintain the amendment with the ordinance by which the code was adopted.

(c) For ordinances adopting or amending a code of ethics under this section, cities of the first class shall comply with the publication requirements of KRS 83A.060(9), notwithstanding the exception contained in that statute.

(6) If a city or county government fails to comply with the requirements of this section, the Department of Local Government shall notify all state agencies, including area development districts, which deliver services or payments of money from the Commonwealth to the city or county government. Those agencies shall suspend delivery of all services or payments to the city or county government which fails to comply with the requirements of this section. The Department of Local Government shall immediately notify those same agencies when the city or county government is in compliance with the requirements of this section, and those agencies shall reinstate the delivery of services or payments to the city or county government.

The Committee Substitute to **HB 238** is as follows:

HB 238, AN ACT relating to the establishment of codes of ethics in cities and counties.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) No later than January 1, 1995, the governing body of each city and county, including urban-counties and charter counties, shall adopt, by ordinance, a code of ethics which shall apply to all elected officials of the city or county, and to appointed officials and employees of the city or county government as specified in the code of ethics. The elected officials of a city or county to which a code of ethics shall apply include the mayor, county judge/executive, members of the governing body, county clerk, county attorney, sheriff, jailer, coroner, surveyor, and constable but do not include members of any school board.

(2) Any city or county may enter into an agreement with one (1) or more other cities or counties, pursuant to the provisions of the Interlocal Cooperation Act, KRS 65.210 to 65.300, for joint adoption of a code of ethics which shall apply to all elected officials of the cities or counties, and to appointed officials and employees as specified by each of the cities or counties which enters into the agreement.

(3) Each code of ethics adopted pursuant to subsection (1) or (2) of this section shall include, but not be limited to, provisions which set forth:

(a) Standards of conduct for elected and appointed officials and employees;

(b) Requirements for creation of financial disclosure statements, which shall be filed annually by all elected officials of each city and county government, and other officials or employees of the city or county government, as specified in the code of ethics, and which shall be filed with the person or group responsible for enforcement of the code of ethics;

(c) A policy on the employment of members of the families of officials or employees of the city or county government, as specified in the code of ethics;

(d) The designation of a person or group who shall be responsible for enforcement of the code of ethics, including maintenance of financial disclosure statements, all of which shall be available for public inspection, receipt of complaints alleging possible violations of the code of ethics, issuance of opinions in response to inquiries relating to the code of ethics, investigation of possible violations of the code of ethics, and imposition of penalties provided in the code of ethics.

(4) The code of ethics ordinance adopted by a city or county may be amended but shall not be repealed.

(5) (a) Within twenty-one (21) days of the adoption of the code of ethics required by this section, each city and county shall deliver a copy of the ordinance by which the code was adopted and proof of publication pursuant to KRS Chapter 424 to the Department of Local Government. The department shall maintain the ordinances as public records and shall maintain a list of city and county governments which have adopted a code of ethics and a list of those which have not adopted a code of ethics.

(b) Within twenty-one (21) days of the amendment of a code of ethics required by this section, each city or county shall deliver a copy of the ordinance by which the code was amended and proof of publication pursuant to KRS Chapter 424 to the Department of Local Government, which shall maintain the amendment with the ordinance by which the code was adopted.

(c) For ordinances adopting or amending a code of ethics under this section, cities of the first class shall comply with the publication requirements of KRS 83A.060(9), notwithstanding the exception contained in that statute.

(6) If a city or county government fails to comply with the requirements of this section, the Department of Local Government shall notify all state agencies, including area development districts, which deliver services or payments of money from the Commonwealth to the city or county government. Those agencies shall suspend delivery of all services or payments to the city or county government which fails to comply with the requirements of this section. The Department of Local Government shall immediately notify those same agencies when the city or county government is in compliance with the requirements of this section, and those agencies shall reinstate the delivery of services or payments to the city or county government.

The Committee on Education reported **HB 46** , with Committee Title Amendment and Committee Substitute attached thereto, and **HB 176**, with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 46, AN ACT relating to superintendent screening committees, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 160.352 is amended to read as follows:

(1) Each board of education shall appoint a superintendent of schools after receiving the recommendations of a screening committee. A screening committee shall be established within thirty (30) days of a determination by a board of education that a vacancy has occurred or will occur in the office of superintendent.

(2) A screening committee shall be composed of:

(a) Two (2) teachers, elected by the teachers in the district;

(b) One (1) board of education member, appointed by the board chairman;

(c) One (1) principal, elected by the principals in the district; ~~[and]~~

(d) One (1) parent, elected by the presidents of the parent-teacher organizations of the schools in the district***; and***

(e) If a minority member is not elected or appointed to a screening committee in districts with a minority population of eight percent (8%) or more the committee membership shall be increased to include one (1) minority parent. This minority parent member shall be elected by the minority parents in an election conducted by the local school board. Minority parents in the district shall be given adequate notice of the date, time, place, and purpose of the election.

(3) Prior to appointing a superintendent of schools, the board of education shall consider the recommendations of the screening committee, but the board shall not be required to appoint a superintendent from the committee's recommendations.

Section 2. Whereas it is necessary to ensure that the minority population has representation on superintendent screening committees, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor.

The Committee Title Amendment to **HB 46** is as follows:

By amending the title to read as follows:
"AN ACT relating to superintendent screening committees."

The Committee Substitute to **HB 46** is as follows:

HB 46, AN ACT relating to superintendent screening committees, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 160.352 is amended to read as follows:

(1) As used in this section, "minority" means American Indian; Alaskan Native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific Islander; Asian; or other underrepresented ethnic group in the district designated by the local board of education.

(2)[~~(1)~~] Each board of education shall appoint a superintendent of schools after receiving the recommendations of a screening committee. A screening committee shall be established within thirty (30) days of a determination by a board of education that a vacancy has occurred or will occur in the office of superintendent.

(3)[~~(2)~~] A screening committee shall be composed of:

(a) Two (2) teachers, elected by the teachers in the district;

(b) One (1) board of education member, appointed by the board chairman;

(c) One (1) principal, elected by the principals in the district; [~~and~~]

(d) One (1) parent, elected by the presidents of the parent-teacher organizations of the schools in the district*; and*

(e) If a minority member is not elected or appointed to a screening committee in districts with a minority population of eight percent (8%) or more the committee membership shall be increased to include one (1) minority parent. This minority parent member shall be elected by the minority parents in an election conducted by the local school board. Minority parents in the district shall be given adequate notice of the date, time, place, and purpose of the election.

(4)[~~(3)~~] Prior to appointing a superintendent of schools, the board of education shall consider the recommendations of the screening committee, but the board shall not be required to appoint a superintendent from the committee's recommendations.

HB 176, AN ACT relating to education.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

THE KENTUCKY FAMILY EDUCATION RIGHTS AND PRIVACY ACT

As used in KRS Chapter 160, unless the context otherwise requires:

(1) "Directory information" means the student's name, address, telephone listing, date and place of birth, participation in school recognized sports and activities, and dates of attendance contained in education records in the custody of the public schools;

(2) "Educational institution" means any public school receiving financial support from the state, including elementary, secondary, vocational, and technical schools, community colleges, and institutions of higher education;

(3) "Education record" means all types of data collected by educational institutions including, but not limited to: academic records and portfolios; achievement tests; aptitude scores; teacher and counselor evaluations; health and personal data; behavioral and psychological evaluations; and directory data recorded in any medium including handwriting, magnetic tapes, film, video, microfiche, computer generated and stored data, or data otherwise maintained and used by the educational institution;

(4) "Eligible student" means a student, or a former student, who has reached the age of eighteen (18) or is pursuing an education beyond high school;

(5) "School official" means personnel employed in instructive and administrative positions with a school board or educational institution. Parents and other noneducational persons who are elected or appointed to school-based decision making councils or committees thereof, or other voluntary boards or committees shall not be considered school officials.

SECTION 2. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) Education records of students in the public educational institutions in this State are deemed confidential and shall not be disclosed, or the contents released, except under the circumstances described in Section 5 of this Act.

(2) School officials shall take precautions to protect and preserve all education records including records generated and stored in the education technology system.

SECTION 3. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

Parents and eligible students shall be informed of the rights of privacy and confidentiality accorded student education records. The educational institution shall determine the means and method of notice and adopt written policies consistent with the state law.

SECTION 4. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) Parents of students and eligible students attending public institutions or who have been in attendance shall have the right to inspect and review student education records within a reasonable time of making a request to inspect.

(2) Educational institutions shall establish procedures for honoring requests for inspection within a reasonable time. Fees for copying materials and documents may be charged.

SECTION 5. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) Parents and eligible students may consent to the release of written documents by completing and signing forms devised by the educational institution identifying the records to be released, the party to whom the release is granted, and the purpose of the request.

(2) Educational institutions shall not permit the release or disclosure of records, reports, or identifiable information on students to third parties without parental or student consent except to:

(a) Other school officials, including teachers, with legitimate education interests and purposes.

(b) Other school systems, colleges, and universities to which the student has sought enrollment and transfer, or from which the student was graduated.

(c) Federal, state, or local officials who carry out a lawful function and who are authorized to receive this information pursuant to statute or regulation. This authority includes requests from any agency of the federal and state government for the purpose of determining a student's eligibility for military service.

(d) Federal, state, or local officials to whom the information is required to be disclosed or reported.

(e) Individuals or organizations conducting legitimate studies, surveys, and data collection in such a manner so as not to permit personal identification of the students or parents.

(f) Accrediting organizations enlisted to carry out accrediting functions.

(g) Parties who need to know in the interests of the public safety, health, and for purposes of law enforcement and national security.

(3) Records of release indicating the agency, institution, or organization that has requested or has had access to student education records and indicating the purpose of the release or inspection shall be maintained by the educational institution. These records of release shall be limited to inspection the same as education records.

Section 6. KRS 160.297 is amended to read as follows:

(1) An educational institution may publish and release to the general public directory information relating to a student if the institution elects to do so. However, no educational institution shall release to any person or organization not listed in Section 5 of this Act, directory information relating to the student body in general, or to a portion thereof, unless it is normally published for the purpose of release to the public. Furthermore, an educational institution shall give notice of the categories of directory information that it intends to publish, and shall allow a reasonable time after the notice has been given for a parent or student to inform the institution that the information should not be released.

(2) If *an educational institution* ~~[a board of education of a public school district]~~ provides access to its campus or its student directory information to persons or groups which make students aware of occupational or educational options, the board shall provide access on the same basis to official recruiting representatives of the military forces of the state and the United States for the purpose of informing students of educational and career opportunities available in the military.

SECTION 7. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) Parents or students may challenge the content of a student record to ensure that the record or report is not inaccurate, misleading, or otherwise in violation of privacy or other rights of the student. The right to challenge shall also provide the opportunity for rebuttal to, and the correction, deletion, or expunction of, any inaccurate, misleading, or inappropriate information.

(2) A challenge to the record may take the form of an informal discussion among the parents, student, and school officials. Any agreement between these parties shall be reduced in writing, signed by all parties, and placed in the student's records. If no agreement can be reached, either party may request a formal hearing to the challenge which shall be conducted in accordance with procedures established by rules and regulations of the Department of Education and the Council on Higher Education for educational institutions under their jurisdiction. Such rules

and regulations shall provide that a formal hearing be conducted within a reasonable time after the request for a hearing; and an official of the educational institution who has no direct interest in the outcome of the challenge shall conduct the hearing and render a decision on the challenge within a reasonable time after the hearing. All parties to the challenge shall be afforded a full and fair opportunity to present evidence relevant to the issues raised. Furthermore, school officials shall take the necessary action to implement the decision.

Section 8. KRS 164.283 is amended to read as follows:

Confidentiality, disclosure, and release of student academic records shall be governed by the provisions of KRS Chapter 160.

[~~(1) As used in this section unless the context otherwise requires:~~

~~(a) "Academic" means a student's official record of academic performance, including, but not limited to transcript of grades or other action taken by the institution directly related to academic performance. The term "academic" does not include any nonacademically related action the institution may take.~~

~~(b) "Universities and colleges" means all public supported institutions of higher learning in Kentucky.~~

~~(c) "Institution" means all public supported institutions of higher learning in Kentucky.~~

~~(2) All student academic records shall be confidential, with the exception of the exemptions stated in subsections (3) to (9) of this section, and shall not be released by any public supported institution of higher education in Kentucky, to any person, organization, institution, group or agency, except with the express consent of the individual student. This confidentiality shall apply only to student academic records, including, but not limited to official transcript of grades.~~

~~(3) All student academic records shall be made available upon request to any agency of the federal or state government for the purpose of determining a student's eligibility for military service, and shall include making such records available to local draft boards. This authority shall be limited only to determining the student's eligibility for military service and shall not be extended, except with the individual student's consent as specified in subsection (2) of this section.~~

~~(4) Any institution may provide the legal parents of any student under twenty-one (21) years of age with a copy of the student's academic record.~~

~~(5) All student academic records shall be made available to any federal, state, or local law enforcement agency and any court of law upon request or issuance of a subpoena.~~

~~(6) All student academic records shall be made available upon request to any grantor of scholarships or loans based upon the maintenance of a satisfactory level of scholarship, but shall be for the official use of the grantors only.~~

~~(7) All student academic records shall be made available upon request to a public or private junior college from which the individual student was graduated or to a public or private secondary school from which the individual student was graduated.~~

~~(8) All student academic records shall be made available upon request to the Council on Higher Education for professional academic research.~~

~~(9) All student academic records shall be made available upon request to any official of the university or college in which the student is enrolled who is directly concerned with the student's academic progress. This authority shall include but is not limited to the individual student's academic adviser.~~

~~(10) This section shall be applicable to all academic records maintained by all public supported institutions of higher education in Kentucky.~~]

SECTION 9. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

Any school official who has willfully violated Section 2 or 5 of this Act, shall, upon conviction, be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500) and his office, appointment, or position shall without further action be vacant. Furthermore, any person who suffers damage as a result of the release of confidential information may pursue all civil remedies available.

Section 10. The following KRS section is repealed:

164.991 Penalty.

The Committee Amendment No. 1 to **HB 176** is as follows:

On page 3, line 2, after "***released,***", by inserting "***the date of the release,***".

The Committee on Education reported **HB 203** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 203, AN ACT relating to employee benefits.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 61.545 is amended to read as follows:

(1) The board shall determine by appropriate administrative regulations how much service in any year is the equivalent of a year of service credit and how much service in any calendar month is the equivalent of a month of service credit. It shall not allow credit for more than one (1) year of service for all service rendered in any period of twelve (12) consecutive months except as provided in KRS 61.546 and in subsection (2) of this section.

(2) Employees participating in one (1) of the state administered retirement systems who are or have been employed by a school board participating in the County Employees Retirement System to work less than twelve (12) months each year may purchase the additional months of service credit needed to total one (1) year of service credit. The employee or the school board may purchase the service credit by paying the retirement system the member and employer contributions calculated on the average monthly rate multiplied by the number of months to be purchased. The payment shall be received by the retirement system by December 31 immediately following the school year in which the fractional year's service occurred. Members who have service credit prior to July 1, ***1994***[~~1992~~], or their employers, may purchase service credit for previous years if payment is made by August 1, ***1995***[~~1993~~].

(3) An employee who is simultaneously eligible for membership in more than one (1) retirement system administered by the Kentucky Retirement Systems may, at his option, choose to participate in only one (1) of those systems. The choice, once made, shall remain in effect so long as the employee is eligible for membership in more than one (1) system.

Section 2. KRS 160.291 is amended to read as follows:

(1) All school employees working on a continuing, regular basis, shall be paid regularly, on dates determined by the employing board of education, during the school year or during the fiscal year for twelve (12) month employees, the provisions of KRS 337.020 notwithstanding. The gross salary received on each pay date will be an amount equal to the school employee's annual salary divided by the number of pay dates.

(2) Salary amounts shall be paid on the prescribed pay dates without deduction for days on which schools were closed; provided, however, any time not worked for which pay is received must be made up prior to the end of that current school year, or pay so received shall be withheld from the final salary payment of that school year.

(3) Gross salary payments under subsection (1) of this section need not, but may, include pay for extra duties or services. Payment for such extra duties or services must be paid pursuant to a payment plan adopted by the board of education prior to the beginning of the school year.

(4) Payments made by the board of education under the authority of this section are deemed to be for services rendered and for the benefit of the common schools; the payments do not affect the eligibility of any school system to participate in the public school fund as established in KRS Chapter 157. Nor shall any individual board member or administrator be held liable where additional payments for such service become necessary. Provided, however, that nothing in this section authorizes or requires the payment of salaries to personnel when schools are closed as a result of a strike or other work stoppage or when schools are open and personnel fail to render services. No part of this section shall be law if any part is declared unconstitutional.

(5) Subsection (2) of this section does not apply to those employed on a twelve (12) month basis.

(6) The board of education of each county or independent school district shall notify each of its classified employees who works less than twelve (12) months a year of the employee's eligibility to purchase additional months of retirement service credit pursuant to KRS 61.545(2). Notification shall be made in writing by July 1 of each year.

The Committee on Tourism Development and Energy reported **HB 126**, with Committee Amendments attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 126, AN ACT relating to cable television.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, and in KRS 278.990, unless the context otherwise requires:

(1) "Corporation" includes private, quasipublic and public corporations, and all boards, agencies and instrumentalities thereof, associations, joint-stock companies and business trusts;

(2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;

(3) "Utility" means any person except a city, who owns, controls or operates or manages any facility used or to be used for or in connection with:

  (a) The generation, production, transmission or distribution of electricity to or for the public, for compensation, for lights, heat, power or other uses;

  (b) The production, manufacture, storage, distribution, sale or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power or other uses;

(c) The transporting or conveying of gas, crude oil or other fluid substance by pipeline to or for the public, for compensation;

(d) The diverting, developing, pumping, impounding, distributing or furnishing of water to or for the public, for compensation;

(e) The transmission or conveyance over wire, in air or otherwise, of any message by telephone or telegraph for the public, for compensation; or

(f) The treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district;

(4) "Retail electric supplier" means any person, firm, corporation, association or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;

(5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;

(6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;

(7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;

(8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;

(9) "Facility" includes all property, means and instrumentalities owned, operated, leased, licensed, used, furnished or supplied for, by, or in connection with the business of any utility;

(10) "Rate" means any individual or joint fare, toll, charge, rental or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement or privilege in any way relating to such fare, toll, charge, rental or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;

(11) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure and quantity of water, and in general the quality, quantity and pressure of any commodity or product used or to be used for or in connection with the business of any utility;

(12) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;

(13) ***"Cable television system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but does not include:***

(a) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

(b) A facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control, or management;

(c) A facility of a utility under subsection (3) of this section, except that the facility may be considered a cable system to the extent it is used in the transmission of video programming directly to subscribers; or

(d) A facility which is owned and operated by a city or county, or by a municipal utility under KRS Chapter 96 if the cable services are rendered totally within the geographical boundaries of the city, county, or municipal utility.

(14) "Cable service" means the one-way transmission to subscribers of video programming or other programming service, and any other impulse or signal by a cable television company or other service lawfully provided, utilizing the facilities of the system.

(15) "Commission" means the Public Service Commission of Kentucky;

(16)[~~(14)~~] "Commissioner" means one (1) of the members of the commission.

(17) "Cable operator" means any person or group of persons:

(a) Who provides cable service over a cable system and directly, or through one (1) or more affiliates, owns a significant interest in that cable system; or

(b) Who otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

SECTION 2. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

(1) Cable television systems in the Commonwealth, as defined in KRS 278.010, are subject to the provisions of this chapter to the extent allowed by federal law. The commission is declared to be the franchising authority for regulation of cable television systems within the meaning of the Cable Television Consumer Protection Act of 1992, unless exempted under Section 4 of this Act.

(2) The commission shall promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A necessary to conform with the Cable Television Consumer Protection Act of 1992, Public Law 102-385, and any other federal communications law in effect relating to the commission's regulating cable television systems and services.

SECTION 3. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

No cable operator shall construct or operate a cable television system in any city or county without first obtaining a franchise from each city or county in which the system operates or is to operate, as provided in Sections 163 and 164 of the Kentucky Constitution. This local franchise shall be nonexclusive. The local franchise agreement shall become effective only upon approval by the commission. The commission shall develop forms, procedures, and standards, and shall offer advice and technical assistance on the issuance or renewal of local franchises with cable television systems regulated by the commission.

SECTION 4. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

(1) A local government may elect to regulate the cable television systems which operate within its boundaries, unless prohibited by subsection (4) of this section, in lieu of all regulation by the commission, upon approval of the commission. To make this election, the local government shall file the following with the commission:

(a) A copy of the certified resolution of the city or county legislative body stating its intent to regulate cable television locally;

(b) The name, telephone number, and mailing address of the authority, and of the agent for service of process;

(c) A copy of the approval by the Federal Communications Commission of the local authority as a qualified franchising authority under federal law; and

(d) A list of any other franchise held by the cable operator in Kentucky.

(2) Upon receipt of the documents specified in subsection (1) of this section, the commission may recognize the local government as the qualified regulatory authority for cable television within its geographic boundaries, subject to subsection (4) of this section.

(3) The regulatory authority that the commission exercises over cable systems operating within a local jurisdiction shall not limit the power of the local jurisdiction to exercise the other powers of franchising authority granted under federal or state law.

(4) If a cable operator has more than one (1) franchise in Kentucky, then all of the franchises shall be regulated by the commission.

SECTION 5. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

The commission shall provide advice and technical assistance to other cable television regulatory authorities and community organizations in matters relating to rate regulation, cable franchises, and service standards. The commission shall work with other regulatory authorities in the state to develop and share expertise in matters of mutual concern.

Section 6. KRS 278.130 is amended to read as follows:

(1) For the purpose of maintaining the commission, including the payment of salaries and all other expenses, and the cost of regulation of the utilities subject to its jurisdiction, the Revenue Cabinet shall each year assess the utilities in proportion to their earnings or receipts derived from intrastate business in Kentucky for the preceding calendar year as modified by KRS 278.150, and shall notify each utility on or before July 1 of the amount assessed against it. The total amount so assessed shall not in any year exceed two (2) mills on intrastate receipts as so modified, ***or five (5) mills on the intrastate receipts of cable television systems regulated by the commission,*** which shall be deposited into the State Treasury to the credit of the general fund. The sum by each utility shall not be less than fifty dollars ($50) in any one (1) year.

(2) ***Except as specified in subsection (4) of this section,*** the assessments provided for in this section shall be in lieu of all other fees or assessments levied by any city or other political subdivision for the control or regulation of utilities.

(3) The commission, upon application by a utility, shall authorize the utility to adjust its rates to recover, within not more than one (1) year, any change in the annual assessment and any costs imposed by commission order for the fees and expenses of consultants. The application, and any hearing or other proceedings thereon, shall be limited to the amount of such adjustment.

(4) The assessment of the cost of regulation against cable television systems regulated by the commission shall be based on receipts beginning July 1, 1994, and the calendar years thereafter. If the cable television system pays a portion of its receipts to a local government as a franchise fee required by its franchise agreement with that local government, and if that franchise fee and the rate assessed under this section together exceed five percent (5%) of the cable television

system's receipts, then the amount assessed under this section shall be taken out of the local franchise fee.

The Committee Amendment No. 1 to **HB 126** is as follows:

On page 5, line 5, after "***boundaries***" by deleting "***, unless prohibited by subsection (4) of this section,***"; and

on line 6, by deleting "***, upon approval of the commission***"; and

on line 12, by deleting "***approval***" and inserting in lieu thereof "***application for certification***", and by deleting the last two words of line 12, "***of the***"; and

on line 13, by deleting all language in line 13 and by inserting in its place "***, and proof of receipt of the application by the Federal Communications Commission.***"; and

on line 14, by deleting line 14 in its entirety; and

on line 16, by deleting "***may***" and by inserting "***shall***" in its place; and

by deleting lines 23 and 24 in their entirety.

The Committee Amendment No. 2 to **HB 126** is as follows:

On page 5 line 27, by deleting "***shall***" and by inserting "***may***" in its place; and

On page 6, line 2, by deleting "***shall***" and by inserting "***may***" in its place.

Calendar

HB 6, HB 39, HB 119, HB 95, HB 190, HB 207, and **HB 7** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Consent Calendar

HB 18 and **HB 135** taken from the Consent Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Representative Stumbo moved that the rules be suspended for the introduction of guests. Agreed.

Floor Amendments

Floor Amendment No. 1 to **HB 84**, by Representative Lindsay:

On page 1, line 5, after the word "***property***" by inserting the following: "***at no more than fair market value in place, considering all relevant circumstances***".

Floor Amendment No. 2 to **HB 84**, by Representative Lindsay:

On page 1, line 24, by deleting "***KRS Chapter 131***" and inserting in lieu thereof "***KRS 133.120***"; and

On page 2, after line 1, by adding the following new sections:

"Section 2. KRS 133.120 is amended to read as follows:

(1) Any taxpayer desiring to appeal an assessment on real property made by the property valuation administrator***, or on unmined minerals assessed by the Revenue Cabinet,*** shall first request a conference with the property valuation administrator or his designated deputy. The conference shall be held prior to or during the inspection period provided for in KRS 133.045***, or in the case of assessments of unmined minerals, during the time period established by the Revenue Cabinet by administrative regulation***. During this conference the property valuation administrator or his deputy shall provide an explanation to the taxpayer of the constitutional and statutory provisions governing property tax administration, including the appeal process, as well as an explanation of the procedures followed in deriving the assessed value for the taxpayer's property. The property valuation administrator or his deputy shall keep a record of each conference which shall include, but shall not be limited to, the initial assessed value, the value claimed by the taxpayer, an explanation of any changes offered or agreed to by each party, and a brief accounting of the outcome of the conference. At the request of the taxpayer, the conference may be held by telephone.

(2) Any taxpayer still aggrieved by an assessment on real property made by the property valuation administrator ***or unmined minerals made by the Revenue Cabinet*** after complying with the provisions of subsection (1) of this section may appeal to the board of assessment appeals. The taxpayer shall appeal his assessment by filing in person or sending a letter or other written petition stating the reasons for appeal, identifying the property for which the appeal is filed, and stating to the county clerk the taxpayer's opinion of the fair cash value of the property. The appeal shall be filed no later than one (1) workday following the conclusion of the inspection period provided for in KRS 133.045***, or in the case of unmined minerals, the appeal shall be filed as established by the Revenue Cabinet by administrative regulation***. The county clerk shall notify the Revenue Cabinet of all assessment appeals and of the date and times of the hearings. The board of assessment appeals may review and change any assessment made by the property valuation administrator ***or, in the case of unmined minerals, by the Revenue Cabinet*** upon recommendation of the Revenue Cabinet, county judge/executive, mayor of any city using the county assessment, or the superintendent of any school district in which the property is located, provided such recommendation is made to the board in writing specifying the individual properties recommended for review. If the board of assessment appeals determines that any such assessment should be increased, then it shall give the taxpayer notice in the manner required by subsection (4) of KRS 132.450, specifying a date when the board will hear the taxpayer, if he so desires, in protest of such increase. Any real property owner who has listed his property with the property valuation administrator at its fair cash value likewise may ask the county board of assessment appeals to review the assessments of real properties he believes to be assessed at less than fair cash value, providing he specifies in writing the individual properties for which the review is sought and factual information upon which his request is based, such as comparable sales or cost data. Nothing in this section shall be construed as granting any property owner the right to request a blanket review of properties or the board the power to conduct such a review.

(3) The board of assessment appeals shall hold a public hearing for each individual taxpayer appeal in protest of the assessment by the property valuation administrator filed in accordance with the provisions of subsection (2) of this section, and after hearing all the evidence, shall fix the assessment of the property at its fair cash value. The Revenue Cabinet may be present at the hearing and present any pertinent evidence as it pertains to the appeal. The taxpayer shall provide factual evidence to support his appeal. If the taxpayer fails to provide reasonable information pertaining to the value of the property requested by the property valuation administrator, the Revenue Cabinet, or any member of the board, his appeal shall be denied. This information shall include, but shall not be limited to, the physical characteristics of land and improvements, insurance policies, cost of construction, real estate sales listings and contracts, income and expense statements for commercial property, and loans or mortgages. ***In the case of unmined minerals, the information shall include, but not be limited to, the type of mineral, quality of the mineral, lease and royalty information.***

(4) Any person receiving compensation to represent a property owner in an appeal before the board shall be an attorney, a certified public accountant, a certified real estate appraiser, a Kentucky licensed real estate broker, or an employee of the taxpayer.

(5) The board shall provide a written opinion justifying its action for each assessment either decreased or increased in the record of its proceedings and orders required in KRS 133.125 on forms or in a format provided or approved by the Revenue Cabinet.

(6) The board shall report to the property valuation administrator any real property omitted from the tax roll. The property valuation administrator shall assess such property and immediately give notice to the taxpayer in the manner required by KRS 132.450(4), specifying a date when the board of assessment appeals will hear the taxpayer, if he so desires, in protest of the action of the property valuation administrator.

(7) The board of assessment appeals shall have power to issue subpoenas, compel the attendance of witnesses, and adopt rules and regulations concerning the conduct of its business. Any member of the board shall have power to administer oaths to any witness in proceedings before the board.

(8) The powers of the board of assessment appeals shall be limited to those specifically granted by this section.

(9) No appeal shall delay the collection or payment of any taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which he claims as true value and stated in the petition of appeal filed in accordance with the provisions of subsection (1) of this section. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6) from the date when the tax would have become due if no appeal had been taken. The provisions of KRS 134.390 shall apply to such tax bill.

(10) Any member of the county board of assessment appeals may be required to give evidence in support of the board's findings in any appeal from its actions to the Kentucky Board of Tax Appeals. Any persons aggrieved by a decision of the board, including the property valuation administrator, taxpayer, and Revenue Cabinet, may appeal the decision to the Kentucky Board of Tax Appeals. Any taxpayer failing to appeal to the county board of assessment appeals, or failing to appear before the board, either in person or by designated representative, shall not be eligible to appeal directly to the Kentucky Board of Tax Appeals.

(11) It shall be the duty of the county attorney to represent the interest of the state and county in all hearings before the board of assessment appeals and on all appeals prosecuted from its decision. In the event the county attorney is unable to

represent the state and county, he or the fiscal court shall arrange for substitute representation.

Section 3. KRS 133.125 is amended to read as follows:

(1) No later than three (3) working days after the expiration of the inspection period provided for in KRS 133.045 ***or, in the case of unmined minerals, within the time period determined by the Revenue Cabinet by administrative regulation,*** the county clerk shall provide a copy to the property valuation administrator of each appeal petition and a summary of the appeals filed with the county board of assessment appeals. The summary shall be in a format, or on a form, provided or approved by the Revenue Cabinet. The property valuation administrator shall, within three (3) working days of receipt of the summary, prepare and submit to the Revenue Cabinet a final recapitulation of the real property tax roll incorporating all changes made since the submission of the first recapitulation. Those properties under appeal shall be listed for recapitulation and certification purposes at the value claimed by the taxpayer. After submission of the final recapitulation to the Revenue Cabinet, assessments shall not be amended except for adjustments ordered by the board and for corrections made under the provisions of KRS 133.110 and KRS 133.130.

(2) The county clerk, or an authorized deputy, shall act as clerk of the board of assessment appeals; and where additional board panels are appointed, as provided by law, one (1) authorized deputy shall act as clerk for each panel. An accurate record of the proceedings and orders of the board and of each of its authorized panels shall be kept and shall show the name of the owner of the property, the description, the type of property, the amount of the assessment the property valuation administrator placed on the property, and the amount of change made in the assessment by the board. A copy certified by the chairman of the board and attested by the county clerk shall be filed by the clerk with the property valuation administrator and with the Revenue Cabinet within five (5) days after the adjournment of the board.

(3) The county clerk shall certify to the county judge/executive the number of days during which the board was in session, and the court shall enter this fact of record along with the amount due the board members for their services. On a presentation of a copy of the order, the Finance and Administration Cabinet shall draw a warrant on the State Treasurer in favor of the board members and clerk for the amount due for their services.

(4) The county clerk and any authorized deputies serving as clerk of the board or a panel thereof shall be allowed the same compensation per day for their services as is allowed to members of the board of their county, and they shall be paid in the same manner as members of the board are paid. The county clerk and his authorized deputies shall be allowed compensation for completing and filing the record of the board in the same manner as allowed for their services while acting as clerk of the board or clerk of a panel of the board.".

Floor Amendment No. 3 to **HB** 99, by Representative Bruce:

"SECTION 22. A NEW SECTION OF KRS CHAPTER 132 IS CREATED TO READ AS FOLLOWS:

"***When assessing farm and agricultural land for farm and agricultural purposes, the assessment shall be the value of the land for general farm and agricultural purposes and shall not include separate assessments for any property tax purposes of tobacco bases or any other specialized crops grown upon the land.***"

Recess

Representative Stumbo moved that the House recess for five minutes for a meeting of the Committee on Rules. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Report of Committees

The Committee on Rules reported the following Consent Bill has been posted for passage in the Regular Orders of the Day, January 27, 1994: **HB 18.**

The Committee on Rules reported that **HB 50, HB 6, HB 7, HB 39, HB 95,** and **HB 119** have been posted for passage in the Orders of the Day for January 27, 1994.

Orders of the Day

Representative Stumbo moved that the rules be suspended and that the vote by which **HB 99** was defeated be reconsidered and the bill be placed in the Orders of the Day for January 27, 1994.

On the roll call the vote was **Yeas 75**--Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bruce, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, Deskins, Donnermeyer, Fox, French, Geveden, Graham, Gray, Hampton, Hancock, Hatcher, Jensen, Johnson, Keith, Kerr, Lear, Lee, LeMaster, Lewis, Lile, Little, Long, Lyne, Maggard, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Napier, Nelson, Palumbo, Rapier, Rasche, Reinhardt, Richards, Riggs, Scorsone, Scott, Shacklette, Simpson, B. Smith, R. Smith, Stacy, Stengel, Stumbo, Treesh, Turner, Wayne, Yates, Zimmerman. **Nays 16**–Ackerson, Adams, Bryant, Buis, Deweese, Ford, Gedling, Gee, Harper, Heleringer, Nesler, Nunn, Sanders, Todd, Trapp, Walton.

The motion to reconsider the vote by which **HB 99** was defeated and to place the bill in the Orders of the Day for January 27, 1994 was adopted.

HB 166, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bowling moved the adoption of Committee Amendment No. 1 to **HB 166**. Agreed.

Representative Bowling moved that **HB 166**, as amended, be passed.

On the roll call the vote was: Yeas 91, Nays 3. (See January 26, 1994 roll call on **HB 166** - Appendix)

HB 166, as amended, was passed and the title agreed to.

Representative Bowling moved that the vote by which **HB 166**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 74 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lear moved that **HB 74** be passed.

On the roll call the vote was: Yeas 98 , Nays 2 (See January 26 , 1994 roll call on **HB 74** - Appendix)

HB 74 was passed and the title agreed to.

Representative Lear moved that the vote by which **HB 74** was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 170**, by Representative Little:

On page 1, line 7, after the word "***products***" insert "***, except agricultural products,***"; and

On page 1, line 8, after the word "***maintaining***" delete "***their***" and after the word "***private***" delete "***road***" and insert "***roads traversed***"; and

On page 1, line 11, delete the word "***private***" before the word "***owner***" and insert the word "***private***" after the word "***a***"; and

On page 1, line 11, after the word "***surfaced***" delete "***their***" and insert "***the***".

Orders of the Day (Continued)

HJR 6 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bowling moved that **HJR 6** be adopted.

On the roll call the vote was: Yeas 99 , Nays 0 (See January 26 , 1994 roll call on **HJR 6** - Appendix)

HJR 6 was adopted.

Motions, Petitions and Communications

Representative Kerr moved that the rules be suspended to act upon Legislative Citations. Agreed.

Representative Kerr moved the adoption of the following **Legislative Citation No. 31**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in loving memory of Forest Popp. The House of Representatives joins Representative Thomas Kerr in expressing its deepest sympathy to The Popp Family.

Representative Kerr moved the adoption of the following **Legislative Citation No. 32**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in loving memory of Winston Forehan. The House of Representatives joins Representative Thomas Kerr in expressing its deepest sympathy to The Forehan Family.

Representative Riggs moved the adoption of the following **Legislative Citation No. 29**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds your effort and offers its sincerest congratulations to Anne Harpenau winning a spot on the Division Two All-American first team and being the first player from Bellarmine College to be invited to the Olympic Development Camp at Rutgers University in New Jersey since the school stared its field hockey program seven years ago is quite a mark in history. Congratulations Anne on your accomplishments during your athletic career. Your contributions have been outstanding and your have brought a great deal of pride and recognition to Bellarmine College. The House of Representatives joins with Representative Steve Riggs in honoring you on your many achievements and wishing you every success.

Representative Geveden moved the adoption of the following **Legislative Citation No. 30**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in loving memory of Billy J. Milner. The House of Representatives joins Representative Charles Geveden in expressing its deepest sympathy to The Milner Family.

Representative Geveden moved the adoption of the following **Legislative Citation No. 34**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors Mildred Potts in recognition of her retirement as County Extension Agent for Home Economics for twenty-five years of devoted service as County Extension Agent for Home Economics. This honorable body is pleased to join your many colleagues, friends and the women of Ballard County in appreciation for your inexhaustible efforts. The entire membership joins Representative Charles Geveden in extending its very best wishes on this memorable occasion.

Representative Stumbo moved that **HB 312** be reassigned to the Committee on Education. Agreed.

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions and Report of Committees. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 346, by Representative Bowling: AN ACT relating to parent and child.

HB 347, by Representative McElroy: AN ACT relating to corn.

HB 348, by Representative McElroy: AN ACT relating to small grains.

HB 349, by Representatives Nunn, Turner and Brown: AN ACT relating to the protection of endangered, threatened, and rare plants.

HB 350, by Representative Brown: AN ACT relating to solid waste management.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Natural Resources and Environment: **HB 282, HB 283, HB 284**

Tourism Development and Energy: **HB 316, HB 318, HB 319, HB 320, HB 321**

Agriculture and Small Business: **HB 294**

Motions, Petitions and Communications (Continued)

Representative Callahan moved that **HB 38** be withdrawn. Agreed.

Representative Rasche moved that **HB 291** be withdrawn. Agreed.

Representative Long moved that **HB 83** be withdrawn. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 5, HB 39, HB 95, HB 135, HB 210**, Representative Lile; **HB 18, HB 97, HB 135**, Representative B. Smith;

HB 18, HB 26, Representative Lyne; **HB 39, HB 174**, Representative Treesh; **HB 50, HB 135, HB 156, HB 159, HB 178, HB 198**, Representative Trapp; **HB 153**, Representative Marzian; **HB 176**, Representative Zimmerman; **HB 187**, Representatives Bentley, Maricle, Treesh; **HB 225**, Representative Harper; **HB 227**, Representatives Gedling, Turner, Lyne.

Announcements

The Clerk announced the following meetings:

Judiciary, 8:00 a.m., January 27, 1994

Health and Welfare, canceled, January 27, 1994

Labor and Industry, canceled, January 27, 1994

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Thursday, January 27, 1994.

On the roll call the vote was **Yeas 92**--Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Brown, Bruce, Bryant, Buis, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Johnson, Keith, Kerr, Lear, Lee, Lewis, Lindsay, Little, Long, Lyne, Maggard, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riggs, Riner, Sanders, Scorsone, Scott, Shacklette, B. Smith, R. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 3**--Deskins, LeMaster, Lile.

The motion to adjourn was adopted.

THURSDAY, JANUARY 27, 1994

FIFTEENTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend Jay Ayers, South Frankfort Presbyterian Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Ackerson, Deskins and Harper.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of January 26, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 1**. (Time: 2:05 p.m.)

Introduction of Bills and Resolutions

HB 351, by Representatives Cave and B. Smith: AN ACT relating to the Kentucky Public Employees Deferred Compensation System.

HCR 24, by Representative Clarke: A CONCURRENT RESOLUTION confirming the appointment of Janice Kaelin Douglass to the Board of the Kentucky Long-Term Policy Research Center.

HCR 25, by Representative Clarke: A CONCURRENT RESOLUTION confirming the appointment of Frederick C. Ladt to the Board of the Kentucky Long-Term Policy Research Center.

HJR 26, by Representative Clarke: A JOINT RESOLUTION directing the establishment of Benny Powell Point on the Kentucky River.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Agriculture and Small Business: **HB 347, HB 348**

Cities: **SB 4**

Judiciary: **HB 343, HB 345, HB 346**

Natural Resources and Environment: **HB 349, HB 350**

State Government: **SB 60, SB 70, SB 72, SB 73, SB 76, SB 77, SB 78, HB 344**

Report of Committees

The Committee on Judiciary reported **HB 36**, with Committee Substitute attached thereto, **HB 161, HB 173**, with Committee Substitute attached thereto, **HB 183**, and **HB 191** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 36, AN ACT relating to the provision of medical and related care and treatment.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

(1) No physician, dentist, nurse, pharmacist, or other medical professional or paraprofessional licensed or certified by the Commonwealth of Kentucky or an agency thereof shall be liable in civil damages for medical services rendered by the person voluntarily and without compensation, or the expectation of compensation, to a patient of any medical facility that is organized in whole or in part for the delivery of health care services without charge, unless the person rendering the services engages in any act or omission which constitutes willful and wanton misconduct. The medical services may be provided by the medical professional or paraprofessional at the medical facility, the office of the professional or paraprofessional, the patient's home, or any other location if the patient is referred from the facility.

(2) The provisions of this section shall not apply to any medical professional or paraprofessional who is employed by, or receives a pecuniary benefit from, the medical facility for which he is rendering medical services, even though the services to the particular patient may have been rendered without compensation or the expectation of compensation.

The Committee Substitute to **HB 36** is as follows:

HB 36, AN ACT relating to the provision of medical and related care and treatment.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBTITLE 40 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) For purposes of this section, the term "charitable health care facility" means any clinic, licensed by the Commonwealth of Kentucky, engaged exclusively in rendering medical care without compensation or charge to the individual, without payment or reimbursement by any governmental agency or insurer and not owned by or controlled by a health care facility which charges for medical or health care services. "Charitable health care facility" includes employees, agents, staff, nurses, pharmacists, paraprofessionals, and physicians while working or practicing in conjunction with the charitable health care facility who are not otherwise covered by medical negligence insurance.

(2) Charitable health care facilities shall be entitled to receive medical negligence insurance coverage, without deductible, for acts or omissions alleged to be a deviation from the standard of care required of medical care providers. The insurance coverage shall be in a form approved by and acceptable to the commissioner and substantially similar in form and in substance to policies for medical negligence insurance coverage provided in the Commonwealth and shall extend to all damages for which a charitable health care facility may be found to be liable and for any costs of providing a defense against claims.

(3) If a claim for medical negligence is made against a charitable health care facility, the claim shall be assigned for defense and indemnity through the assigned claims plan established in this section.

(4) The insurance provided pursuant to this section shall be secondary to any other insurance which may be available to the party against which the claim is made.

(5) Insurers providing medical negligence insurance for health care providers, including physicians, hospitals, clinics, and other health care facilities and health care professionals, may organize and maintain, subject to approval and regulation by the commissioner, an assigned claims bureau and an assigned claims plan for charitable health care facilities and may adopt rules for their operation and for assessment of cost on a fair and equitable basis consistent with this section. If insurers do not organize and continuously maintain an assigned claims bureau and an assigned claims plan in a manner considered by the commissioner to be consistent with this section, the commissioner shall organize and maintain an assigned claims bureau and an assigned claims plan. Each insurer providing medical negligence insurance in the Commonwealth shall participate in the assigned claims bureau and the assigned claims plan as a condition of doing business in Kentucky. Costs incurred shall be allocated fairly and equitably among the insurers.

(6) The assigned claims bureau for charitable health care facilities shall promptly assign each claim against a charitable health care facility to a medical negligence insurer pursuant to subsection (5) and shall notify the facility of the identity and address of the assignee of the claim. The charitable health care facility shall have all rights and obligations to the assignee as if the charitable health care facility had been issued a policy of medical negligence insurance, without deductible, for any acts or omissions arising from any alleged deviation from the standard of care required of the charitable health care facility.

HB 161, AN ACT relating to imprisonment.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 532.100 is amended to read as follows:

(1) When an indeterminate term of imprisonment is imposed, the court shall commit the defendant to the custody of the Department of Corrections for the term of his sentence and until released in accordance with the law.

(2) When a definite term of imprisonment is imposed, the court shall commit the defendant to the county or city correctional

institution or to a regional correctional institution for the term of his sentence and until released in accordance with the law.

(3) When a sentence of death is imposed, the court shall commit the defendant to the custody of the Department of Corrections with directions that the sentence be carried out according to law.

(4) The provisions of KRS 500.080(5) notwithstanding, if a Class D felon is sentenced to an indeterminate term of imprisonment of five (5) years or less, he shall serve that term in a county jail; except that, when an indeterminate sentence of two (2) years or more is imposed on a Class D felon convicted of a sexual offense enumerated in KRS 197.410(1), the sentence shall be served in a state institution. Counties choosing not to comply with the provisions of this subsection shall be granted a waiver by the commissioner of the Department of Corrections.

(5) The jailer of a county in which a Class D felon is incarcerated may request the commissioner of the Department of Corrections to incarcerate the felon in a state corrections institution if the jailer has reasons to believe that the felon is an escape risk, ***is*** a danger to himself or other inmates, ***is*** an extreme security risk, ***has a medical problem,*** or needs protective custody beyond that which can be provided in a county jail. The commissioner of the Department of Corrections shall evaluate the request and transfer the inmate if he deems it necessary. If the commissioner refuses to accept the felon inmate, and the Circuit Judge of the county that has jurisdiction of the offense charged is of the opinion that the felon cannot be safely kept in a county jail, the Circuit Judge, with the consent of the Governor, may order the felon transferred to the custody of the Department of Corrections.

(6) Class D felons serving their time in a local jail shall be considered state prisoners, and the Department of Corrections shall pay the jail in which the prisoner is incarcerated a per diem amount determined according to KRS 431.215(2). For other state prisoners and parole violator prisoners, the per diem payments shall also begin on the date prescribed in KRS 431.215(2).

(7) State prisoners, excluding the Class D felons qualifying to serve time in county jails, shall be transferred to the state institution within forty-five (45) days of final sentencing.

HB 173, AN ACT relating to standby guardians and conservators.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

(1) Any person of full age and sound mind may execute a verified petition for the voluntary appointment of a guardian or a conservator of the person's property upon the express condition that the petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in the petition. The petition shall advise the proposed ward of a guardian's powers as provided in KRS 387.065 and conservator's powers as provided in KRS 387.137.

(2) The petition may nominate a person for appointment to serve as guardian or conservator, and may request that the appointment be made without bond, or with bond of a certain stated sum. The court in appointing the guardian or conservator shall give due regard to the nomination and other requests and recommendations contained in the petition.

(3) The petition may be deposited with the circuit clerk of the county in which the party resides, or with any person, firm, bank, or trust company selected by the petitioner.

(4) The petition may be revoked by the petitioner at any time before appointment of a guardian or conservator by the court, if the petitioner is of sound mind. Revocation shall be accomplished by the destruction of the petition by the petitioner, or by the execution of an acknowledged instrument of revocation. If the petition has been deposited with the clerk, the revocation may be deposited there.

(5) At any time after the deposit of the petition with the clerk, and before its revocation, it may be brought on for hearing by the filing of a verified statement to the effect that the occurrence of the event or the condition provided for in the petition has come to pass. If the petition has not been deposited with the clerk under the provisions of subsection (3) of this section, it may be brought on for hearing at any time by the filing of it and the verified statement with the circuit clerk of the county in which the person who executed the petition then resides.

(6) At the time the petition is filed, the court, without any notice, may appoint the guardian or conservator nominated in the petition or may set the petition for hearing on notice the court may prescribe.

(7) The powers and duties of a guardian or conservator shall be the same as those of a guardian or conservator appointed in response to any of the other petitions authorized in this chapter.

The Committee Substitute to **HB 173** is as follows:

HB 173, AN ACT relating to standby guardians and conservators.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

(1) Any person of full age and sound mind may execute a verified petition for the voluntary appointment of a guardian or a conservator of that person's property upon the express condition that the petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in the petition. The petition, when filed, shall be accompanied by an affidavit from a licensed physician indicating that the person who signed the petition is now disabled as defined in KRS 387.510. The petition shall advise the proposed ward of a guardian's powers as provided in KRS 387.065 and conservator's powers as provided in KRS 387.137.

(2) The petition may nominate a person for appointment to serve as guardian or conservator, and may request that the appointment be made without bond, or with bond of a certain stated sum. The court in appointing the guardian or conservator shall appoint the individual nominated unless the court finds that person unfit or incompetent and shall give due regard to the other requests and recommendations contained in the petition.

(3) The petition may be deposited with the circuit clerk of the county in which the party resides, or with any person, firm, bank, or trust company selected by the petitioner.

(4) The petition may be revoked by the petitioner at any time before appointment of a guardian or conservator by the court, if the petitioner is of sound mind. Revocation shall be accomplished by the destruction of the petition by the petitioner, or by the execution of an acknowledged instrument of revocation. If the petition has been deposited with the clerk, the revocation may be deposited there.

(5) At any time after the deposit of the petition with the clerk, and before its revocation, it may be brought on for hearing by the filing of a verified statement to the effect that the occurrence of the event or the condition provided for in the petition has come to pass. If the petition has not been deposited with the clerk under the provisions of subsection (3) of this section, it may be brought on for hearing at any time by the filing of it and the verified statement with the circuit clerk of the county in which the person who executed the petition then resides.

(6) At the time the petition is filed, the court, without any notice, may appoint the guardian or conservator nominated in the petition or may set the petition for hearing on notice the court may prescribe.

(7) The powers and duties of a guardian or conservator shall be the same as those of a guardian or conservator appointed in response to any of the other petitions authorized in this chapter.

HB 183, AN ACT relating to the Kentucky Judicial Form Retirement System.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 21.540 is amended to read as follows:

Except as provided in KRS 21.550 and 21.560, the board of trustees of the Judicial Form Retirement System shall be charged with the administration of that system and of KRS 21.350 to 21.510, and shall have all powers necessary thereto, including the power to promulgate all reasonable regulations, pass upon questions of eligibility and disability, make [~~contracts or~~] employments for services, and ***to contract for*** [~~purchase~~] fiduciary liability insurance***, and for investment counseling, actuarial, auditing, and other professional services as required without the limitations of KRS 45A.045***. The administrative expenses shall be paid out of an administrative account which shall be funded by transfers of the necessary money, in appropriate ratio, from the funds provided for in KRS 21.550 and 21.560.

Section 2. KRS 21.370 is amended to read as follows:

(1) Except as provided in subsection (2) of KRS 21.410 and in subsection (2) of KRS 21.420, no benefits shall be payable under KRS 21.350 to 21.480 to any member or to his surviving spouse, unless he has completed at least eight (8) years of service, including service before becoming a member. No surviving spouse of a retired member shall be entitled to any benefits unless the person was the spouse of the member at the time he retired.

(2) A member who has qualified for benefits pursuant to this section may transfer to the Judicial Retirement Plan up to ten (10) years of service credit which he has earned in ***a retirement system administered by Kentucky Retirement Systems, and he may transfer to the Judicial Retirement Plan up to ten (10) years of service credit which he has earned in the Kentucky Legislators' Retirement Plan*** [~~the Kentucky Employees' Retirement System~~]. If the member elects to transfer his [~~Kentucky Employees' Retirement System~~] service credit, ***the*** [~~that~~] system ***or plan from which the transfer is made*** shall transfer to the judicial retirement fund an amount equal to the employee's and employer's contributions attributable to that credit, together with interest on the contributions from the date made to the date of transfer at the actuarially assumed interest rate of the ***system or plan from which the transfer is made*** [~~Kentucky Employees' Retirement System~~] in effect at the time the contributions were made, compounded annually at that same interest rate. The member shall be entitled to the transferred service credit, at the rate at which he qualifies pursuant to KRS 21.400, when he pays the total difference between the amount of the funds transferred [~~by the Kentucky Employees' Retirement System~~] and the cost of

the credit to the Judicial Retirement Plan, as determined by the actuary for the Judicial Retirement Plan. *The member may pay by lump sum or by increments as set forth in KRS 6.515(2)(b), but an installment contract shall not extend for more than sixty (60) months. The payments made under this section shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 21.360(6).*

(3) Any active member of the Judicial Retirement Plan who is vested in the Judicial Retirement Plan pursuant to subsection (1) of this section or KRS 21.375, shall receive service credit for a maximum of four (4) years for his period of service as a city police judge for a city within the Commonwealth of Kentucky, if the service was performed prior to the first Monday in January, 1978, and if the service has not been credited to the member's account with any other public defined benefit plan, by paying the retirement system one hundred percent (100%) of the actuarial cost of the service as determined by the board of trustees, based on assumptions used in the most recent biennial evaluation. The period of service to be purchased shall be certified to the board of trustees by the custodian of the records of the city for which the service was performed. The service credit shall be awarded and the cost shall be determined in conformity with the rate which applies to the member in question pursuant to KRS 21.400. Service credit awarded pursuant to this subsection shall be equivalent, for all purposes of the Judicial Retirement Plan, to other service credit earned in the plan. The payments made under this section shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 21.360(6).

(4) (a) Any active member of the Judicial Retirement Plan who is vested in the Judicial Retirement Plan pursuant to subsection (1) of this section or KRS 21.375, or his beneficiary acting in his place if the member dies prior to retirement, shall receive service credit for a maximum of four (4) years for his period of service in the armed forces of the United States, if his discharge therefrom is honorable and he has not been credited with the service by any other retirement system administered by the Commonwealth of Kentucky, by paying the retirement system one hundred percent (100%) of the actuarial cost of the service as determined by the board of trustees, based on assumptions used in the most recent biennial evaluation. The service credit shall be awarded and the cost shall be determined in conformity with the rate which applies to the legislator in question pursuant to KRS 21.400. Service credit awarded pursuant to this subsection shall be equivalent, for all purposes of the Judicial Retirement Plan, to other service credit earned in the plan.

(b) The beneficiary may purchase military service credit only at one (1) time by lump-sum payment for the amount of service he wishes to purchase, and the payment shall be made within thirty (30) days of the death of the active member. The member may purchase all of his military service credit at one (1) time, or in increments of no less than one (1) year, unless there is a fraction remaining after all full years have been paid for. Payment of the total or the increment may be made by lump sum or by monthly installments through payroll deduction. If the member chooses to pay by installment, the cost of the service credit shall be computed in the same manner as for a lump-sum payment, which shall be the principal. Interest, at the annual actuarial rate in effect at the time each payment is made, shall be added to each monthly payment at the rate of one-twelfth (1/12) of the annual interest rate applied to the declining principal amount. Installment purchases shall be for no less than twelve (12) nor more than sixty (60) months. If the member leaves office before completing his installment payments, he may satisfy his contract by a lump-sum payment of the remaining principal amount, but no further installment payments shall be accepted thereafter. In this case, the member shall be credited with the military service credit for which he has paid, in years or months but no fraction less than a full month, and any payment remaining after credit for full months has been awarded shall be returned to the member.

(c) The payments made under this section shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 21.360(6).

(d) No veteran shall be eligible to purchase military service credit under this section if he is receiving a military pension or is eligible for a military pension in the future, unless the military pension is for service primarily on inactive duty in a reserve component of the armed forces, or is a disability pension which does not exceed five hundred dollars ($500) monthly.

Section 3. KRS 6.515 is amended to read as follows:

(1) Service credit in the Legislators' Retirement Plan shall be acquired only by service as a legislator after July 1, 1980, while a member of the plan, by transfer of credit as provided in KRS 6.505, or by purchase of military service credit pursuant to subsection (2) of this section, or by transfer of credit as provided in subsection (6) of this section.

(2) (a) Any active member of the Legislators' Retirement Plan who has at least five (5) years of service credit in the Legislators' Retirement Plan, or his beneficiary acting in his place if the member dies prior to retirement, shall receive service credit for a maximum of four (4) years for his period of service in the armed forces of the United States, if his discharge therefrom is honorable and he has not been credited with the service by any other retirement system administered by the Commonwealth of Kentucky, by paying the retirement system fifty percent (50%) of the actuarial cost of the service as determined by the board of trustees, based on assumptions used in the most recent biennial evaluation. The service credit shall be awarded and the cost shall be determined in conformity with the rate which applies to the legislator in question pursuant to KRS 6.520. Service credit

awarded pursuant to this subsection shall be equivalent, for all purposes of the Legislators' Retirement Plan, to other service credit earned in the plan.

(b) The beneficiary may purchase military service credit only at one (1) time by lump-sum payment for the amount of service he wishes to purchase, and the payment shall be made within thirty (30) days of the death of the active member. The member may purchase all of his military service credit at one (1) time, or in increments of no less than one (1) year, unless there is a fraction remaining after all full years have been paid for. Payment of the total or the increment may be made by lump-sum or by monthly installments through payroll deduction. If the member chooses to pay by installment, the cost of the service credit shall be computed in the same manner as for a lump-sum payment, which shall be the principal. Interest, at the annual actuarial rate in effect at the time each payment is made, shall be added to each monthly payment at the rate of one-twelfth (1/12) of the annual interest rate applied to the declining principal amount. Installment purchases shall be for no less than twelve (12) nor more than sixty (60) months. If the member leaves office before completing his installment payments, he may satisfy his contract by a lump-sum payment of the remaining principal amount, but no further installment payments shall be accepted thereafter. In this case, the member shall be credited with the military service credit for which he has paid, in years or months but no fraction less than a full month, and any payment remaining after credit for full months has been awarded shall be returned to the member.

(c) The payments made under this section shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 6.505(2).

(d) No veteran shall be eligible to purchase military service credit under this section if he is receiving a military pension or is eligible for a military pension in the future, unless the military pension is for service primarily on inactive duty in a reserve component of the armed forces, or is a disability pension which does not exceed five hundred dollars ($500) monthly.

(3) If spouses both serve in the General Assembly, but not simultaneously, they may combine their service credit in the Legislators' Retirement Plan for all purposes of that plan into a single account, and may jointly designate to whom the service retirement allowance shall be paid. The designation shall not be changed once it is made. Assuming equal service credit, the benefits paid, pursuant to this section, to a legislator and his or her spouse who also served as a legislator shall not exceed the benefits that the same legislator and his or her spouse would receive if the spouse had not served as a legislator.

(4) In the event of divorce, rights to benefits shall be considered marital property subject to the provisions of KRS 403.190.

(5) A former legislator whose spouse currently serves in the General Assembly and who received a refund of contributions pursuant to KRS 21.460 may repurchase service credit which he or she previously had by repaying the amount refunded with interest at six percent (6%) per annum, and the service credit shall become part of the single account authorized by subsection (2) of this section.

(6) A member who has qualified for benefits pursuant to KRS 6.525(1) may[~~, until July 1, 1991,~~] transfer to the Legislators' Retirement Plan up to ten (10) years of service credit which he has earned in ***a retirement system administered by Kentucky Retirement Systems*** [~~the County Employees' Retirement System~~]. If the member elects to transfer his [~~County Employees' Retirement System~~] service credit, ***the*** [~~that~~] system ***from which the transfer is made*** shall transfer to the legislators' retirement fund an amount equal to the employee's and employer's contributions attributable to that credit, together with interest on the contributions from the date made to date of transfer at the actuarially assumed interest rate of the ***system from which the transfer is made*** [~~County Employees' Retirement System~~] in effect at the time the contributions were made, compounded annually at that same interest rate. The member shall be entitled to the transferred service credit, at the rate at which he qualifies pursuant to KRS 6.520, when he pays the total difference between the amount of the funds transferred [~~by the County Employees' Retirement System~~] and the cost of the credit to the Legislators' Retirement Plan, as determined by the actuary for the Legislators' Retirement Plan. ***The member may pay by lump sum or by increments, as provided for in subsection (2)(b) of this section, but an installment contract shall not extend for more than sixty (60) months. The payments made under this section shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 6.505(2).***

Section 4. KRS 21.420 is amended to read as follows:

(1) After the death of a member who at the time of his death was receiving a service retirement allowance (other than an actuarially reduced allowance under subsection (3) of KRS 21.400), or was receiving a disability retirement allowance, his surviving spouse is entitled to receive during his lifetime a monthly allowance equal to one-half (1/2) of that he was receiving.

(2) (a) If a member dies before retirement and before reaching normal retirement age, without regard to length of service, his surviving spouse is entitled to receive during his lifetime a monthly allowance equal to one-half (1/2) of the monthly allowance the member would have received commencing at his normal retirement date if he had continued in service until that date and had then retired, computed however on the basis of his final compensation at time of death.

(b) If a member dies before retirement and after reaching normal retirement age, his surviving spouse is entitled to receive during his lifetime a monthly allowance equal to one-half (1/2) of the monthly allowance the member would have been entitled to, on the basis of his years of service, had he retired on the date of his death.

(3) If a member dies after retirement and was at the time of his death receiving an actuarially reduced allowance under subsection (3) of KRS 21.400, or was not at the time of his death receiving a retirement allowance but had acquired the vested right under subsection (2) of KRS 21.400 to have received an allowance upon reaching normal retirement age, his surviving spouse is entitled to receive during his lifetime a monthly allowance equal to one-half (1/2) of the monthly allowance the member would have received when he reached normal retirement age.

(4) A member, or a retiree who has not commenced drawing retirement benefits pursuant to KRS 21.400, who dies without a spouse or eligible children entitled to survivor's benefits, may designate a beneficiary who shall receive the accumulated contributions of the member. Absent a designation by the member or retiree, the accumulated contributions shall be paid to the member's estate.

(5) A member who commences drawing retirement benefits pursuant to KRS 21.400 or 21.410, who dies without a spouse or eligible children entitled to survivor's benefits and before the benefits received by the member equal the personal contributions of the member, may designate a beneficiary who shall receive the balance of the accumulated contributions of the member. Any offset of contributions by reason of benefits received shall be deducted from the contributions first made to the system. Absent a designation by the member, the accumulated contributions shall be paid to the member's estate.

(6) A member may designate a beneficiary who shall receive the balance of the accumulated contributions of the member, in the event survivor's benefits are being paid pursuant to subsection (1), (2), or (3) of this section, and the survivor dies prior to receiving benefits equal to the member's contributions. In this event, the provisions of subsection (5) of this section shall apply as to offset and payment.

HB 191, AN ACT relating to children.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 199.011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Secretary" means the secretary for human resources;

(2) "Cabinet" means the Cabinet for Human Resources;

(3) "Department" means the Department for Social Services;

(4) "Child" means any person who has not reached his eighteenth birthday;

(5) "Adult adopted person" means any adopted person who is twenty-one (21) years of age or older;

(6) "Child-caring facility" means any institution or group home other than a state facility, or one (1) certified by an appropriate agency as operated primarily for educational or medical purposes providing residential care on a twenty-four (24) hour basis to children, not related by blood, adoption***,*** or marriage to the person maintaining the facility;

(7) "Child-placing agency" means any agency ***licensed by the cabinet*** other than a state agency which supervises the placement of children in foster family homes or child-caring facilities, or which places children for adoption;

(8) ***"Adoption worker"*** [~~"Child welfare worker"~~] means an employee of the cabinet designated as such by the secretary for human resources***, a*** [~~or~~] social worker employed by a county or city who has been approved by the cabinet to handle, under its supervision, ***adoption placement*** services to children***, or a social worker employed by or under contract to a child-placing adoption agency***;

(9) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or of a licensed child-placing agency;

(10) "Group home" means a homelike facility for not more than eight (8) foster children, not adjacent to or part of an institutional campus, operated by a sponsoring agency for children who may participate in community activities and use community resources;

(11) "Institution" means a child-caring facility providing care or maintenance for nine (9) or more children; [~~and~~]

(12) "Family rehabilitation home" means a child-caring facility for appropriate families and comprising not more than twelve (12) children and two (2) staff persons***; and***

(13) "Placement services" means those social services customarily provided by a licensed child-placing or a public agency which are necessary for the arrangement and placement of children in foster family homes, child-placing facilities, or adoptive homes. Placement services are provided through a licensed child-placing or a public agency for children who cannot be cared for by their biological parents and who need and can benefit from new and permanent family ties established through legal adoption. Licensed child-placing agencies and public agencies have a responsibility to act in the best interests of children, biological parents, and adoptive parents by providing social

services to all the parties involved in an adoption.

Section 2. KRS 199.470 is amended to read as follows:

(1) Any person who is eighteen (18) years of age and who is a resident of this state or who has resided in this state for twelve (12) months next before filing may file a petition for leave to adopt a child in the Circuit Court of the county in which the petitioner resides.

(2) If the petitioner is married, the husband or wife ***shall*** ~~[must]~~ join in a petition for leave to adopt a child unless the petitioner is married to a biological parent of the child to be adopted, except that if the court finds the requirement of a joint petition would serve to deny the child a suitable home, ***the*** ~~[such]~~ requirement may be waived.

(3) ***If*** ~~[No petition for the adoption of any child under the age of sixteen (16) shall be filed until after the child has lived continuously in the home of the petitioner for at least three (3) months immediately prior to the filing of the petition unless the child has been placed for adoption by the cabinet or an agency licensed to place children for adoption by the cabinet. In the case of]~~ a child ***is*** placed for adoption by the cabinet***, by*** ~~[or]~~ an agency licensed by the cabinet, ***or with written approval by the secretary of the cabinet,*** the petition may be filed at the time of placement. ***In all other adoptions, the petition shall not be filed until the child has resided continuously in the home of the petitioner for at least ninety (90) days immediately prior to the filing of the adoption petition.***

(4) No petition for adoption shall be filed unless prior to the filing of the petition the child sought to be adopted has been placed for adoption by a ~~[licensed]~~ child-placing institution or agency***,*** or by the cabinet, or the child has been placed with written approval of the secretary; but no ~~[such]~~ approval shall be necessary in the case of:

(a) A child sought to be adopted by a stepparent, grandparent, sister, brother, aunt***,*** or uncle; or

(b) A child received by the proposed adopting parent or parents from an agency without this state with the written consent of the secretary.

(5) Subsection (4) of this section shall not apply to ~~[those]~~ children placed for adoption prior to June 14, 1962.

Section 3. KRS 199.473 is amended to read as follows:

(1) All persons other than a ~~[licensed]~~ child-placing agency or institution, the department, or persons excepted by KRS 199.470(4) or (5) who wish to place or receive a child shall make written application to the secretary for permission to place or receive a child. ***Prior to the approval*** ~~[Upon receipt]~~ of an application to place or receive a child, together with the fee required pursuant to subsection ***(6)*** ~~[(5)]~~ of this section, the secretary shall cause ***the*** ~~[an]~~ investigation to be made ***by a Cabinet for Human Resources social worker unless the applicant specifies in the application that the investigation shall be done by an adoption worker*** of the home and the background of the person or persons wishing to receive the child. ***The portion of the investigation pertaining to the home and family background shall be valid for one (1) year following the date of its completion by an adoption worker.*** The purpose of the investigation shall be to determine the suitability of the applicants to receive a child, taking into account at all times the best interest of the child for whom application to receive has been made. The ***adoption*** ~~[child welfare]~~ worker making the investigation shall make a finding in writing recommending either that the application be granted or that the application be denied. In either case, reasons for the ***adoption*** ~~[child welfare]~~ worker's recommendation shall be given in writing. The recommendation of the ***adoption*** ~~[child welfare]~~ worker shall then be reviewed by the secretary. Based on the report and recommendation of the ***adoption*** ~~[child welfare]~~ worker making the investigation, the secretary shall grant or refuse permission for the applicant to place or receive a child as early as practicable, but, in any case, the decision shall be made within sixty (60) days after the receipt of the application. In reaching his decision, the secretary shall be guided by the ability of the persons wishing to receive the child to give the child a suitable home, and shall at all times consider the best interest of the child from a financial, medical, psychological, and psychiatric standpoint. If the application is refused, the secretary shall in general terms furnish in writing the reasons for his refusal.

(2) ***Upon a finding by the Circuit Court that the child should be placed prior to the secretary's ruling on the application, the Circuit Court may grant the applicant temporary custody of the child pending the decision of the secretary. If the application is denied, the temporary custody order shall be set aside and, upon motion of the cabinet or of the child's parent or parents, the Circuit Court may order the child returned to the biological parent or parents or the child's custody may be awarded to the cabinet, another licensed child-placing agency, or such other individuals deemed appropriate by the court. This section shall not be deemed to permit the completion of any adoption proceeding without the approval of the secretary and compliance with KRS 615.030, if required.***

(3) In any case where the cabinet refuses to approve the placement of a child for adoption when requested by the parent or parents of the child, or refuses the request of any person or persons that a child be placed with him or them for adoption, the decision of the secretary in so refusing shall be final unless within ten (10) days after notice of refusal, the biological or proposed adopting parent or parents shall appeal to the Circuit Court of the county in which the adoption is proposed. No placement shall be disapproved on the basis of the religious, ethnic, racial, or interfaith background of the adoptive applicant, if the placement is made with the consent of the parent. ***The cabinet may refuse to approve the placement of a child for adoption if the child's custodial parent is unwilling for the child to be placed for adoption with the proposed adoptive family. The cabinet may approve or deny the placement, in spite of the fact that the custodial***

parent or parents are unwilling to be interviewed by the cabinet or other approving entity, or if, after diligent efforts have been made, the adoption worker is unable to locate or interview the custodial parent or parents. The cabinet shall be made a party defendant to the appeal. In the hearing of an appeal, the court shall review the findings of the secretary and shall determine if the secretary has acted arbitrarily, unlawfully, or in such a manner as to constitute an abuse of discretion.

[~~(3) No person, association, or organization, other than the cabinet or a licensed child placing institution or agency shall place a child or act as intermediary in the placement of a child for adoption or otherwise, except in the home of a stepparent, grandparent, sister, brother, aunt, or uncle, or upon written approval of the secretary. Nothing in this subsection shall be construed to limit the Cabinet for Human Resources in carrying out its Aid to Dependent Children Program in accordance with KRS Chapter 205.~~]

(4) If a child who does not fall within the exception provided for in KRS 199.470(4) or (5) is placed or received in a home without the permission of the secretary for human resources, or if permission to receive a child has been denied, a representative of the cabinet may petition the juvenile session of District Court of the county in which the child is found setting out the facts concerning the child. When the petition has been filed, the court shall take jurisdiction of the child and shall provide for it as it would provide for a dependent, neglected, or abused child under KRS Chapter 620, except that the child may not be placed in the home of the applicants to receive him unless permission to do so is granted by the secretary or the action is ordered by a [~~Circuit Court, the~~] Kentucky court of ***competent jurisdiction*** [~~Appeals or Supreme Court of Kentucky~~].

(5) ***When either the custodial parent or parents of the child to be placed or the persons wishing to receive the child reside out-of-state, the requirement of KRS 615.030, Interstate Compact on the Placement of Children, shall be met before the cabinet gives approval for the child's placement.***

(6) The secretary of the Cabinet for Human Resources shall be paid a nonrefundable fee of one hundred fifty dollars ($150) upon the filing of the written application for permission to place or receive a child. Payment shall be made by certified or cashier's check only. All funds collected under this section shall be deposited in a restricted account, which is hereby created, for the purpose of subsidizing an adoptive parent for suitable care of a special needs child as authorized in KRS 199.555.

(7)[~~(6)~~] Nothing in this statute shall be construed to limit the authority of the cabinet or a [~~licensed~~] child-placing institution or agency to determine the proper disposition of a child committed to it by the juvenile session of District Court or the Circuit Court, prior to the filing of an application to place or receive.

Section 4. KRS 199.480 is amended to read as follows:

(1) The following persons shall be made parties defendant in an action for leave to adopt a child:

(a) The child to be adopted;

(b) The biological living parents of a child under eighteen (18), if the child is born in lawful wedlock***. If the child is born out of wedlock, its mother; and its father, if one (1) of the following requirements is met:***

1. He is known and voluntarily identified by the mother by affidavit;

2. Prior to the entry of a final order in a termination proceeding, he has acknowledged the child as his own by affirmatively asserting paternity in the action or to the custodial agency or the party bringing the action within sixty (60) days after the birth of the child;

3. He has caused his name to be affixed to the birth certificate of the child;

4. He has commenced a judicial proceeding claiming parental right;

5. He has contributed financially to the support of the child, either by paying the medical or hospital bills associated with the birth of the child or financially contributed to the child's support; or

6. He has married the mother of the child or has lived openly or is living openly with the child or the person designated on the birth certificate as the biological mother of the child.

A putative father shall not be made a party defendant if none of the requirements set forth above have been met, and a[~~, and its mother and if paternity is established in legal action or if an affidavit is filed stating that the affiant is father of the child, its father, if the child is born out of wedlock, provided that no~~] biological parent ***shall not*** [~~need~~] be made a party defendant ***if*** [~~in the event~~] the parental rights of ***that*** [~~such~~] parent have been terminated under KRS Chapter 625, or under a comparable statute of another jurisdiction;

(c) The child's guardian, if it has one***.***[~~; and~~]

(d) If the care, custody***,*** and control of the child has been transferred to the cabinet, ***or*** any other individual ***or individuals***, institution***,*** or agency, then the cabinet, ***the*** [~~such~~] other individual ***or individuals***, institution***,*** or agency shall be named a party defendant***, unless the individual or individuals, or the institution or agency is also the petitioner***.

(2) Each party defendant shall be brought before the court in the same manner as provided in other civil cases except that if

the child to be adopted is under fourteen (14) years of age and the cabinet, individual, institution or agency has custody of ***the*** ~~[such]~~ child, the service of process upon ***the*** ~~[such]~~ child shall be had by serving a copy of the summons in ***the*** ~~[such]~~ action upon the cabinet, individual, institution or agency, any provision of CR 4.04(3) to the contrary notwithstanding.

(3) If the child's biological living parents, if the child is born in lawful wedlock, or if the child is born out of wedlock, its mother, and if paternity is established in legal action or if an affidavit is filed stating that the affiant is father of the child, its father, are parties defendant, no guardian ad litem need be appointed to represent the child to be adopted.

Section 5. KRS 199.490 is amended to read as follows:

(1) The petition shall allege:

(a) The name, date, ~~[and]~~ place of birth, place of residence, and mailing address of each petitioner, and, if married, the date and place of their marriage;

(b) The name, date, ~~[and]~~ place of birth, place of residence, and mailing address, if known, of the child sought to be adopted;

(c) Relationship, if any, of the child to each petitioner;

(d) Full name by which the child shall be known after adoption;

(e) A full description of the property, if any, of the child so far as it ***is*** ~~[be]~~ known to the petitioner;

(f) The names of the parents of the child and the address of each living parent, if known. ~~[, provided]~~ The name of the biological father of a child born out of wedlock shall not be given unless paternity is established in a legal action, or unless an affidavit is filed stating that the affiant is the father of the child. ~~[, or]~~ If certified copies of orders terminating parental rights are filed as provided in subsection (2) of this section, the name of any parent whose rights have been terminated shall not be given;

(g) The name and address of the child's guardian, if any, or of the cabinet, institution, or agency having legal custody of the child;

(h) Any further facts necessary for the location of the person or persons whose consent to the adoption is required, or whom KRS 199.480 requires to be made a party to or notified of the proceeding; and

(i) If any fact ~~[herein]~~ required ***by this subsection*** to be alleged is unknown to the petitioners, ***the*** ~~[such]~~ lack of knowledge ***shall*** ~~[must]~~ be alleged.

(2) There shall be filed with the petition certified copies of any orders terminating parental rights. Any consent to adoption shall be filed prior to the entry of the adoption judgment.

(3) If the petitioner was not excepted by KRS 199.470(4) or (5), a copy of the written approval of the Secretary of the Cabinet for Human Resources or the secretary's designee shall be filed with the petition.

Section 6. KRS 199.500 is amended to read as follows:

(1) ***An*** ~~[No]~~ adoption shall ***not*** be granted without the sworn consent of the living parent or parents of a child born in lawful wedlock or the mother of the child born out of wedlock, or the father of the child born out of wedlock if paternity is established in a legal action or if an affidavit is filed stating that the affiant is the father of the child, except that ***the*** ~~[such]~~ consent of the living parent or parents shall not be required if:

(a) ***The*** ~~[Such]~~ parent or parents have been adjudged mentally disabled and ***the*** ~~[such]~~ judgment shall have been in effect for not less than one (1) year prior to the filing of the petition for adoption;

(b) The parental rights of ***the*** ~~[such]~~ parents have been terminated under KRS Chapter 625; ~~[or]~~

(c) The living parents are divorced and the parental rights of one (1) parent have been terminated under KRS Chapter 625 and consent has been given by the parent having custody and control of the child***; or***

(d) The biological parent has not established parental rights as required by KRS 625.065.

(2) A minor parent who is a party defendant may consent to an adoption but a guardian ad litem for ***the*** ~~[such]~~ parent shall be appointed.

(3) In the case of a child twelve (12) years of age or older, the consent of the child shall be given in court. ~~[, provided that]~~ The court in its discretion may waive this requirement.

(4) ~~[Notwithstanding the provisions of subsection (1) of this section, an adoption may be granted without the consent of the biological living parents of a child if it is pleaded and proved as a part of the adoption proceedings that any of the provisions of KRS 625.090 exist with respect to such child.~~

~~(5) In no case shall~~] An adoption ***shall not*** be granted or a consent for adoption be held valid if ***the*** ~~[such]~~ consent for adoption is given prior to ***seventy-two (72) hours*** ~~[the fifth day]~~ after the birth of the child. ***The consent may be taken at seventy-two (72) hours after the birth of the child and shall become final and irrevocable ten (10) days after either the interstate or the intrastate placement approval by the secretary of the Cabinet for Human Resources, or ten (10) days after the execution of the consent if placement approval was given prior to the signing of the consent.***

Section 7. KRS 199.510 is amended to read as follows:

(1) Upon filing a petition for the adoption of a minor child, the clerk of the court shall forward two (2) copies of the petition to the cabinet. The cabinet, or any person, agency or institution designated by it or the court shall, to the extent of available facilities, investigate and report in writing to the court:

(a) Whether the contents of the petition required by KRS 199.490 are true;

(b) Whether the proposed adoptive parents are financially able and morally fit to have the care, custody and training of the child; and

(c) Whether the adoption is to the best interest of the child and the child is suitable for adoption.

(2) The report of the cabinet or the designated person, agency or institution shall be filed with the court as soon as practicable but not later than one hundred-eighty (180) days ***from the placement of the child*** [~~in the event the petition was filed forthwith by virtue of cabinet placement or placement by an agency licensed by the cabinet~~] or ninety (90) days***,*** ***whichever is longer,*** [~~in the case of private placement~~] after the filing date of the petition unless for good cause the court by written order extends the period of time for filing the report. If the cabinet or the designated person, agency or institution is unable to make the report, it shall within ten (10) days of receipt of the petition notify the court of its inability to conduct the investigation, and the court may designate some other person, agency or institution to make the necessary investigation. If the court designates some other person, agency or institution, the clerk shall forward one (1) copy of the petition to such person, agency or institution and shall notify the cabinet of such other designation at the time he forwards the petition to the cabinet.

(3) If the cabinet is a party defendant, its reports, if it files no other pleadings, shall be considered its answer to the petition.

(4) The clerk's fee for copying and forwarding the copies of the petitions required by this section shall be taxed as a cost of the action.

Section 8. KRS 199.520 is amended to read as follows:

(1) After hearing the case***,*** the court shall enter a judgment of adoption, if it finds that the facts stated in the petition were established; that all legal requirements, including jurisdiction, relating to the adoption have been complied with; that the petitioners are of good moral character, of reputable standing in the community and of ability to properly maintain and educate the child***;***[~~,~~] and that the best interest of the child will be promoted by the adoption and that the child is suitable for adoption. In the judgment***,*** the name of the child shall be changed to conform with the prayer of the petition. The judgment and all orders required to be entered and recorded in the order book, including the caption, shall contain only the names of the petitioners and the proposed adopted name of the child, without any reference [~~whatsoever~~] to its former name or the names of its birth parents.

(2) Upon entry of the judgment of adoption, from and after the date of the filing of the petition, the child shall be deemed the child of petitioners and shall be considered for purposes of inheritance and succession and for all other legal considerations, the natural child of the parents adopting it the same as if born of their bodies. ***Upon granting an adoption, all legal relationship between the adopted child and the biological parents shall be terminated except the relationship of a biological parent who is the spouse of an adoptive parent*** [~~Except where a biological parent is the spouse of an adoptive parent an adopted child from the time of adoption shall have no legal relationship to its birth parents in respect to either personal or property rights~~].

(3) The clerk of the court shall notify the cabinet of any action of the court with respect to entering a judgment granting an adoption, the amendment of an adoption, or the denial or dismissal of a petition for adoption.

(4) (a) The health history of biological parents and blood relatives of the adopted person, in writing, on a standardized form, provided by the cabinet, if known, shall be given by the cabinet or child-placing agency which has ***the*** [~~such~~] information[~~,~~] to the adoptive parents and to the Circuit Court not later than the date of finalization of the adoption proceedings; and

(b) The information provided for in paragraph (a) of this subsection, if known, shall, upon the request in person or in writing of the adult adopted person be made available in writing to ***that*** [~~such~~] person. [~~None of~~] The information shall ***not*** be made available if it is of [~~such~~] a nature that [~~it~~] would tend to identify the biological parents of ***the*** [~~such~~] adopted person except as provided in KRS 199.570 and 199.572.

Section 9. KRS 199.540 is amended to read as follows:

(1) ***If*** [~~Whenever~~] a child adopted under KRS 199.470 to 199.520 reveals definite traits of ethnological ancestry different from those of the adoptive parents, and of which the adoptive parents had no knowledge or information prior to the adoption, a petition setting forth ***the*** [~~such~~] facts may be filed by the original petitioner or the cabinet at any time within five (5) years after ***the*** [~~such~~] adoption with the court which decreed the adoption***.***[~~, and~~] If upon hearing the facts set forth in ***the*** [~~such~~] petition they are established, the [~~said~~] court may enter a decree of annulment of the adoption and setting aside any or all rights or obligations which may have accrued by reason of ***the*** [~~said~~] adoption.

(2) After the expiration of ***one (1) year*** [~~two (2) years~~] from the date of the entry of judgment of adoption, the validity thereof shall not be subject to attack in any ***action*** [~~procedure~~], collateral or direct, by reason of any irregularity ***or***

failure to comply with [~~in procedures had pursuant to~~] KRS 199.470 to 199.520***, either procedurally or substantially***.

SECTION 10. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding the provisions of KRS 199.500(1), an adoption may be granted without the consent of the biological living parents of a child if it is pleaded and proved as part of the adoption proceeding that any of the following conditions exist with respect to the child:

(a) That the parent has abandoned the child for a period of not less than ninety (90) days;

(b) That the parent had inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;

(c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;

(d) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child, and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;

(e) That the parent has caused or allowed the child to be sexually abused or exploited; or

(f) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's wellbeing and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child.

(2) Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law, and a decision either:

(a) Granting the adoption without the biological parent's consent; or

(b) Dismissing the adoption petition, and stating whether the child shall be returned to the biological parent or the child's custody granted to the state, another agency, or the petitioner.

Section 11. KRS 199.570 is amended to read as follows:

(1) The files and records of the court during adoption proceedings shall not be open to inspection by persons other than parties to such proceedings, their attorneys, and representatives of the cabinet except under order of the court expressly permitting inspection. Upon the entry of the final order in the case, the clerk shall place all papers and records in the case in a suitable envelope which shall be sealed and shall not be open for inspection by any person except on written order of the court, except that upon the written consent of the biological parents and upon written order of the Circuit Court all papers and records including all files and records of the Circuit Court during proceedings for termination of parental rights provided in KRS 625.108 shall be open for inspection to any adult adopted person who applies in person or in writing to the Circuit Court as provided in KRS 199.572. No person having charge of any adoption records shall disclose the names of any parties appearing in such records or furnish any copy of any such records, except upon order of the court which entered the judgment of adoption. The clerk of the Circuit Court shall set up a separate docket and order book for adoption cases and these files and records shall be kept locked.

(2) After entry of the adoption judgment, the clerk of the Circuit Court shall promptly report to the Cabinet for Human Resources of Kentucky full information as called for on forms furnished by the Cabinet for Human Resources, necessary to make a new birth certificate conforming to the standard birth certificate form. Upon receipt of this information, the Cabinet for Human Resources shall cause to be made a new record of the birth and it shall be filed with the original certificate, and the original certificate shall be stamped with the words, "CONFIDENTIAL -- subject to copy and/or inspection only on written order of the court."

(3) The new certificate shall set forth the new name, if any, of the adopted child, the names of the adoptive parents and such other information deemed necessary in accordance with rules and regulations promulgated by the Cabinet for Human Resources in issuing of birth certificates. If the adopted child is under eighteen (18) years of age, the birth certificate shall not contain any information revealing the child is adopted and shall show the adoptive parent or parents as the biological parent or parents of the child. ***If requested by the adoptive parents,*** the new birth certificate when issued shall [~~not~~] contain the ***location*** [~~place~~] of birth, hospital and name of doctor or midwife. This information should be given only by an order of the court in which the child was adopted. The new birth certificate shall recite the residence of the adoptive parents as the birthplace of the child and this shall be deemed for all legal purposes to be the birthplace of the child. If no birth certificate is on file for a child born in Kentucky, the Cabinet for Human Resources shall prepare a certificate of birth in accordance with the information furnished the cabinet by the clerk of the Circuit Court which issued the adoption order. The Cabinet for Human Resources shall furnish to the clerks of the Circuit Courts the necessary forms to carry out the provisions of this section. ***If*** [~~In the event~~] the child was born in another state, the order of adoption shall be forwarded to the division of vital statistics of the state concerned to be changed in accordance with the laws of such state. ***If*** [~~In the event~~] the child was born in a foreign country, the report of adoption shall be returned to the attorney or agency handling the adoption for submission to the appropriate federal agency.

(4) Thereafter when any copy of the certificate of birth of any child is issued it shall be a copy of the new certificate of birth, except when an order of the court granting the judgment of adoption shall request the issuance of the copy of the original certificate of such child's birth.

(5) If any judgment of adoption is reversed, modified or vacated in any particular, the clerk of the Circuit Court shall notify the Cabinet for Human Resources of ***the*** [~~such~~] reversal or modification and the effect of same, and ***the*** [~~thereupon such~~] cabinet shall make ***any necessary*** [~~such~~] changes[~~, if any,~~] in its records [~~as may be necessary by such reversal or modification~~].

Section 12. KRS 199.590 is amended to read as follows:

(1) ***A*** [~~No~~] person, corporation***,*** or association shall ***not*** advertise in any manner that it will receive children for the purpose of adoption***. A*** [~~nor shall any~~] newspaper published in the Commonwealth of Kentucky ***or*** [~~nor~~] any other publication which is prepared, sold, or distributed in the Commonwealth of Kentucky ***shall not*** contain an advertisement which solicits children for adoption or solicits the custody of children.

(2) ***A*** [~~No~~] person, agency, institution, or intermediary ***shall not*** [~~may~~] sell or purchase or procure for sale or purchase any child for the purpose of adoption or any other purpose, including termination of parental rights. [~~Nothing in~~] This section shall ***not*** prohibit a [~~licensed~~] child-placing agency from charging a fee for adoption services. [~~Nothing in~~] This section shall ***not*** be construed to prohibit in vitro fertilization. For purposes of this section***,*** "in vitro fertilization" means the process ***by which*** [~~whereby~~] an egg is removed from a woman, ***and*** [~~then~~] fertilized in a receptacle by the sperm of the husband of the woman in whose womb the fertilized egg will thereafter be implanted.

(3) No person, association, or organization, other than the cabinet or a child-placing institution or agency shall place a child or act as intermediary in the placement of a child for adoption or otherwise, except in the home of a stepparent, grandparent, sister, brother, aunt, or uncle, or upon written approval of the secretary. This subsection shall not be construed to limit the Cabinet for Human Resources in carrying out its Aid to Dependent Children Program in accordance with KRS Chapter 205. This section shall not be construed to prohibit private independent adoption or the right to seek legal services relating to a private independent adoption.

(4) ***A*** [~~No~~] person, agency, institution, or intermediary shall ***not*** be a party to a contract or agreement which would compensate a woman for her artificial insemination and subsequent termination of parental rights to a child born as a result of that artificial insemination. ***A*** [~~No~~] person, agency, institution***,*** or intermediary shall ***not*** receive compensation for the facilitation of contracts or agreements as proscribed by this subsection. Contracts or agreements entered into in violation of this subsection shall be void.

(5) A person, organization, group, agency, or any legal entity, except a child-placing agency, shall not accept any fee for bringing the adoptive parents together with the child to be adopted or the biological parents of the child to be adopted. This section shall not interfere with the legitimate practice of law by an attorney.

(6)[~~(4)~~] In ***every*** [~~any~~] adoption [~~for which approval of the secretary is required under KRS 199.470(4)~~], the total amount of money paid ***by or on behalf of the adoptive parents for any purpose related to the adoption shall be made known to the court for approval or modification prior to a judgment for adoption. The adoptive parents and their attorney shall submit an affidavit to the court stating in detail each item paid including, but not limited to, any fees for legal services, placement services, and expenses of biological parent or parents***[~~, including attorney's fees, by adoptive parents for any purpose related to the adoption shall be made known to the court for approval or modification~~].

Section 13. KRS 199.990 is amended to read as follows:

(1) Any person violating any of the provisions of KRS 199.380 to 199.400 shall be guilty of an offense, and upon conviction thereof, shall be fined not more than five hundred dollars ($500) or imprisoned for not more than twelve (12) months, or be both fined and imprisoned, in the discretion of the court.

(2) Any person who violates any of the provisions of KRS 199.430, 199.470, 199.473, 199.570 and 199.590 ***except subsection (2)***, or 199.640 to 199.670, or any rule or regulation under such sections the violation of which is made unlawful shall be fined not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000) or imprisoned for not more than six (6) months, or both. Each day such violation continues shall constitute a separate offense.

(3) Any person who willfully violates any other of the provisions of KRS 199.420 to 199.670 or any rule or regulation thereunder, the violation of which is made unlawful under the terms of those sections, and for which no other penalty is prescribed in those sections or in subsection (1) of this section, or in any other applicable statute, shall be fined not less than ***one hundred dollars ($100)*** [~~twenty dollars ($20)~~] nor more than two hundred dollars ($200) or imprisoned for not more than thirty (30) days, or both.

(4) Any person who violates any of the provisions of KRS 199.896 shall be fined not less than one thousand dollars ($1,000) or imprisoned for not more than twelve (12) months, or be fined and imprisoned, at the discretion of the court.

(5) Any person who violates any of the provisions of KRS 199.590(2) shall be guilty of a Class D felony.

Section 14. KRS 625.040 is amended to read as follows:

(1) A petition for the voluntary termination of parental rights shall be entitled "In the interest of ..., a child." The petition may be filed by a parent.

(2) The petition for the voluntary termination of parental rights shall be filed in the Circuit Court of the county where the petitioner resides or is found and shall be verified and contain the following:

(a) Name and place of residence of each petitioner;

(b) Name, sex, date of birth***,*** and place of residence of the child;

(c) Name and relationship of each petitioner to the child;

(d) A concise statement of the factual basis for the termination of parental rights;

(e) Name and address of the person or of the cabinet or authorized agency to which parental rights are sought to be transferred; and

(f) A statement that the person, cabinet***,*** or authorized agency to whom custody is to be given has facilities available***,*** [~~and~~] is willing to receive the custody of the child***, and the person, if not excepted by KRS 199.470(4) or (5), has applied for the written permission of the secretary or the secretary's designee for the child's placement. This provision shall not affect the right of a court to grant temporary custody under Section 3 of this Act***.

(3) No petition may be filed under this chapter prior to ***three (3)*** [~~five (5)~~] days after the birth of the child.

Section 15. KRS 625.042 is amended to read as follows:

(1) Within three (3) days after a petition for the voluntary termination of parental rights is filed, the Circuit Court shall set a date for a hearing.

(2) The Circuit Court shall require notice to be served upon the local representative of the cabinet in any case in which a statement from the cabinet of willingness to accept custody of the child has not been filed with the petition, or custody of the child is to be placed with an individual ***unless the placement has been approved by the cabinet*** [~~and not the cabinet or a licensed agency unless the cabinet has approved the placement~~]. ***It shall not be necessary to serve notice upon the cabinet if custody of the child is to be placed with the cabinet or with a child-placing agency.***

(3) Proceedings under this chapter shall be completed as soon as practicable. All hearings shall be held before the Circuit Court privately for the purpose of determining the facts.

(4) An official stenographic or mechanical record shall be made of the proceedings and retained for a period of five (5) years.

(5) The best interests of the child shall be considered paramount.

(6) At the time of the hearing, the Circuit Court, after full and complete inquiry, shall determine whether each petitioner is fully aware of the purpose of the proceedings and the consequences of the provisions of this chapter.

Section 16. KRS 625.043 is amended to read as follows:

(1) If the Circuit Court determines that parental rights are to be voluntarily terminated in accordance with the provisions of this chapter, it shall make an order terminating all parental rights and obligations of ***the*** [~~such~~] parent and releasing the child from all legal obligations to ***the*** [~~such~~] parent and vesting care and custody of the child in ***the*** [~~such~~] person, agency***,*** or cabinet [~~as~~] the court believes is best qualified to receive custody.

(2) Upon consent by the Cabinet for Human Resources, the child may be declared a ward of the state and custody vested in the cabinet or in any child-placing agency[~~,~~] or child-caring facility licensed by the cabinet or in another person ***if*** [~~provided~~] all persons with parental rights to the child under the law have had their rights terminated voluntarily or involuntarily. ***If the other person is not excepted by KRS 199.470(4) or (5), a grant of permanent custody shall be made only if the proposed custodian has received the written approval of the secretary or the secretary's designee for the child's placement.***

Section 17. KRS 625.090 is amended to read as follows:

(1) The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that the child has been adjudged to be an abused or neglected child by a court of competent jurisdiction or is found to be an abused or neglected child by the Circuit Court in this proceeding and that termination would be in the best interest of the child. No termination of parental rights shall be ordered unless the circuit court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:

(a) That the parent has abandoned the child for a period of not less than ***ninety (90) days*** [~~six (6) months~~];

(b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;

(c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;

(d) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;

(e) That the parent has caused or allowed the child to be sexually abused or exploited; or

(f) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child.

(2) In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:

(a) Emotional illness, mental illness, or mental deficiency of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;

(b) Acts of abuse or neglect toward any child in the family;

(c) If the child has been placed with the cabinet or a child-placing agency or child-caring facility, whether the cabinet has rendered or attempted to render all reasonable services to the parent which reasonably might be expected to bring about a reunion of the family, including the parent's testimony concerning ***the*** [~~such~~] services and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within a reasonable period of time, considering the age of the child;

(d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;

(e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and

(f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.

(3) If the parent proves the following to the satisfaction of the court, the court in its discretion may determine not to terminate parental rights:

(a) That serious physical injury to the child will not occur in the future;

(b) That continuous or repeated physical injury or emotional harm to the child will not occur in the future; or

(c) That sexual abuse or exploitation will not occur in the future.

(4) Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law and a decision as to each parent-respondent either:

(a) Terminating the right of ***the*** [~~such~~] parent; or

(b) Dismissing the petition and [~~in such event~~] stating whether the child shall be returned to the parent or shall remain in the custody of the state.

The Committee on Transportation reported **HB 155** and **HB 208** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 155, AN ACT relating to motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.390 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Business district" means the territory contiguous to and including a highway if, within six hundred (600) feet along the highway, there are buildings in use for business or industrial purposes that occupy three hundred (300) feet of frontage on one (1) side or three hundred (300) feet collectively on both sides of the highway;

(b) "Residential district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred (300) feet or more is improved with residences or residences and buildings in use for business;

(c) "State highway" means a highway or street maintained by the Kentucky Department of Highways; and

(d) "Non-urbanized area" means an area located outside of the federal-aid urban boundary designated for urbanized areas of fifty thousand (50,000) population or more as defined by the United States Bureau of Census.

(2) An operator of a vehicle upon a highway shall not drive at a greater speed than is reasonable and prudent, having regard for the traffic and for the condition and use of the highway.

(3) If conditions exist that require lower speed for compliance with subsection (2) of this section, the speed of any vehicle in

excess of the limits specified in this section shall be unlawful:

(a) For vehicles other than motor vehicles of five (5) horsepower or less, thirty-five (35) miles per hour in any business or residential district, except as provided in subsection (5) of this section, and fifty-five (55) miles per hour in other locations, except where the speed limit has been posted at sixty-five (65) miles per hour;

(b) For motor vehicles of five (5) horsepower or less, thirty-five (35) miles per hour in any location except as provided in subsection (5) of this section;

(c) Vehicles using off-street parking facilities offered for public use whether publicly or privately owned, fifteen (15) miles per hour.

(4) If the secretary of transportation determines, upon the basis of an engineering and traffic investigation, that any speed limit is greater or less than is reasonable or safe under the conditions found to exist at any intersection, or upon any part of a state highway within or without the corporate limits of a city, the secretary of transportation may establish by official order a reasonable and safe speed limit at the location. The secretary shall not increase any speed limit established by subsection (3) of this section in excess of fifty-five (55) miles per hour.

(5) (a) A city or a county may by ordinance establish speed limits within its own jurisdiction, except as provided in paragraph (b) of this subsection.

(b) The alteration of speed limits on state highways within a city or a county shall not be effective until the alteration has been approved by the secretary of transportation. The secretary shall not approve any alteration that could increase any speed limit established by subsection (3) of this section in excess of fifty-five (55) miles per hour.

(c) If a county determines, upon the basis of an engineering and traffic investigation and study, that it is unsafe to park motor vehicles on or along any highway, other than a state highway, within the unincorporated areas of the county, or that in any business district the congestion of traffic justifies a reasonable limitation on the length of time any one (1) motor vehicle is permitted to park in such district so as to reduce the congestion, the fiscal court may by ordinance establish "no parking" areas on the highway, or limit the length of time any motor vehicle may be parked in any business district. ***Parking a vehicle so as to partially or fully obstruct the driveway or entrance of a business or residence shall be prohibited unless the driver of the vehicle obtains permission from the owner of the business or residence to do so.***

(d) Notwithstanding the other limitations in this subsection, the secretary of transportation may establish, by official order, reasonable and safe speed limits on interstate highways and divided highways with four (4) or more lanes and fully controlled access and located in a non-urbanized area, a speed limit not to exceed sixty-five (65) miles per hour.

(6) A person shall not drive a motor vehicle at a speed that will impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law.

(7) In every charge for a violation of any speed limit specified in this section, the warrant or citation shall specify the speed at which the defendant is alleged to have driven, and the lawful speed limit applicable at the location where the violation is charged to have occurred.

HB 208, AN ACT relating to vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186.650 is amended to read as follows:

As used in KRS 186.650 to 186.700:

(1) A "trailer" means any vehicle designed for carrying persons or property and being drawn by a motor vehicle being so constructed that no part of its weight rests upon the towing vehicle.

(2) "Semitrailer" means any vehicle designed for carrying persons or property and for being drawn by a motor vehicle and is so constructed that some part of its weight and some part of its load rests upon or is carried by another vehicle, except that:

(a) "Semitrailer" shall not include any vehicle designed for carrying persons or property and being drawn by a motor vehicle registered according to the provisions of KRS 186.050(4)(a) and used by a farmer only for transporting persons, food, provender, feed, machinery, livestock, material and supplies necessary for his farming operation and the products grown on his farm.

(3) "***Manufactured*** ~~[Mobile]~~ home" means a structure, transportable in one (1) or more sections, which***:*** ~~[when erected on site measures]~~

(a) Is eight (8) body feet or more in width and ***forty (40)*** ~~[thirty two (32)]~~ body feet or more in length ***when in the traveling mode;*** ~~[, and which is]~~

(b) Has three hundred twenty (320) or more square feet when erected on site;

(c) Is built on a permanent chassis***;*** ~~[and]~~

(d) ***Is*** designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities***;*** [~~, and~~]

(e) Includes [~~the~~] plumbing, heating, air-conditioning, and electrical systems***; and*** [~~contained therein.~~]

(f) [~~It~~] May be used as a place of residence, business, profession, or trade by the owner, lessee or their assigns***,*** and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure.

(4) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper***,*** and motor home***;***[~~.~~]

(a) ***A*** travel trailer ***is***[~~,~~] a vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use***. It shall be a*** [~~, and of such~~] size ***and*** [~~or~~] weight ***which shall not*** [~~as not to~~] require special highway movement permits when drawn by a motorized vehicle***. It shall have*** [~~, and with~~] a living area of less than two hundred twenty (220) square feet, excluding built-in equipment (such as wardrobes, closets, cabinets, kitchen units***,*** or fixtures) and bath and toilet rooms. ***The exterior area of a travel trailer shall be less than three hundred twenty (320) square feet.***

(b) ***A*** camping trailer ***is***[~~,~~] a vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use.

(c) ***A*** truck ***camper is*** [~~campers:~~] a portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pick-up truck.

(d) ***A*** motor home ***is***[~~:~~] a vehicular unit designed to provide temporary living quarters for recreational, camping or travel use built on or permanently attached to***,*** a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle.

(5) "Cabinet" means the Transportation Cabinet.

Section 2. KRS 186.655 is amended to read as follows:

(1) Before any owner or operator of a trailer, semitrailer, [~~mobile home~~] or recreational vehicle may operate [~~or permit the operation of such vehicles~~] upon the highways, the owner shall apply for registration to the county clerk of the county in which he resides or in which ***the*** [~~such~~] vehicles are principally operated. The application shall be retained by the clerk and shall be accompanied by:

(a) A manufacturer's certificate of origin, if the application is for the registration of a new trailer, semitrailer, [~~mobile home~~] or recreational vehicle; [~~or~~]

(b) The owner's registration receipt, if the trailer, semitrailer, [~~mobile home~~] or recreational vehicle was last registered in this state; [~~or~~]

(c) A bill of sale and the previous registration receipt, if last registered in another state ***that*** [~~where the law of such state~~] does not require the owner of a trailer, semitrailer, [~~mobile home~~] or recreational vehicle to obtain a certificate of title or ownership; [~~or~~]

(d) A certificate of title, if last registered in another state ***that*** [~~where the law of such state~~] requires the owner of a trailer, semitrailer, [~~mobile home~~] or recreational vehicle to obtain a certificate of title or ownership; [~~or~~]

(e) ***An*** affidavit from the owner of a trailer, semitrailer, [~~mobile home~~] or recreational vehicle assembled or constructed for his personal use on the highways; or

(f) ***An*** affidavit from the owner of a trailer, semitrailer, [~~mobile home~~] or recreational vehicle where the bill of sale for ***the*** [~~such~~] vehicle has been lost, destroyed***,*** or stolen.

(2) The affidavit required in paragraph (e) ***of subsection (1) of this section*** shall contain the owner's name, address, date, brief description***,*** and a statement that the trailer was constructed by the owner for use on the highways and [~~any~~] additional information [~~that~~] the cabinet may ***require by administrative regulation promulgated pursuant to KRS Chapter 13A*** [~~from time to time prescribe by regulation~~].

(3) The affidavit required in paragraph (f) ***of subsection (1) of this section*** shall contain the owner's name, address, date, make, year made, serial or identification number, ***name of the person*** from whom purchased, date of purchase, ***a statement*** that the person making the affidavit is the sole owner, the circumstances under which the bill of sale was lost, destroyed***,*** or stolen, and [~~any~~] additional information [~~that~~] the cabinet may ***require by administrative regulation promulgated pursuant to KRS Chapter 13A*** [~~from time to time prescribe by regulation~~].

(4) After ***initial registration of his vehicles in this state, the owner*** [~~that, he~~] shall register his trailer, semitrailer, [~~mobile home~~] or recreational vehicle on or before April 1 of each year. [~~Insofar as the owner is concerned,~~] Registration with the clerk shall be deemed to be registration with the cabinet.

(5) ***A*** [~~No~~] county clerk or other officer shall ***not*** issue [~~any~~] license tags to the owner of ***a*** [~~any mobile home or~~] recreational vehicle when it is offered for registration in this state, unless the owner presents a tax receipt from the seller verifying that the Kentucky sales tax has been paid. If the owner is unable to present [~~such~~] evidence of payment of tax, he shall furnish to the clerk a bill of sale indicating the purchase price of the [~~mobile home or~~] recreational vehicle on which price the sales tax shall be assessed. If he cannot furnish a bill of sale indicating the purchase price, the clerk shall assess the value in accordance with information prescribed by the Revenue Cabinet. The clerk shall collect the tax, deduct a fee of five percent (5%) of the amount collected and remit the balance to the Revenue Cabinet.

Section 3. KRS 186.680 is amended to read as follows:

If ***a*** [~~any~~] person becomes the owner of a trailer, semitrailer, [~~mobile home~~] or recreational vehicle after April 1 of any year, and for that reason registers for only part of a year***,*** the registration fee shall be as many twelfths of the annual fee as there are unexpired months in the registration year.

Section 4. KRS 186.690 is amended to read as follows:

KRS 186.045 and 186.070 to 186.240 shall apply to the registration of trailers, semitrailers, [~~mobile homes~~] and recreational vehicles ***if*** [~~insofar as~~] practicable.

Section 5. KRS 186.695 is amended to read as follows:

(1) Trailers, semitrailers and ***manufactured*** [~~mobile~~] homes as defined in KRS 186.650 to 186.700 are expressly exempted from KRS 138.450 to 138.470.

(2) Trailers and semitrailers in transit between a manufacturing plant and dealer's place of business; between a manufacturing plant and user's place of residence; or between a dealer's place of business and user's place of residence and farm equipment pulled or towed by a motor vehicle not required to be licensed under the provisions of KRS Chapter 186 shall be exempt from the provisions of KRS 186.650 to 186.700.

(3) Recreational vehicles [~~and mobile homes~~] in transit between a manufacturing plant and dealer's place of business shall be exempt from the provisions of KRS 186.650 to 186.700.

(4) Manufactured homes shall be exempt from the provisions of KRS 186.650 to 186.700.

Section 6. KRS 189.010 is amended to read as follows:

As used in this chapter[~~, unless the context requires otherwise~~]:

(1) "Department" means the Department of Highways.

(2) "Crosswalk" means:

(a) That part of a roadway at an intersection within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or in the absence of curbs, from the edges of the traversable roadway; or

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

(3) "Highway" means any public road, street, avenue, alley or boulevard, bridge, viaduct, or trestle and the approaches to them and includes off-street parking facilities offered for public use, whether publicly or privately owned, except for-hire parking facilities listed in KRS 189.700.

(4) "Intersection" means:

(a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two (2) highways which join one another, but do not necessarily continue, at approximately right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come into conflict; or

(b) Where a highway includes two (2) roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. If the intersecting highway also includes two (2) roadways thirty (30) feet or more apart, every crossing of two (2) roadways of the highways shall be regarded as a separate intersection. The junction of a private alley with a public street or highway shall not constitute an intersection.

(5) ***"Manufactured home" has the same meaning as defined in KRS 186.650.***

(6) "Motor truck" means any motor-propelled vehicle designed for carrying freight or merchandise. It shall not include self-propelled vehicles designed primarily for passenger transportation, but equipped with frames, racks, or bodies having a load capacity of not exceeding one thousand (1,000) pounds.

(7)[~~(6)~~] "Operator" means the person in actual physical control of a vehicle.

(8)[~~(7)~~] "Pedestrian" means any person afoot.

(9)[~~(8)~~] "Right-of-way" means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other.

(10)[~~(9)~~] "Roadway" means that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two (2) or more separate roadways, the term "roadway" as used herein shall refer to any roadway separately but not to all such roadways collectively.

(11)[~~(10)~~] "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

(12)[~~(11)~~] "Semitrailer" means a vehicle designed to be attached to, and having its front end supported by, a motor truck or truck tractor, intended for the carrying of freight or merchandise and having a load capacity of over one thousand (1,000) pounds.

(13)[~~(12)~~] "Truck tractor" means any motor-propelled vehicle designed to draw and to support the front end of a semitrailer. The semitrailer and the truck tractor shall be considered to be one (1) unit.

(14)[~~(13)~~] "Sharp curve" means a curve of not less than thirty (30) degrees.

(15)[~~(14)~~] "State Police" includes any agency for the enforcement of the highway laws established pursuant to law.

(16)[~~(15)~~] "Steep grade" means a grade exceeding seven percent (7%).

(17)[~~(16)~~] "Trailer" means any vehicle designed to be drawn by a motor truck or truck-tractor, but supported wholly upon its own wheels, intended for the carriage of freight or merchandise, and having a load capacity of over one thousand (1,000) pounds.

(18)[~~(17)~~] "Unobstructed highway" means a straight, level, first-class road upon which no other vehicle is passing or attempting to pass, and upon which no other vehicle or pedestrian is approaching in the opposite direction, closer than three hundred (300) yards.

(19) (a)[~~(18)~~] "Vehicle" includes*:*

1. All agencies for the transportation of persons or property over or upon the public highways of ***the*** [~~this~~] Commonwealth*;* [~~and~~]

2. All vehicles passing over or upon the highways*; **and***

3. All vehicles propelled by power other than muscular power:

(b) Vehicle does not include:[~~, excepting~~]

1. Road rollers*;*[~~,~~]

2. Road graders*;*[~~,~~]

3. Farm tractors*;*[~~,~~]

4. Vehicles on which power shovels are mounted*;*[~~, other~~]

5. Construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways*;*[~~,~~]

6. Vehicles that travel exclusively upon rails*;*[~~,~~] and

7. Vehicles propelled by electric power obtained from overhead wires while being operated within any municipality or where the vehicles do not travel more than five (5) miles beyond the city limits of any municipality. [~~"Motor vehicle" includes all vehicles as defined above which are propelled otherwise than by muscular power.~~]

(20)[~~(19)~~] "Reflectance" means the ratio of the amount of total light, expressed in a percentage, which is reflected outward by the product or material to the amount of total light falling on the product or material.

(21)[~~(20)~~] "Sunscreening material" means a product or material, including film, glazing, and perforated sunscreening, which, when applied to the windshield or windows of a motor vehicle, reduces the effects of the sun with respect to light reflectance or transmittance.

(22)[~~(21)~~] "Transmittance" means the ratio of the amount of total light, expressed in a percentage, which is allowed to pass through the product or material, including glazing, to the amount of total light falling on the product or material and the glazing.

(23)[~~(22)~~] "Window" means any device designed for exterior viewing from a motor vehicle, except the windshield, any roof-mounted viewing device, and any viewing device having less than one hundred fifty (150) square inches in area.

(24)[~~(23)~~] "All-terrain vehicle" means any motor vehicle for off-road use, which is fifty (50) inches or less in width; has a dry weight of six hundred (600) pounds or less; travels on three (3) or more low pressure tires; is designed for operator use only with no passengers; and has a seat or saddle designed to be straddled by the operator, and handle bars for steering control.

Section 7. KRS 189.270 is amended to read as follows:

(1) ***(a)*** The department may promulgate ~~[by]~~ administrative regulations, pursuant to KRS Chapter 13A***, to govern*** ~~[for]~~ the issuance ~~[by it]~~ of permits for the operation of motor vehicles, ***manufactured*** ~~[mobile]~~ homes, recreational vehicles, vehicles transporting microwave satellite television antennae, and vehicles transporting boats or farm equipment, whose gross weight including load, height, width, or length exceeds the limits prescribed by this chapter or which in other respects fail to comply with the requirements of this chapter. Permits may be issued by the department for stated periods, special purposes, and unusual conditions, and upon terms in the interest of public safety and the preservation of the highways as the department may~~[, in its discretion,]~~ require.

(b) The department shall require ***an applicant to pay a fee of sixty dollars ($60) for each overweight permit issued and an annual fee of*** ~~[, as a condition to the issuance of the permit, that the applicant pay in addition to a fee of sixty dollars ($60) for each overweight permit a fee of]~~;

1. Forty dollars ($40) for any vehicle with six (6) axles;

2. Fifty dollars ($50) for any vehicle with seven (7) axles;

3. Sixty dollars ($60) for any vehicle with eight (8) axles; ***and***

4. Seventy dollars ($70) for any vehicle with nine (9) or more axles.

(c) The department shall require an applicant to pay a fee of sixty dollars ($60) for each overdimension permit issued and an additional fee of: ~~[For an overdimension permit the applicant shall pay a fee of sixty dollars ($60), and in addition, a fee of]~~

1. Thirty dollars ($30) for any permit authorizing the movement of a load having a width of from ten (10) to fourteen (14) feet***;***~~[, or]~~

2. Fifty dollars ($50) for any permit authorizing the movement of a load having a width in excess of fourteen (14) feet;

3. Twenty dollars ($20) for each single trip ***manufactured home*** ~~[house trailer]~~ permit if the ***manufactured home*** ~~[house trailer]~~ is fourteen (14) feet wide or less;

4. Forty dollars ($40) for each single trip ***manufactured home*** ~~[house trailer]~~ permit if the ***manufactured home*** ~~[house trailer]~~ exceeds fourteen (14) feet in width; ~~[a fee of]~~

5. Eighty dollars ($80) for each annual ***permit to transport:***

a. Farm equipment***;***~~[,]~~

b. Utility equipment transporter including towing vehicle and trailer combination which does not exceed ninety-five (95) feet in length or twelve (12) feet in width***;***~~[,]~~

c. Boat transporter***;***~~[,]~~ or

d. Microwave antennae transporter permit; ~~[a fee of]~~

6. Five hundred dollars ($500) for each annual ***manufactured home*** ~~[house trailer]~~ permit if the ***manufactured home*** ~~[house trailer]~~ is sixteen (16) feet or less in width;

7. Eighty dollars ($80) for each annual manufactured home permit if all manufactured homes transported during the year are less than fourteen (14) feet in width; ~~[a fee of]~~

8. Five hundred dollars ($500) for each annual boat permit for units in excess of sixty-five (65) feet in length and twelve (12) feet in width***.***~~[; and]~~

(d) The department may require ~~[that]~~ the applicant ***to*** give bond, with approved surety, to indemnify the state or counties against damage to highways or bridges resulting from use by the applicant. The operation of motor vehicles, ***manufactured*** ~~[mobile]~~ homes, and recreational vehicles in accordance with the terms of the permit shall not constitute a violation of this chapter if the operator has the permit, or a ***authenticated*** copy of it, ~~[authenticated as the department may require,]~~ in his possession.

(2) Annual boat permits shall be issued for any unit, including towing vehicle and trailer combination which does not exceed ninety-five (95) feet in length or fourteen (14) feet in width exclusive of usual and ordinary overhang. The department may, by ***administrative*** regulation, limit annual boat permits for units including towing vehicle and trailer combinations which exceed sixty-five (65) feet in length and twelve (12) feet in width to manufacturers and dealers, to specified routes or to exclude certain highways from the annual permit in this subsection if an unreasonable risk of accident or an unreasonable impedence of the flow of traffic would result from the presence of ***the*** ~~[such]~~ units. Movement of boats in excess of sixty-five (65) feet in length and twelve (12) feet in width shall be preceded by notification to the Department of Vehicle Regulation, Division of Motor Carriers of any trip to be made under the permit. The department may, no later than eighteen (18) hours after the receipt of notice, prohibit the trip if, because of temporary or special conditions, an unreasonable risk of accident or unreasonable impedance of the flow of traffic would be created.

(3) Any motor carrier transporting equipment used to mold steel which exceeds the dimensional limits for movement over a highway in this state may apply for an annual overdimensional permit pursuant to subsection (1) of this section. The

permit shall be limited to a vehicle operating on a round trip basis of not more than twenty-five (25) miles. The material movement shall be limited to the manufacturing facilities of the same corporation. Reporting of these movements shall be on an annual basis, but shall include an estimate of trips which will be made weekly. The cost of the annual permit shall be five hundred dollars ($500).

(4) The department shall, for a fee not to exceed one hundred fifty dollars ($150), issue an annual permit for the operation of a motor vehicle or vehicle described in subsection (1) of this section when the motor vehicle or vehicle exceeds the dimension limits for length or width prescribed by KRS 189.221 or 189.222, ***if*** [~~provided~~]:

(a) [~~That~~] The motor vehicle is engaged in the transporting of farm equipment from the dealership to the farm or from the farm to the dealership; and

(b) [~~That~~] The width of the motor vehicle or vehicle does not exceed sixteen (16) feet, including any part of the body or load.

(5) Upon the issuance of an annual permit for the operation of a motor vehicle or vehicle described in subsection (4) of this section, the department shall provide each applicant ***free of charge*** [~~with~~] a publication[~~, free of charge,~~] which contains a description of ***the*** [~~any~~] administrative regulations ***that*** [~~which~~] are applicable to the operation of the motor vehicle or vehicle including escort vehicles, safety markings, and [~~any~~] other applicable restrictions. The department shall update the publication within thirty (30) days of any change in an administrative regulation that pertains to the operation of a motor vehicle or vehicle described in subsection (4) of this section.

(6) (a) Annual overlength permits may be issued to any utility pole or pipe transporter under the following conditions:

1. An annual overlength permit may be issued for a towing vehicle and trailer combination which does not exceed one hundred twenty-five (125) feet in overall length. Restrictions may be placed on routes and the permit use limited if unreasonable risk of accident or unreasonable impedance of traffic flow could be created. An annual permit to transport poles or pipe which are fifty-five (55) feet or less in length shall cost one hundred dollars ($100). An annual permit to transport poles or pipe which are more than fifty-five (55) feet in length shall cost three hundred fifty dollars ($350). The Department of Highways may prescribe the use of escort vehicles for transportation of poles or pipes which exceed fifty-five (55) feet in length, and the permit holder shall notify the Department of Highways of each trip or series of trips to be made that requires an escort. The department may cancel or reroute the trip if an unreasonable risk of accident or impedance of the flow of traffic could be created.

2. An annual overlength permit may be issued for a straight truck capable of transporting utility poles or pipe on a specially designed pole rack mounted on the body of the truck if the pole or pipe length exceeds forty-five (45) feet. Restrictions may also be placed on routes and the permit use limited if unreasonable risk of accident or unreasonable impedance to traffic flow could be created. The cost of this overlength permit shall be one hundred dollars ($100).

3. An annual overlength permit may be issued for a straight truck capable of transporting utility poles or pipe on specially designed pole racks mounted on the body of the truck if the pole or pipe length exceeds fifty-five (55) feet, but does not exceed ninety-five (95) feet. The permit shall cost three hundred fifty dollars ($350). The Department of Highways may prescribe the use of escort vehicles, and the permit holder shall notify the Department of Highways of each trip or series of trips made. The department may cancel or reroute the trip if an unreasonable risk of accident or impedance of the flow of traffic could be created.

4. More than one (1) type of permit authorized in subparagraphs (1) and (2) of this paragraph may be issued for the same vehicle. The maximum cost of the multiple-use annual permit shall be three hundred fifty dollars ($350).

(b) The secretary of transportation shall, by administrative regulation, prescribe additional safety requirements for movements of these vehicles. ***Administrative*** regulations promulgated for this subsection and for utility equipment transporters under subsection (1) of this section shall not restrict the ability of a permit holder to respond to an emergency due to an electrical or gas outage.

(7) Each motor carrier used in transporting prefabricated wood trusses, used in residential and commercial construction, which exceeds the dimensional limits for movement over a highway in this state may apply for an annual overdimensional permit. The Department of Vehicle Regulation shall ***charge*** [~~assess~~] the applicant a fee of five hundred dollars ($500) for each annual permit. A copy of the permit shall be carried at all times in the vehicle and shall be shown to a peace officer upon demand. The department may restrict the use of the permits to specified routes or exclude certain highways from the annual permit in this subsection if an unreasonable risk of accident or impedance of the flow of traffic could result. The department shall promulgate administrative regulations setting forth the safety requirements which shall be met prior to the movement of any vehicle under the provisions of this permit including setting the dimensions at which the transporter shall contact the department for specific, individual authority for the movement under the annual permit.

(8) Any person transporting a parade float which exceeds the dimensional limits on a highway over which it is transported shall be required to obtain a permit as required in subsection (1) of this section. If the float is being used in conjunction

with a parade to be held within the boundaries of the Commonwealth, ***a*** [~~no~~] fee shall ***not*** be assessed by the department ***to issue*** [~~for the issuance of~~] the permit.

(9) ***A*** [~~No~~] person shall ***not*** operate any motor vehicle, ***manufactured*** [~~mobile~~] home, or recreational vehicle in violation of the terms of the permit.

Section 8. KRS 186.695 is amended to read as follows:

(1) Trailers, semitrailers, and ***manufactured*** [~~mobile~~] homes as defined in KRS 186.650 to 186.700 are expressly exempted from KRS 138.450 to 138.470.

(2) Trailers and semitrailers in transit between a manufacturing plant and dealer's place of business; between a manufacturing plant and user's place of residence; or between a dealer's place of business and user's place of residence and farm equipment pulled or towed by a motor vehicle not required to be licensed under the provisions of KRS Chapter 186 shall be exempt from the provisions of KRS 186.650 to 186.700.

(3) Recreational vehicles and ***manufactured*** [~~mobile~~] homes in transit between a manufacturing plant and dealer's place of business shall be exempt from the provisions of KRS 186.650 to 186.700.

Section 9. KRS 186A.070 is amended to read as follows:

Except as otherwise provided, the state resident owner of a vehicle as defined in KRS 186.010(8)(a), ***manufactured*** [~~mobile~~] home as defined in KRS 186.650, or trailer which will not be operated upon the highways of this state ***shall*** [~~must~~] within fifteen (15) days apply for and obtain a certificate of title in his name. He shall not, however, be required to obtain a certificate of registration until [~~such time as~~] the vehicle, ***manufactured*** [~~mobile~~] home, or trailer is to be operated upon the highways of this state.

Section 10. KRS 139.050 is amended to read as follows:

(1) "Gross receipts" means the total amount of the sale, lease or rental price, as the case may be, of "retail sales," or "sales at retail," valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the property sold. However, in accordance with such rules and regulations as the cabinet may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property;

(b) The cost of the materials used, labor or service cost, interest paid, losses or any other expense;

(c) The cost of transportation of the property prior to its sale to the purchaser.

(2) The total amount of the sale or lease or rental price includes all of the following:

(a) Any services that are a part of the sale;

(b) All receipts, cash, credits and property of any kind;

(c) Any amount for which credit is allowed by the seller to the purchaser.

(3) "Gross receipts" do not include any of the following:

(a) Cash discounts allowed and taken on sales (provided that premium or trading stamps shall not be considered as cash discounts);

(b) Sale price of property returned by customers when the full sale price is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned;

(c) The price received for labor or services used in installing or applying the property sold;

(d) The amount of any tax (not including, however, any manufacturer's excise or import duty) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer;

(e) Sales of gasoline and special fuels subjected to tax under KRS Chapter 138;

(f) The sales price of any motor vehicle as defined by KRS 138.450(2) which is registered for use on the public highways and upon which any applicable tax levied under KRS 138.460 has been paid; or, the sales price of vehicles defined under KRS 189.010***(12)***[~~(11)~~] and 189.010***(17)***[~~(16)~~];

(g) Sales of distilled spirits, wine and malt beverages not consumed on the premises licensed for their sale under the provisions of KRS Chapter 243.

(4) For purposes of the sales tax, if the retailer establishes to the satisfaction of the cabinet that the sales tax has been added to the total amount of the sale price and has not been absorbed by the retailer, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

Section 11. KRS 189.110 is amended to read as follows:

(1) A windshield in a fixed and upright position, ***that*** ~~[which]~~ is equipped with safety glazing as required by federal safety-glazing material standards, is required on every motor vehicle which is operated on the public highways, roads, and streets, except on a motorcycle or implement of husbandry.

(2) A person shall not operate ***a*** ~~[any]~~ motor vehicle on ***a*** ~~[any]~~ public highway, road, or street with any sign, sunscreening material, product, or covering attached to, or located in or upon the windshield, except the following:

(a) A certificate or other paper required to be displayed by law;

(b) Sunscreening material along a strip at the top of the windshield, ***if the*** ~~[so long as such]~~ material is transparent and does not encroach upon the driver's direct forward viewing area as ~~[more particularly described and]~~ defined in Federal Motor Vehicle Safety Standards No. 205 as the AS/1 portion of the windshield.

(3) A person shall not operate ***a*** ~~[any]~~ motor vehicle required to be registered in the Commonwealth, on ***a*** ~~[any]~~ public highway, road, or street on which vehicle the side wings and side windows on either side forward of or adjacent to the operator's seat are composed of, covered by, or treated with any sunscreening material or other product or covering which has the effect of making the window nontransparent or which would alter the window's color, increase its reflectivity, or reduce its light transmittance, except as expressly permitted by this section. A sunscreening material may be applied to ***the*** ~~[such]~~ windows if, when tested on one-eighth (1/8) inch clear glass, the material has a total solar reflectance of visible light of not more than twenty-five percent (25%) as measured on the nonfilm side and a light transmittance of at least thirty-five percent (35%) in the visible light range.

(4) A person shall not operate ***a*** ~~[any]~~ motor vehicle required to be registered in the Commonwealth, on ***a*** ~~[any]~~ public highway, road, or street on which vehicle any windows behind the driver are composed of, covered by, or treated with any sunscreening material, or other product or material which has the effect of making the window nontransparent or which would alter the window's color, increase its reflectivity, or reduce its light transmittance, except as specified below:

(a) Sunscreen material consisting of film which, when tested on one-eighth (1/8) inch clear glass, has a total solar reflectance of visible light of not more than thirty-five percent (35%) as measured on the nonfilm side and a light transmittance of at least eighteen percent (18%) in the visible light range; however, sunscreen material which, when tested on one-eighth (1/8) inch clear glass, has a total solar reflectance of visible light of not more than thirty-five percent (35%) as measured on the nonfilm side and a light transmittance of at least eight percent (8%) in the visible light range may be used on multipurpose passenger vehicles;

(b) Perforated sunscreening material which, when tested in conjunction with existing glazing or film material, has a total reflectance of visible light of not more than thirty-five percent (35%) and a light transmittance of no less than thirty percent (30%). For those products or materials having different levels of reflectance, the highest reflectance from the product or material will be measured by dividing the area into sixteen (16) equal sections and averaging the overall reflectance. The measured reflectance of any of those sections may not exceed fifty percent (50%).

(5) A person shall not operate ***a*** ~~[any]~~ motor vehicle required to be registered in the Commonwealth, upon ***a*** ~~[any]~~ public highway, road, or street, on which vehicle the rear window is composed of, covered by, or treated with any material which has the effect of making the window nontransparent, unless the vehicle is equipped with side mirrors on both sides.

(6) Each installer or seller of sunscreening material shall provide a pressure-sensitive, self-destructive, nonremovable, vinyl-type film label to the purchaser stating that the material complies with the provisions of KRS 189.010***(20)***~~[(19)]~~ to ***(23)***~~[(22)]~~ and subsections (1) to (5) of this section. Each ~~[such]~~ installer shall affix the required label to the inside left door jamb of the motor vehicle. In addition, the label shall state the trade name of the material and the installer's or seller's business name. Labeling is not required for factory glazing which complies with Federal Motor Vehicle Safety Standard No. 205.

(7) Every percentage measurement required by subsections (3) and (4) of this section is subject to a tolerance of plus or minus three percent (3%).

(8) ***A*** ~~[No]~~ person shall ***not*** install window tinting materials on ***a*** ~~[any]~~ vehicle ***that*** ~~[after July 15, 1988, which]~~ fails to meet the minimum standards for light transmission pursuant to subsections (3) and (4) of this section. ~~[Any]~~ Tinted material ***that*** ~~[installed prior to July 15, 1988, which]~~ fails to meet the minimum standards for light transmission pursuant to subsections (3) and (4) of this section shall be removed ***immediately*** ~~[within six (6) months after the effective date of this section. No police officer shall issue a uniform traffic citation during the first six (6) month period, but owners of vehicles in violation shall be issued a warning citation during said six (6) months]~~.

(9) ***A*** ~~[Any]~~ person who applies sunscreening materials in violation of this section shall be guilty upon conviction of a Class B misdemeanor.

(10) Nothing in this section shall prevent the display of a representation of the American flag on the rear window of any motor vehicle, including any vehicle owned by a local or state government, provided that ***the*** ~~[such]~~ representation does not exceed a size of five (5) inches by eight (8) inches and is placed in a lower corner of the rear window.

(11) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield. The device shall be so constructed as to be controlled by the operator of the vehicle.

(12) Nothing in this section shall be construed to prevent the use of any window which is composed of, covered by, or treated with any material or component in a manner approved by federal statute or regulation if ***the*** [~~such~~] window was a component part of a vehicle at the time of the vehicle manufacture, or the replacement of any [~~such~~] window by ***a*** [~~such~~] covering which meets ***these*** [~~such~~] requirements.

Section 12. KRS 189.221 is amended to read as follows:

A person shall not operate on any highway, except those highways designated by the secretary of transportation under the provisions of KRS 189.222, or those locally maintained highways under the provisions of KRS 189.222(9), any of the following trucks, trailers, ***manufactured*** [~~mobile~~] homes, or vehicles:

(1) Any motor truck, semitrailer, trailer, ***manufactured*** [~~mobile~~] home, or vehicle which exceeds eleven and one-half (11-1/2) feet in height or ninety-six (96) inches in width, including any part of the body or load;

(2) Any motor truck, except a semitrailer truck, which exceeds twenty-six and one half (26-1/2) feet in length, including any part of the body or load;

(3) Any semitrailer truck which exceeds thirty (30) feet in length, including any part of the body or load;

(4) Any truck, semitrailer truck, or truck and trailer unit which exceeds 36,000 pounds gross weight, including the load;

(5) Any truck, semitrailer truck, or tractor-trailer unit which exceeds a gross weight equal to the sum of six hundred (600) pounds per inch of the combined width of the tires upon which the vehicle may be propelled, but no more than thirty-six thousand (36,000) pounds.

(6) Notwithstanding the provisions of this section, any truck hauling building materials to a road construction project on a highway rated less than the maximum weight provided above, may haul up to eighty thousand (80,000) pounds gross weight, including the load, without a permit. This privilege shall extend only to travel between the materials manufacturing site and the road construction project and shall be automatically rescinded upon completion of ***the*** [~~said~~] project.

Calendar

HB 123, HB 238, HB 46, HB 176 and **HB 126** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Consent Calendar

HB 203 taken from the Consent Calendar and ordered read at length for the second time. Representative Stumbo moved that it be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Representative Stumbo announced that upon recess there would be a Majority Caucus in Room 327 and a Minority Caucus on the House floor.

Recess

Representative Stumbo moved that the House recess for a Majority Caucus and a Minority Caucus. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Floor Amendments

Floor Amendment No. 1 to the Committee Substitute to **HB 39**, by Representative Treesh:

on page one, by deleting lines 24 and 25;

and on page two, by deleting lines 1 through 3;

and by substituting therefor the following:

"***(4) The county shall be liable for civil damages when a person is treated in a manner inconsistent with the requirements of subsection (1), (2), or (3) of this section, and the conduct constituting the offense has been authorized, commanded, or wantonly tolerated by the fiscal court or the county judge/executive. In addition any county official who prescribes a rule for the treatment of prisoners, which violates the provisions of subsection (1), (2), or (3) of this section, or any county official or employee who violates the provisions of subsection (1), (2), or (3) of this section shall be personally liable for any portion of damages assessed against him.***".

Floor Amendment No. 2 to **HB 50**, by Representative Lindsay:

On page 1, line 21 after "***districts***", by changing "***shall***" to "***may***"; and

On page 1, line 22, after "***boards***", by changing "***shall***" to "***may***".

Floor Amendment No. 1 to the Committee Substitute to **HB 51**, by Representative Curd:

On page 4, line 12, by inserting "***without supervision***" after "***evaluations***"; and

On page 4, line 23, by inserting "***due process***" after "***any***"; and

On page 7, line 17, by adding the following after the period "***.***":

"***For each speech-language pathology assistant assigned to him for supervision, a supervisor's pupil caseload may be increased by no more than two-thirds (2/3) of the caseload established for speech-language pathologists by administrative regulation. The supervisor shall delegate to the assistant the appropriate tasks pursuant to KRS 334A.020 and the supervisor and assistant shall work together to provide the appropriate services to all assigned pupils.***".

Floor Amendment No. 2 to the Committee Substitute to **HB 51**, by Representative Curd:

On page 5, after line 14, by adding the following:

"***(3) A licensed speech-language pathology assistant employed by a public school shall receive the same salary and benefits available to certified teachers with Rank III and the corresponding years of experience.***"

Floor Amendment No. 3 to the Committee Substitute to **HB 51**, by Representative Curd:

On page 3, line 3 delete "***both administrative and criminal actions***" and insert the following in lieu thereof:

"***penalties established pursuant to KRS 334A.990***"

Floor Amendment No. 3 to **HB 84**, by Representative Long:

On page 1, line 13, by deleting the word "***transporting,***".

Floor Amendment No. 1 to **HB 95**, by Representative Mason:

On page 1, line 23, after "***(6)***" by inserting "***(a)***";

On page 1, line 25, by deleting "***Duties***"; and

On page 2, before line 1, by inserting the following:

"***(b) An individual employed as a victim advocate shall be a person who by a combination of education, professional qualification, training, and experience is qualified to perform the duties of this position. The victim advocate shall be an individual at least eighteen (18) years of age, of good moral character, with at least two (2) years of experience working in the human services field in a position requiring professional contact with children, who has:***

1. Received a baccalaureate degree in social work, sociology, psychology, guidance and counseling, education, religion, criminal justice, or other human service field; or

2. Received a high school diploma or equivalency certificate, and, in addition to the experience required in this subsection, has at least four (4) years experience working in the human services field.

(c) Each Commonwealth's attorney who employs an individual to serve as a victim advocate shall develop a written job description which describes the duties of the position. Duties".

Floor Amendment No. 1 to the Committee Substitute to **HB 238**, by Representative Lindsay:

On page 3, after line 8, by inserting the following:

"***(7) (a) If a city or county government fails to comply with the requirements of this section, the Department of Local Government shall notify the Executive Branch Ethics Commission of the city or county's failure to comply. The elected officials of a city or county government which fails to comply with the requirements of this***

section shall be subject to the jurisdiction of the Executive Branch Ethics Commission.

(b) In the enforcement of this subsection, the Executive Branch Ethics Commission shall apply to city or county elected officials the requirements for ethics education set forth in KRS 6.701 to 6.716, the standards of conduct set forth in KRS 6.731 to 6.767, and the requirements for financial disclosure set forth in KRS 6.781 to 6.797.

(c) In addition to the authority provided in KRS 11A.990, the Executive Branch Ethics Commission, upon a finding pursuant to an adjudicatory proceeding that there has been clear and convincing proof of a violation of any of the provisions set forth in subsection (7)(b) of this section, may issue any order or levy any civil penalty provided in KRS 6.691, if that order or penalty is made applicable only to the city or county official found to have violated any of the provisions of subsection (7)(b) of this section."

The following members filed requests to have their names added as co-sponsors of the following Bills under the rules previously suspended: **HB 2**, Representative Nesler; **HB 18**, Representative Scott; **HB 187**, Representative Lile; **HB 344**, Representative Hatcher.

Recess

Representative Stumbo moved that the House recess for five minutes for a meeting of a Committee on Rules. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Representative Stumbo moved that the rules be suspended for a Rules Committee Report. Agreed.

Report of Committees

The Committee on Rules reported the following Consent Bills have been posted for passage in the Regular Orders of the Day, January 28, 1994: **HB 135, HB 203**

The Committee on Rules reported that **HB 46, HB 123, HB 126, HB 176** and **HB 238** have been posted for passage in the Orders of the Day for January 28, 1994.

The Committee on Rules reported that the following Bill has been recommitted:

Appropriations and Revenue: **HB 207**

Orders of the Day

HB 170, with Committee Amendment and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Little moved the adoption of Committee Amendment No. 1 to **HB 170**. Agreed.

Representative Little moved the adoption of Floor Amendment No. 1 to **HB 170**. Agreed.

Representative Little moved that **HB 170**, as amended, be passed.

On the roll call the vote was: Yeas 47, Nays 45. (See January 27, 1994 roll call on **HB 170** - Appendix)

HB 170, as amended, was passed and the title agreed to.

Representative Little moved that the vote by which **HB 170**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 18 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Farrow moved that **HB 18** be passed.

On the roll call the vote was: Yeas 91 , Nays 0 (See January 27 , 1994 roll call on **HB 18** - Appendix)

HB 18 was passed and the title agreed to.

Representative Farrow moved that the vote by which **HB 18** was passed be reconsidered and said motion be placed on

the table. Agreed.

Representative Stumbo moved that **HB 6**, with Committee Substitute attached thereto, be recommitted to the Committee on Agriculture and Small Business. Agreed.

HB 119 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lindsay moved that **HB 119** be passed.

Representative Lear moved that **HB 119** be laid on the Clerk's Desk.

The motion that **HB 119** be laid on the Clerk's Desk was adopted by voice vote.

HB 50, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Scorsone moved that **HB 50**, be passed.

Representative Little moved the adoption of Floor Amendment No. 1 to **HB 50**. Rejected.

On the roll call on the passage of **HB 50** the vote was: Yeas 92, Nays 1. (See January 27, 1994 roll call on **HB 50** - Appendix)

HB 50 was passed and the title agreed to.

Representative Scorsone moved that the vote by which **HB 50** was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative B. Smith moved the adoption of the following **Legislative Citation No. 33**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby celebrates The 175th Birthday Of Simpson County. Simpson County was officially named a county on January 28, 1819 by Kentucky General Assembly in Frankfort. It was originally formed from land taken from adjoining Logan, Warren and Allen Counties. The current population is 15,125. Its economic base is industrial and agricultural. The entire membership joins Representative Billy Ray Smith on this memorable occasion in observing "The 175th Birthday Of Simpson County."

Representative Morris moved that his vote be changed from "yea" to "nay" on **HB 170**. Agreed.

Representative Mason inquired if the vote change would effect the outcome of the vote on **HB 170** when the proper papers are filed with the Clerk.

The Speaker ruled that the vote change would not effect the outcome of the vote on **HB 170** when the proper papers are filed with the Clerk.

Representative Stumbo moved that the rules be suspended for the Introduction of Bills and Resolutions and Report of Committees. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 352, by Representative Scorsone: AN ACT relating to crematories, and making an appropriation therefor.

HB 353, by Representative Bowling: AN ACT relating to employer reporting of information on new employees.

HB 354, by Representative Kerr: AN ACT relating to residential care facilities.

HB 355, by Representatives Stumbo and Jensen: AN ACT relating to public financing of campaigns of slates of candidates for Governor and Lieutenant Governor.

HB 356, by Representative Moberly: AN ACT relating to the primary school program.

HB 357, by Representative Moberly: AN ACT relating to retirement.

HB 358, by Representative Lear: AN ACT relating to controlled substances.

HB 359, by Representatives Stumbo, Rapier, L. Clark, Richards, Morris, Wayne, Bowling, Hancock, Burch, Lewis, Riner, Palumbo, Long, Scorsone, Stengel, Riggs, Crenshaw, Hatcher, Marzian, Trapp, French, Kerr, Coleman, Moberly, Callahan, Cave, Gray, Reinhardt, Jensen and Northup: AN ACT relating to crimes and punishments.

HB 360, by Representative Ballard: AN ACT relating to boilers.

HB 361, by Representatives Farrow, B. Smith, Hatcher, Nunn, Altman, Cave Ridley, Lear, Riggs: AN ACT relating to insurance.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Health and Welfare: **HB 311, HB 29**

Counties and Special Districts: **HB 149, HB 165, HB 214, HB 229, HB 243, HB 275, HB 287**

Banking and Insurance: **HB 335**

Appropriations and Revenue: **HB 297, HB 298, HB 307, HB 309, HB 310, HB 337, HB 56**

Economic Development: **HB 247, HB 322**

Elections and Constitutional Amendments: **HB 134**

Cities: **HB 239**

Report of Committees

The Committee on State Government reported **HB 48,** with Committee Amendment attached thereto, **HB 128, HB 185, HB 244, HR 16, SB 10** and **HB 98**, with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 48, AN ACT relating to state policy on geographic information systems.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 42 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds and declares that:

(1) Much of the Commonwealth's information is geographically referenced and may be presented through geographic information systems;

(2) Geographic information systems allow for the exchange of information between levels of government and facilitate the management of the Commonwealth's natural, human, cultural, and economic resources;

(3) There is a need to reduce redundancy in data-collection and development efforts, to coordinate the various activities in geographic information systems, and to share geographic information system resources and expertise to maximize the Commonwealth's investment in geographic information systems technology;

(4) Considerations of cost and the need for the transfer of information among agencies of state government in the most timely and useful form possible require a uniform policy and coordinated approach for the use of geographic information systems;

(5) It is the policy of the Commonwealth of Kentucky to coordinate and direct the use of geographic information resources and technologies to provide the most cost-effective and useful retrieval of information by its elected and appointed officials.

SECTION 2. A NEW SECTION OF KRS CHAPTER 42 IS CREATED TO READ AS FOLLOWS:

As used in Section 3 of this Act, unless the context requires otherwise:

(1) "Commission" means the Kentucky Information Systems Commission;

(2) "Council" means the Geographic Information Advisory Council;

(3) "Geographic information system" means a computerized database management system for the capture, storage, retrieval, analysis, and display of spatial (locationally defined) data;

(4) "Information resources" means the procedures, equipment, and software that are designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel;

(5) "Information technologies" means data processing and telecommunications hardware, software, services, supplies, personnel, facilities, maintenance, and training which are used to support information processing and telecommunications systems;

(6) "Office" means the Office of Geographic Information; and

(7) "Project" means a program to provide information technology support to support functions for a state agency, which should be characterized by well-defined parameters, specific objectives, common benefits, planned activities, expected outcomes and completion dates, and an established budget with a specified source of funding.

SECTION 3. A NEW SECTION OF KRS CHAPTER 42 IS CREATED TO READ AS FOLLOWS:

(1) The Office of Geographic Information is hereby established in the Office of the Secretary of the Finance and Administration Cabinet.

(2) The Office of Geographic Information shall be headed by an executive director, appointed by the Geographic Information Advisory Council, and shall include other personnel as may be determined by the executive director of the office to be necessary and desirable to carry out the office's functions. The executive director of the Office of Geographic Information shall serve at the pleasure of the Geographic Information Advisory Council. All other employees within the office shall be employed pursuant to the provisions of KRS Chapter 18A.

(3) The office may solicit, receive, and consider proposals for funding from any state agency, federal agency, local government, university, nonprofit organization, or private person or corporation. The office may also solicit and accept money by grant, gift, donation, bequest, legislative appropriation, or other conveyance.

(4) The office shall:

(a) Establish a central statewide geographic information clearinghouse to maintain map inventories, information on current and planned geographic information systems applications, information on grants available for the acquisition or enhancement of geographic information resources, and a directory of geographic information resources available within the state or from the federal government;

(b) Coordinate multiagency geographic information system projects, including overseeing the development and maintenance of statewide base maps and geographic information systems;

(c) Provide access to both consulting and technical assistance, and education and training, on the application and use of geographic information technologies to state and local agencies;

(d) Maintain, update, and interpret geographic information and geographic information systems standards, under the direction of the council;

(e) Provide geographic information system services, as requested, to agencies wishing to augment their geographic information system capabilities;

(f) In cooperation with other agencies, evaluate, participate in pilot studies, and make recommendations on geographic information systems hardware and software;

(g) Assist the council with review of agency information resource plans and participate in special studies as requested by the council;

(h) Provide staff support and technical assistance to the Geographic Information Advisory Council; and

(i) Prepare proposed legislation and funding proposals for the General Assembly which will further solidify coordination and expedite implementation of geographic information systems.

(5) The office may promulgate necessary administrative regulations for the furtherance of this section.

SECTION 4. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby established a Geographic Information Advisory Council, hereinafter called the council, to the Kentucky Information Systems Commission to advise the Governor, the General Assembly, the Judicial Branch, and the Kentucky Information Systems Commission on issues as they relate to geographic information and geographic information systems.

(2) The council shall establish and adopt policies and procedures that assist state and local jurisdictions in developing, deploying, and leveraging geographic information resources and geographic information systems technology for the purpose of improving public administration.

(3) The council shall closely coordinate with users of geographic information systems to establish policies and procedures that insure the maximum use of geographic information by minimizing the redundancy of geographic information and geographic information resources.

(4) The Geographic Information Advisory Council shall consist of twenty five (25) members and one (1) legislative liaison. The members shall be knowledgeable in the use and application of geographic information systems technology and shall have sufficient authority within their organizations to influence the implementation of council recommendations.

(a) The council shall consist of:

1. The secretary of the Transportation Cabinet or his designee;

2. The secretary of the Cabinet for Human Resources or his designee;

3. The director of the Kentucky Geological Survey or his designee;

4. The secretary of the Revenue Cabinet or his designee;

5. The commissioner of the Department of Information Systems or his designee;

6. The secretary of the Economic Development Cabinet or his designee;

7. The commissioner of the Department of Local Government or his designee;

8. The secretary of the Justice Cabinet or his designee;

9. The executive director of the Council on Higher Education or his designee;

10. The adjutant general of the Department of Military Affairs or his designee;

11. The commissioner of the Department of Education or his designee;

12. The secretary of the Natural Resources and Environmental Protection Cabinet or his designee;

13. The commissioner of the Department of Agriculture or his designee;

14. The secretary of the Public Protection and Regulation Cabinet or his designee;

15. The secretary of the Tourism Cabinet or his designee;

16. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky League of Cities;

17. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky Association of Counties;

18. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chapter of the American Planning Association;

19. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chamber of Commerce;

20. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Land Surveyors;

21. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Society of Professional Engineers; and

22. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Board of Registered Geologists; and

23. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council of Area Development Districts.

(b) The council shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission.

(5) The council shall select from its membership a chairman and any other officers it considers essential. The council may have committees and subcommittees as determined by the council or an executive committee, if an executive committee exists.

(6) A member of the council shall not:

(a) Be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that has, a substantial interest in the geographic information industry and is doing business in the Commonwealth;

(b) Own, control, or have directly or indirectly, more than ten percent (10%) interest in a business entity that has a substantial interest in the geographic information industry;

(c) Be in any manner connected with any contract or bid for furnishing any governmental body of the Commonwealth with geographic information systems, the computers on which they are automated, or a service related to geographic information systems;

(d) Be a person required to register as a lobbyist because of activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have substantial interest in the geographic information industry;

(e) Accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise;

(f) Be liable to civil action or any action performed in good faith in the performance of duties as a council member.

(7) Those council members specified in subsection (4)(a) of this section who serve by virtue of an office shall serve on the council while they hold that office.

(8) Appointed members of the council shall serve for a term of four (4) years. Vacancies in the membership of the

council shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.

(9) The council shall have no funds of its own and council members shall not receive compensation of any kind from the council.

(10) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at council meetings.

SECTION 5. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

(1) The council's duties shall include the following:

- ***(a) Overseeing the development and adoption of policies and procedures related to geographic information and geographic information systems;***
- ***(b) Overseeing the development of a strategy for the implementation and funding of a statewide base map and geographic information system;***
- ***(c) Overseeing the development and recommending standards on geographic information and geographic information systems for inclusion in the statewide architecture;***
- ***(d) Overseeing the development and delivery of a statewide geographic information plan and annually reporting to the Governor, the General Assembly, the Judicial Branch, and the Kentucky Information Systems Commission;***
- ***(e) Overseeing the development of the geographic information systems training and education plan;***
- ***(f) Overseeing the assessment of state agency plans for geographic information systems standards compliance;***
- ***(g) Overseeing the development of operating policies and procedures for the management of the Council and any standing or ad hoc committees and associated advisory groups;***
- ***(h) Promoting collaboration and the sharing of data and data development, as well as other aspects of geographic information systems; and***
- ***(i) Overseeing the implementation of a pilot project to study the advantages and resources of geographic information system technology.***

(2) The Office of Geographic Information shall provide necessary staff support services to the council. All cabinets, departments, divisions, agencies, and officers of the Commonwealth shall furnish the council necessary assistance, resources, information, records, or advice as it may require to fulfill its duties.

The Committee Amendment No. 1 to **HB 48** is as follows:

On page 2, by deleting lines 22 to 27 in their entirety, and inserting in lieu thereof:

"***whose appointment is subject to KRS 12.050. The executive director may employ personnel, pursuant to the provisions of KRS Chapter 18A, as required to perform the functions of the office.***"

On page 5, delete lines 11 and 12 and insert in lieu thereof the following;

"***9. One (1) member appointed by the Governor from a list of three (3) persons submitted by the executive director of the Council on Higher Education;***" and

On page 6, line 13, delete the word "***president***" and insert "***chairman***" in lieu thereof.

HB 128, AN ACT relating to the state tree of Kentucky.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 2.095 is amended to read as follows:

The ***tulip poplar*** [~~Kentucky coffee tree~~] is named and designated as the Kentucky state tree.

HB 185, AN ACT relating to local government data collection.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 6.970 is amended to read as follows:

[~~(1)~~]The Legislative Research Commission shall be responsible for compiling, analyzing***,*** and collecting fiscal and other information from local governments necessary for the preparation of fiscal notes. An information system shall be developed and designed [~~so as~~] to provide sufficient continuing information on the financial condition of local government which can be readily utilized for the preparation of fiscal notes. In the development of ***this*** [~~such an~~] information system***,*** the Legislative Research

Commission shall:

(1) ~~[(a)]~~ Compile, analyze, and maintain in a unified, concise, and orderly form, information on the nature and impact of existing state mandates and state programs which involve the distribution of funds to local government; and

(2) ~~[(b)]~~ Continuously compile, analyze, and maintain fiscal and other relevant information which is required by statute or regulation to be prepared by local governments.

~~[(2) The Legislative Research Commission shall publish, annually, beginning January 1, 1984, in a report to the General Assembly, a summary of the information collected pursuant to subsection (1) of this section in a format designed to show the financial condition of local government.]~~

HB 244, AN ACT relating to a compact between the Commonwealth of Kentucky and the Commonwealth of Virginia providing for the operation of an interstate park known as The Breaks Interstate Park.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 148.220 is amended to read as follows:

The Governor is hereby authorized and directed to execute, on behalf of the Commonwealth of Kentucky, the following compact with the Commonwealth of Virginia which is hereby approved, ratified and enacted into law:

BREAKS INTERSTATE PARK COMPACT

Pursuant to authority granted by an Act of the 83rd Congress of the United States, being Public Law 275, approved August 14, 1953, the Commonwealth of Kentucky and the Commonwealth of Virginia do hereby covenant and agree as follows:

ARTICLE I.

The Commonwealth of Kentucky and the Commonwealth of Virginia agree to create, develop and operate an interstate park to be known as The Breaks Interstate Park, which shall be located along the Russell Fork of the Levisa Fork of the Big Sandy River and on adjacent areas in Pike County, Kentucky, and Dickenson and Buchanan counties, Virginia. Said park shall be of such area and of such character as may be determined by the commission created by this compact.

ARTICLE II.

There is hereby created The Breaks Interstate Park Commission, which shall be a body corporate with the powers and duties set forth herein and such additional powers as may be conferred upon it by subsequent action of the appropriate authorities of Kentucky and Virginia. The commission shall consist of ***the Director of the Virginia Department of Conservation and Recreation or his designee and the Commissioner of the Kentucky Department of Parks or his designee as voting, ex officio members and*** three commissioners from each of the two states, each of whom shall be a citizen of the state he shall represent. Members of the commission shall be appointed by the Governor. Vacancies shall be filled by the Governor for the unexpired term. The term of ~~[one of]~~ the ~~[first]~~ commissioners appointed ***by the Governor*** shall be for ~~[two years, the term of another for three years, and the term of the third for four years. Their successors shall be appointed for terms for]~~ four years ~~[each]~~. Each commissioner shall hold office until his successor is appointed and qualified. An officer or employee of the state, a political subdivision or the United States government may be appointed a commissioner under this compact.

ARTICLE III.

The commission created herein shall be a joint corporate instrumentality of both the Commonwealth of Kentucky and the Commonwealth of Virginia for the purpose of effecting the objects of this compact, and shall be deemed to be performing governmental functions of the two states in the performance of its duties hereunder. The commission shall have power to sue and be sued, to contract and be contracted with, to use a common seal and to make and adopt suitable bylaws, rules and regulations. The commission shall have the authority to acquire by gift, purchase or otherwise real estate and other property, and to dispose of such real estate and other property. Each Commonwealth agrees that it will authorize the commission to exercise the right of eminent domain to acquire property located within each Commonwealth required by the commission to effectuate the purposes of this compact.

ARTICLE IV.

The commission shall select from among its members a chairman and a vice chairman, and may select from among its members a secretary and treasurer or may designate other persons to fill these positions. It may appoint, and at its pleasure remove or discharge, such officers and legal, clerical, expert and other assistants and employees as may be required to carry the provisions of this compact into effect, and shall fix and determine their duties, qualifications and compensation. It may establish and maintain one or more offices for the transaction of its business, and may meet at any time or place. A majority of the commissioners present shall constitute a quorum for the transaction of business. The commissioners shall serve without compensation, but shall be paid their expenses incurred in and incident to the performance of their duties. They shall take the oath of office required of officers of their respective states.

ARTICLE V.

Each Commonwealth agrees that the officers and departments of each will be authorized to do all things falling within their respective jurisdictions necessary or incidental to the carrying out of the compact in every particular. The commission shall be entitled to the services of any state officer or agency in the same manner as any other department or agency of this state. The commission shall keep accurate records, showing in full its receipts and disbursements, and said records shall be open at any reasonable time to the inspection of such representatives of the two Commonwealths as may be duly constituted for that purpose. The commission shall submit annually and at other times as required such reports as may be required by the laws of each Commonwealth or by the Governor thereof.

ARTICLE VI.

The cost of acquiring land and other property required in the development and operation of The Breaks Interstate Park and constructing, maintaining and operating improvements and facilities therein and equipping same may be defrayed by funds received from appropriations, gifts, the use of money received as fees or charges for the use of said park and facilities, or by the issuance of revenue bonds, or by a combination of such sources of funds. The commission may charge for admission to said park, or make other charges deemed appropriate by it and shall have the use of funds so received for park purposes. The commission is authorized to issue revenue bonds, which shall not be obligations of either state, pursuant to procedures which shall be in substantial compliance with the provisions of laws of either or both states governing the issuance of revenue bonds by governmental agencies.

ARTICLE VII.

All money, securities and other property, real and personal, received by way of gift or otherwise or revenue received from its operations may be retained by the commission and used for the development, maintenance and operation of the Park or for other Park purposes.

The commission shall not pledge the credit of either Commonwealth except by and with the authority of the General Assembly thereof.

ARTICLE VIII.

This compact may be amended from time to time by the concurrent action of the two Commonwealth parties hereto.

Section 2. KRS 148.225 is amended to read as follows:

One (1) of the ***four (4)*** ~~[three (3)]~~ members of the Breaks Interstate Park Commission appointed by the Governor pursuant to Article II of the compact set forth in KRS 148.220 shall be the Lieutenant Governor.

Section 3. This Act shall become effective at such time as the Commonwealth of Virginia approves changes in the compact which are substantially the same as those of this Act, but in no event shall it become effective any sooner than the normal effective date for legislation enacted during this 1994 Regular Session of the General Assembly of the Commonwealth of Kentucky.

HR 16, A RESOLUTION concerning the sponsorship of a statewide spelling bee.

WHEREAS, the Louisville Courier-Journal is the largest circulating newspaper in the Commonwealth and the great purveyor of words, truth, and justice; and

WHEREAS, the Kentucky Education Association constitutes a monolithic union of instructors and educators, representing all geographic areas of this great Commonwealth;

WHEREAS, the Courier-Journal and the Kentucky Education Association have withdrawn their sponsorship of spelling competitions, justifying this action on their concerns that standup spelling bees emphasize spelling taught in isolation from writing and are nothing more than rote memorization;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. That this body strongly urges the Courier-Journal and the Kentucky Education Association to engage in a public spelling bee, competing one against the other, so that they can conduct and benefit from empirical research, through actual experience, on the heightened stress levels and pressure attributed to this type of competition and on whether the art of spelling is based solely on rote memory or is a higher level skill enhanced by competition.

Section 2. That upon the reestablishment of a statewide spelling bee, the word "potato" be listed among the challenge words so never again will a United States Vice President, whose family owns a newspaper, be embarrassed by the level of his spelling skills.

Section 3. That in view of the fact that the Courier-Journal is so opposed to competition, the Lexington Herald-Leader consider purchasing the Louisville newspaper to eliminate competition, eradicate diversity of opinion in the media, and spare the Courier-Journal from suffering from the suggested anguish and other ill effects of competition.

Section 4. That WHAS-Radio, Business First, and The Kentucky Derby Festival, as new sponsors of this spelling bee, be and hereby are commended by this House for viewing a statewide spelling bee competition to be an event worthy of preservation and celebration during the Kentucky Derby Festival activities.

Section 5. That at least until that happy day when all schools in the Commonwealth are sufficiently equipped with computers accessible to every student and having word-processing programs that contain a "spell-check" function, these new sponsors are urged to continue this spelling bee.

SB 10, AN ACT relating to the General Assembly and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 6.211 is amended to read as follows:

Effective January 1, ***1994*** [~~1978~~], in addition to any and all sums, compensation, or expenses now paid the members of the General Assembly [~~and the President of the Senate~~], each shall receive an expense allowance of ***one hundred ten percent (110%) of the expense allowance paid federal employees traveling in the Frankfort, Kentucky area*** [~~seventy-five dollars ($75)~~] for each calendar day. This sum shall be paid whether the General Assembly is in regular or extraordinary session and shall be in full recompense of any additional expenses incurred in excess of that now received by them.

Section 2. Whereas the Commonwealth is in a financial crisis and immediate action is required, an emergency is declared to exist, and this Act shall become effective immediately, retroactive to January 1, 1994, upon its passage and approval by the Governor.

HB 98, AN ACT relating to energy efficiency in government buildings.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 56 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 8 of this Act unless the context clearly indicates otherwise:

(1) "Aggregate simple payback period" means the simple payback period of a set of energy efficiency measures taken together for a building;

(2) "Building" means all contiguous land, structures, appurtenances, and improvements that use energy;

(3) "Conditioned building" means a building using energy for heating or cooling;

(4) "Energy audit" means examination of a building's energy-using systems, energy consumption and costs, occupancy patterns, and operation and maintenance procedures;

(5) "Energy efficiency measure" means any construction, improvement, repair, alteration, or betterment of a building that is intended to reduce energy costs; or any equipment, fixture, or furnishing to be added to or used in a building that will be a cost-effective energy-related project that is intended to reduce energy costs;

(6) "Energy performance contract" means an agreement for the provision of energy services or equipment, including energy conservation-enhancing projects and alternate energy technologies for state government buildings, in which a person agrees to finance, design, construct, install, maintain, operate, or manage energy systems or equipment to improve energy efficiency of, or produce energy in connection with, a state government building in exchange for a portion of the energy cost savings or specified revenues based on estimated or measured energy cost savings;

(7) "Engineering analysis" means a detailed cost-benefit analysis of energy efficiency investments including a review of potential cost savings through operation and maintenance changes;

(8) "Life cycle energy cost analysis" means a method for estimating the total cost of an energy efficiency measure over its useful life, including cost factors such as purchase price, energy use, maintenance, interest, and inflation;

(9) "Low cost/no cost energy efficiency measures" means those energy efficiency measures, usually involving operation and maintenance practices, that can be accomplished by existing personnel within existing operating budgets;

(10) "Shared savings contract" means an energy performance contract; and

(11) "Simple payback period" means the number of years it takes to pay back, from estimated energy savings, the initial cost of an energy efficiency investment, with the simple payback period equal to the initial cost divided by the annual energy savings.

SECTION 2. A NEW SECTION OF KRS CHAPTER 56 IS CREATED TO READ AS FOLLOWS:

It shall be the policy of the Commonwealth to maximize the use of energy efficiency measures in the construction, renovation, and maintenance of buildings owned or leased by the Commonwealth. In furtherance of these policies, the cabinet shall administer an energy efficiency program, to be known as the Energy Efficiency Program for State Government Buildings.

SECTION 3. A NEW SECTION OF KRS CHAPTER 56 IS CREATED TO READ AS FOLLOWS:

(1) The Energy Efficiency Program for State Government Buildings shall provide for implementation of low cost/no cost energy efficiency measures, engineering analyses, energy efficiency measures, building improvements, and monitoring of results for state-owned buildings.

(2) An engineering analysis shall be performed for state-owned buildings. The analysis shall assess the energy efficiency of each state-owned building and make recommendations for improving the efficient use of energy within the building. The analyses shall be performed by qualified engineers, architects, or other persons trained in energy

efficiency who shall be employed pursuant to KRS Chapter 45A.

(3) Except as provided in subsection (5) of this section, measures to improve the energy efficiency of a state-owned building which have an aggregate simple payback period of five (5) years or less shall be implemented as funding becomes available. No more than five percent (5%) of the cost of energy efficiency measures for a building may be utilized for monitoring the results.

(4) The cabinet shall prioritize the projects among the various state-owned buildings to determine which projects shall be implemented to best utilize the available funding.

(5) If general fund appropriations are unavailable, energy efficiency measures for a state-owned building may be financed by other means. These other means include, but are not limited to, energy performance contracts and shared savings contracts. These energy efficiency measures shall not be limited to those which have an aggregate simple payback period of five (5) years or less, but shall result in reasonable economic benefit to the Commonwealth. Ownership of the energy efficiency measures shall remain with the Commonwealth. Energy cost savings may be used to repay the cost of the other means used to finance energy efficiency measures, with any remaining savings to be deposited in the state agency account. All energy cost savings estimated under an energy performance contract or shared savings contract shall be guaranteed to the Commonwealth.

(6) To provide an incentive for state agencies with state-owned buildings to adopt low cost/no cost energy efficiency measures, any savings realized in the energy costs of a state-owned building after implementation of low cost/no cost energy efficiency measures shall be divided, with half of the estimated ten percent (10%) savings allocated to the general fund if the general fund is used to pay energy costs, and any additional actual savings allocated to the agency account. The savings shall be calculated by comparing the energy costs of the building, adjusted for weather and other appropriate factors, on an annual basis before and after implementation of the measures. The division of shared savings shall continue for a period of no more than five (5) years after the measures have been implemented, after which the savings shall be allocated to the agency account.

SECTION 4. A NEW SECTION OF KRS CHAPTER 56 IS CREATED TO READ AS FOLLOWS:

There is established an advisory committee on energy efficiency whose purpose shall be to advise the cabinet on the priority of various energy efficiency proposals, program operations, and any other matters related to energy efficiency. The secretary of the Natural Resources and Environmental Protection Cabinet or his designee shall chair the advisory committee. The other members of the committee shall be the agency head or his designee of those six (6) noncollege and nonuniversity state agencies which have the most total square feet of state-owned building space, a representative of the Council on Higher Education to represent the state colleges and universities, and the commissioner of the Department for Facilities Management.

SECTION 5. A NEW SECTION OF KRS CHAPTER 56 IS CREATED TO READ AS FOLLOWS:

The cabinet shall institute an energy audit training program to identify energy saving techniques for state-owned building maintenance staff. Additional programs shall be developed to educate state employees and other building occupants on energy awareness and practices to reduce energy use in state-owned buildings.

SECTION 6. A NEW SECTION OF KRS CHAPTER 56 IS CREATED TO READ AS FOLLOWS:

The cabinet shall require persons submitting bids or plans for state-owned buildings to be constructed or substantially renovated after the effective date of this Act to include within those bids or plans life-cycle energy cost analyses. The cabinet shall consider those life-cycle cost analyses when evaluating competing bids or plans.

SECTION 7. A NEW SECTION OF KRS CHAPTER 56 IS CREATED TO READ AS FOLLOWS:

(1) Any building which the cabinet considers for leasing or purchase shall be evaluated for cost-effective energy use and energy efficiency. This evaluation shall be considered in choosing between competing leases or building purchases. The cabinet shall consider the energy costs of operating a building to ensure the selection of a cost-effective lease, and the cabinet shall compare life-cycle energy cost analyses for competing leases.

(2) A lease may be structured so that both the lessor and the state agency as lessee may share energy cost savings that can be accomplished by energy-efficient lease arrangements. The lease may incorporate financial incentives to make energy efficiency improvements that are cost effective in reducing the operating cost of the building. The lease may provide for the state agency to make lease payments which may be used to help fund the costs of energy efficiency measures in the building, if the costs are amortized and returned to the state agency over a period of years not to exceed the useful life of the energy efficiency measures. Thereafter, the state agency shall be entitled to a reduction in the lease amount based on any continued savings resulting from the energy efficiency measures. The amount of reduction shall be negotiated between the lessor and the state agency.

SECTION 8. A NEW SECTION OF KRS CHAPTER 56 IS CREATED TO READ AS FOLLOWS:

Any state agency is authorized to participate as a state partner with the U.S. Environmental Protection Agency in its "Green Lights Program" or other similar programs.

SECTION 9. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall administer an energy efficiency program for buildings owned by the University of Kentucky and the University of Louisville, to be known as the Institutional Energy Efficiency Program.

(2) The program shall be administered in a manner consistent with the Energy Efficiency Program for State Government Buildings established in Sections 1 to 7 of this Act.

(3) Each university shall receive a proportional share of any general fund appropriation for all state government buildings provided by Section 3 of this Act, equal to the proportion its total square feet of conditioned building space bears to the total square feet of conditioned building space owned by state agencies.

SECTION 10. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

There is created within the State Treasury a trust and agency account, in which funds shall not lapse, to be known as the Energy Conservation Fund for Governmental Agencies to be managed by the cabinet. The cabinet may receive appropriations, gifts, grants, or loans to be placed in the account for energy efficiency measures, engineering analyses, and monitoring of performance. This account is specifically authorized to receive funds provided to the Commonwealth under the federal Energy Policy Act of 1992 (Public Law 102-486, 106 Stat. 2776).

SECTION 11. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

It shall be the policy of the Commonwealth to encourage local government agencies to incorporate cost-effective energy efficiency measures into their buildings to the greatest extent possible.

SECTION 12. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

(1) An energy efficiency revolving loan fund is established in the State Treasury and shall be administered by the authority.

(2) The fund shall be a dedicated fund, and all moneys in the fund shall be dedicated to providing low interest loans to governmental agencies to assist them in using energy efficiency measures in their infrastructure projects.

(3) Repayment of the loan, with interest, shall be made to the revolving loan fund from energy cost savings realized by the governmental agency at a rate set in the assistance agreement.

(4) The revolving loan fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for its stated purpose.

(5) The criteria for approval of loans for energy efficiency measures in infrastructure projects shall be established in administrative regulations promulgated by the Natural Resources Cabinet, and shall be modeled after any applicable criteria established for the Energy Efficiency Program for State Government Buildings managed by the Finance and Administration Cabinet and the Institutional Energy Efficiency Program managed by the Natural Resources Cabinet.

(6) The authority may enter into any necessary agreement with federal or state agencies or persons to carry out the provisions of this section.

Section 13. KRS 224A.011 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Administrative fee" means a fee assessed and collected by the authority from borrowers under assistance agreements, to be used for operational expenses of the authority.

(2) "Applicable interest rate" means the rate of interest which shall be used as part of the repayment criteria for an assistance agreement between a governmental agency and the authority, and shall be determined by the authority pertinent to the source of funds from which the assistance agreement is funded.

(3) "Assistance agreement" means the agreement to be made and entered into by and between a governmental agency and the authority, as authorized by this chapter, providing for a lease, loan, services, or grant to the governmental agency or for the purchase of obligations issued by the governmental agency, and for the repayment thereof to the authority by the governmental agency.

(4) "Authority" means the Kentucky Infrastructure Authority, which is created by this chapter.

(5) "Authority revenues" means the totality of all:

- (a) Service charges;
- (b) Water utility tax receipts, to the extent not otherwise committed and budgeted by the authority during any fiscal period of the authority;
- (c) Any gifts, grants, or loans received, to the extent not otherwise required to be applied;
- (d) Any and all appropriations made to the authority by the General Assembly of the Commonwealth of Kentucky, to the extent not otherwise required to be applied;
- (e) All moneys received in repayment of and for interest on any loans made by the authority to a governmental agency, except as provided in KRS 224A.111 and 224A.112, or as principal of and interest on any obligations issued by a governmental agency and purchased by the authority, or as receipts under any assistance agreement;

and

(f) The proceeds of bonds or long-term debt obligations of governmental agencies pledged to the payment of bond anticipation notes issued by the authority on behalf of the said governmental agency to provide interim construction financing.

(6) "Borrower or borrowing entity" means any agency of the state or its political subdivisions, any city, or any special district created under the laws of the state acting individually or jointly under interagency or interlocal cooperative agreements to enter into assistance agreements with the authority.

(7) "Community flood damage abatement project" means any structural or nonstructural study, plan, design, construction, development, improvement, or other activity to provide for flood control.

(8) "Construction" means and includes, but is not limited to:

(a) Preliminary planning to determine the economic and engineering feasibility of infrastructure projects, the engineering, architectural, legal, fiscal, and economic investigations, and studies necessary thereto, and surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the construction of infrastructure projects;

(b) The erection, building, acquisition, alteration, remodeling, improvement, or extension of infrastructure projects; and

(c) The inspection and supervision of the construction of infrastructure projects and all costs incidental to the acquisition and financing of same. This term shall also relate to and mean any other physical devices or appurtenances in connection with, or reasonably attendant to, infrastructure projects.

(9) "Dams" means any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either:

(a) Is or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the natural resources cabinet; or

(b) Has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre feet or more.

(10) "Distribution facilities" means all or any part of any facilities, devices, and systems used and useful in obtaining, pumping, storing, treating, and distributing water for agricultural, industrial, commercial, recreational, public, and domestic use.

(11) "Federal act" means the Federal Clean Water Act (33 U.S.C. Section 1251 et seq.) as said federal act may be amended from time to time in the future, or any other enactment of the United States Congress providing funds that may assist in carrying out the purposes of the authority.

(12) "Federally assisted wastewater revolving fund" means that fund which will receive federal and state funds or the proceeds from the sale of revenue bonds of the authority for the purpose of providing loans to finance construction of publicly owned treatment works as defined in Section 212 of the federal act and for the implementation of a management program established under Section 319 of the federal act and for the development and implementation of a conservation and management plan under Section 320 of the federal act.

(13) "Governmental agency" means any incorporated city or municipal corporation, or other agency, or unit of government within or a department or a cabinet of the Commonwealth of Kentucky, now having or hereafter granted, the authority and power to finance, acquire, construct, or operate infrastructure projects. This definition shall specifically apply, but not by way of limitation, to incorporated cities; counties, including any counties containing a metropolitan sewer district; sanitation districts; water districts; water associations if these associations are permitted to issue interest-bearing obligations which interest would be excludable from gross income under Section 103 of the Internal Revenue Code of 1986 as amended; sewer construction districts; metropolitan sewer districts; sanitation taxing districts; and any other agencies, commissions, districts, or authorities (either acting alone, or in combination with one another pursuant to any regional or area compact, or multimunicipal agreement), now or hereafter established pursuant to the laws of the Commonwealth of Kentucky having and possessing the described powers described in this subsection.

(14) "Industrial waste" means any liquid, gaseous, or solid waste substances resulting from any process of industry, manufacture, trade, or business, or from the mining or taking, development, processing, or recovery of any natural resources, including heat and radioactivity, together with any sewage as is present therein, which pollutes the waters of the state, and specifically, but not by way of limitation, means heat or thermal differentials created in the waters of the state by any industrial processing, generating, or manufacturing processes.

(15) "Infrastructure project" means any construction or acquisition of treatment works, distribution facilities, or water resources projects instituted by a governmental agency which is approved by the authority and, if required, by the Natural Resources Cabinet, Public Service Commission, or other agency; solid waste management facilities; dams; storm water control and treatment systems; solid waste handling and disposal facilities; gas or electric utility; ***energy efficiency measures;*** or any other public utility or public service project which the authority finds would enhance economic development opportunities in a governmental agency.

(16) "Infrastructure revolving fund" means that fund which will receive state funds, the proceeds from the sale of revenue

bonds of the authority or other moneys earmarked for that fund for the purpose of providing loans or grants to finance construction or acquisition of infrastructure projects as defined in this section.

(17) "Interim financing agreement" means the agreement to be made and entered into by and between a governmental agency and the authority, as authorized by this chapter, providing for the use of the authority as an issuing agency in providing interim financing through the issuance of bond anticipation notes by the authority on behalf of a governmental agency in order to provide construction financing to said governmental agency pending the sale, issuance, and delivery of long-term debt obligations to effect assistance to said governmental agency.

(18) "Loan or grant" means moneys to be made available to governmental agencies by the authority for the purpose of defraying all or any part of the total costs incidental to construction or acquisition of any infrastructure project.

(19) "Market interest rate" means the interest rate available to governmental agencies from sources other than those defined by this chapter at the time the authority shall provide financial assistance to a governmental agency.

(20) "Natural resources cabinet" means the Kentucky Natural Resources and Environmental Protection Cabinet, or its successor, said term being meant to relate specifically to the state agency which is designated as the water pollution agency for the Commonwealth of Kentucky, for purposes of the federal act.

(21) "Obligation of a governmental agency" means a revenue bond issued by a governmental agency under KRS 58.010 et seq.

(22) "Person" means any individual, firm, partnership, association, corporation, or governmental agency.

(23) "Pollution" means the placing of any noxious or deleterious substances ("pollutants"), including sewage and industrial wastes, in any waters of the state or affecting the properties of any waters of the state in a manner which renders the waters harmful or inimical to the public health or to animal or aquatic life, or to the use, present or future, of these waters for domestic water supply, industrial, or agricultural purposes, or recreational purposes.

(24) "Prioritization schedules" means the list of wastewater treatment works, distribution facilities and water resources projects which the natural resources cabinet has evaluated and determined to be of priority for receiving financial assistance from the federally assisted wastewater revolving fund, or the list of infrastructure projects which the Department of Local Government has evaluated and determined to be of priority for receiving financial aid from the infrastructure revolving fund.

(25) "Project" or "solid waste project" means construction, renovation or acquisition of a solid waste facility which shall be publicly owned.

(26) "Recovered material" means those materials which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis.

(27) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material but does not mean a solid waste facility if solid waste generated by a recovered material processing facility is managed pursuant to KRS Chapter 224 and administrative regulations adopted by the cabinet.

(28) "Revenue bonds" means special obligation bonds issued by the authority pursuant to the provisions of this chapter, which are not direct or general obligations of the state, and which are payable only from a pledge of, and lien upon, authority revenues as provided in the resolution authorizing the issuance of the bonds, and shall include revenue bond anticipation notes.

(29) "Service charge" means any monthly, quarterly, semiannual, or annual charge to be imposed by a governmental agency, or by the authority, for any infrastructure project financed by the authority, which service charge arises by reason of the existence of, and requirements of, any assistance agreement.

(30) "Sewage" means any of the waste products or excrements, or other discharges from the bodies of human beings or animals, which pollute the waters of the state.

(31) "Solid waste" means "solid waste" as defined by KRS 224.01-010(31)(a).

(32) "Solid waste management facility" means any facility for collection, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether the facility is associated with facilities generating the waste or otherwise, but does not include a container located on property where the waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility.

(33) "State" means the Commonwealth of Kentucky.

(34) "Treatment works" or "wastewater treatment works" means all or any part of any facilities, devices, and systems used and useful in the storage, treatment, recycling, and reclamation of wastewater, including facilities for the treatment, neutralization, disposal of, stabilization, collecting, segregating, or holding of wastewater, including without limiting the generality of the foregoing, intercepting sewers, outfall sewers, pumping power stations, and other equipment and their

appurtenances; extensions, improvements, remodeling, additions, and alterations thereof, and any wastewater treatment works, including site acquisition of the land that will be an integral part of the wastewater treatment process, or is used for ultimate disposal of residues resulting from wastewater treatment, together with any other facilities which are deemed to be treatment works pursuant to the federal act.

(35) "Variable rate revenue bonds" means revenue bonds the rate of interest on which fluctuates either automatically by reference to a predetermined formula or index or pursuant to the standards set forth in KRS 224A.120.

(36) "Wastewater" means any water or liquid substance containing sewage, industrial waste, or other pollutants or contaminants derived from the prior use of these waters.

(37) "Water resources" means all waters of the state occurring on the surface, in natural or artificial channels, lakes, reservoirs, or impoundments, and in subsurface aquifers, which are available, or which may be made available to agricultural, industrial, commercial, recreational, public, and domestic users.

(38) "Water resources project" means any structural or nonstructural study, plan, design, construction, development, improvement, or any other activity including programs for management, intended to conserve and develop the water resources of the state and shall include all aspects of water supply, flood damage abatement, navigation, water-related recreation, and land conservation facilities and measures.

(39) "Waters of the state" means all streams, lakes, watercourses, waterways, ponds, marshes, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural, surface or underground waters.

(40) "Water utility tax" means the tax which may be imposed by the authority on every purchase of water service in the Commonwealth of Kentucky.

The Committee Amendment No. 1 to **HB 98** is as follows:

On page 15, after line 18, by adding the following:

"Section 14. Sections 1 through 12 of this Act are repealed effective July 30, 1998."

The Committee on State Government reported **HB 242**, with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 242, AN ACT relating to the Commonwealth of Kentucky's procurement of architectural and engineering services.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 45A.800 is amended to read as follows:

As used in KRS 45A.800 to 45A.835, 45A.195, 45A.440, and 45A.695, unless the context requires otherwise:

(1) "Architect" means an architect licensed to practice under KRS Chapter 323 or a landscape architect licensed to practice under KRS Chapter 323A;

(2) "Engineer" means an engineer licensed to practice under KRS Chapter 322;

(3) "Procuring agency" means either the Finance and Administration Cabinet or the Transportation Cabinet;

(4) "Project" means any undertaking requiring the professional services of an architect or engineer, except as provided in KRS 45A.100;

(5) "User agency" means the state agency ***or any public supported institution of higher education, when it declines to exercise the authority granted under KRS 164A.590,*** that will occupy or otherwise be the primary beneficiary of a completed Finance and Administration Cabinet project; and

(6) "User division" means the division of the Transportation Cabinet that requires the procuring of engineering services for a project.

Section 2. KRS 45A.810 is amended to read as follows:

(1) (a) One (1) or more architectural services selection committees and one (1) or more engineering services selection committees shall be created in the Finance and Administration Cabinet.

(b) One (1) or more engineering services selection committees shall be created in the Transportation Cabinet.

(2) Except when an emergency exists as defined by KRS 45A.095(3):

(a) An architectural services selection committee created in the Finance and Administration Cabinet shall participate in every instance of that cabinet's procuring architectural services;

(b) An engineering services selection committee created in the Finance and Administration Cabinet shall participate in every instance of that cabinet's procuring engineering services; and

(c) An engineering services selection committee created in the Transportation Cabinet shall participate in every instance of that cabinet's procuring engineering services.

(3) An architectural services selection committee created in the Finance and Administration Cabinet shall consist of the following six (6) members selected in the manner specified within each paragraph:

(a) Two (2) architects. The secretary of the Finance and Administration Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select the two (2) architects from a pool, appointed by the secretary, of six (6) architects, who are merit employees of the Finance and Administration Cabinet;

(b) Two (2) merit employees of the user agency appointed by the head of that agency to serve for the duration of the selection committee's participation in the project for which they were appointed by the user agency;

(c) An individual. The Kentucky Society of Architects shall nominate nine (9) individuals, and the Governor shall appoint three (3) of these individuals to serve in the pool from which the secretary of the Finance and Administration Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select one (1) individual to serve on the committee; and

(d) A merit employee of the Auditor of Public Accounts, appointed by the Auditor, who shall serve as a nonvoting member of the committee.

(4) The engineering services selection committee created in the Finance and Administration Cabinet shall consist of the following six (6) members selected in the manner specified in each paragraph:

(a) Two (2) engineers. The secretary of the Finance and Administration Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select the two (2) engineers from a pool, appointed by the secretary, of six (6) engineers, who are merit employees of the Finance and Administration Cabinet;

(b) Two (2) merit employees of the user agency appointed by the head of that agency to serve for the duration of the selection committee's participation in the project for which they were appointed by the user agency;

(c) An individual. The Kentucky Society of Professional Engineers and the Consulting Engineers Council of Kentucky shall together nominate nine (9) individuals, and the Governor shall appoint three (3) of these individuals to serve in the pool from which the secretary of the Finance and Administration Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select one (1) individual to serve on the committee; and

(d) A merit employee of the Auditor of Public Accounts, appointed by the Auditor, who shall serve as a nonvoting member of the committee.

(5) Notwithstanding the provisions of subsections (3) and (4) of this section, when the Finance and Administration Cabinet procures for one (1) project architectural services for an estimated fee of fifty thousand dollars ($50,000) or more and engineering services for an estimated fee of one hundred thousand dollars ($100,000) or more, then:

(a) The secretary of the Finance and Administration Cabinet shall appoint one (1) of the cabinet engineers serving on the engineering services selection committee to serve as a nonvoting member of the architectural services selection committee; and

(b) He shall appoint one (1) of the cabinet architects serving on the architectural services selection committee to serve as a nonvoting member of the engineering services selection committee.

(6)[~~(5)~~] The engineering services selection committee created in the Transportation Cabinet shall consist of the following six (6) members selected in the manner specified in each paragraph:

(a) Two (2) engineers. The secretary of the Transportation Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select the two (2) engineers from a pool, appointed by the secretary, of six (6) engineers, who are merit employees of the Transportation Cabinet;

(b) Two (2) engineers who are merit employees of the user division appointed by the head of that division to serve for the duration of the selection committee's participation in the project for which they were appointed by the user agency***. However, if two (2) user divisions have approximately equal responsibilities or separate responsibilities for the project, each user division head shall appoint one (1) member to the selection committee***;

(c) An individual. The Kentucky Society of Professional Engineers and the Consulting Engineers Council of Kentucky shall together nominate nine (9) individuals, and the Governor shall appoint three (3) of these individuals to serve in the pool from which the secretary of the Transportation Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select one (1) individual to serve on the committee; and

(d) A merit employee of the Auditor of Public Accounts, appointed by the Auditor, who shall serve as a nonvoting member of the committee.

(7)[~~(6)~~] (a) All selection committee members shall have experience which qualifies them to serve on the committee.

(b) The same appointment procedures set out in this section apply to any user agency or user division listed in subsection (3), (4), or ***(6)***[~~(5)~~] of this section that does not operate under a merit system.

(c) Any individual appointed to serve in a pool from which selection committee members are drawn shall serve in the pool for an initial one (1) year term and may be reappointed ***for additional successive one (1) year terms*** [~~to succeed himself for another one (1) year term~~]. He shall serve until his successor is appointed and qualified. [~~At the conclusion of his service in a pool, he shall be prohibited from serving in a pool until a year has elapsed.~~] A successor or a replacement, in the case of a vacancy in the pool, shall be appointed in the same manner as the initial appointee.

(d) Any individual appointed by the Auditor of Public Accounts to serve on selection committees shall serve an initial one (1) year term and may be reappointed ***for additional successive one (1) year terms*** [~~to succeed himself for another one (1) year term~~]. He shall serve until his successor is appointed and qualified. [~~At the conclusion of his service, he shall be prohibited from serving on a selection committee until a year has elapsed.~~] A successor or a replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.

(e) The selection committee members appointed by the head of a user agency or user division ***or pursuant to subsection (5) of this section*** shall serve on a project-by-project basis. These members shall participate only in committee action related to the project for which they were appointed. A replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.

Section 3. KRS 45A.825 is amended to read as follows:

(1) ***(a) A firm shall not be considered for providing architectural or engineering services to the Commonwealth unless the relevant procuring agency has prequalified the firm.***

(b) A firm's prequalification shall remain in effect for twelve (12) months from the date of prequalification [~~A firm interested in providing architectural or engineering services to the Commonwealth shall, each Commonwealth fiscal year, submit to the relevant procuring agency a statement of general qualifications on a form devised by that agency. A firm may submit a completed form at the same time or at any time before the firm responds to a request for proposals. A firm which fails to submit a completed form in a timely fashion shall be barred from the procurement process. A statement of general qualifications shall remain in effect until the end of the fiscal year during which the statement is submitted~~].

(2) The procuring agency shall consult with the user agency or user division before arriving at a request for proposals. The request for proposals shall ***include as an evaluation factor the location of the office where the work tasks are to be performed and shall*** indicate the relative weight of evaluation factors. Through advertisement, and any other available means, the procuring agency shall provide notice of a request for proposals and notice of the materials that the procuring agency will provide to a firm to assist that firm in responding to a request for proposals. Those materials shall include, but not be limited to, the request for proposals and the project evaluation sheet to be used by the relevant selection committee. The advertisement shall also set a deadline for filing responses to a request for proposals with the procuring agency.

(3) A firm shall respond to a request for proposals by submitting, before the deadline, a one (1) page letter of interest as well as a completed form, devised by the procuring agency, which states the firm's experience and its qualifications for the project as described in the request for proposals. A firm which fails to meet the deadline shall be barred from the procurement process.

(4) The employees of a procuring agency and the members of the selection committee shall keep all responses to a request for proposals confidential until the procuring agency has awarded a contract.

(5) The secretary of the procuring agency shall designate a procuring agency employee to determine which firms have ***prequalified pursuant to subsection (1) of this section and have*** filed, in a timely fashion, [~~statements of general qualifications and~~] responses to a request for proposals. He shall create a list of the firms which have done so and certify the list.

(6) The procuring agency shall organize the selection committee's first meeting. At that meeting, ***each selection committee member shall sign a statement of confidentiality. Also, at that meeting,*** the selection committee shall:

(a) Elect from among the voting members of the committee a chairman and a vice chairman who shall hold their positions for the duration of the selection committee's participation in the project;

(b) Be provided with:

1. The certified list created pursuant to subsection (5) of this section;

[~~2. The current general qualification statements of these firms;~~]

2.[~~3.~~] The firms' responses to the request for proposals;

3.[~~4.~~] The request for proposals;

4.[~~5.~~]The advertised notice of request for proposals; and

5.[~~6.~~] The project evaluation sheets; and

(c) Discuss the future conduct of its affairs.

(7) (a) When the Department of Transportation procures any engineering services, or when the Finance and Administration Cabinet procures architectural services for an estimated fee of less than fifty thousand dollars ($50,000) or engineering services for an estimated fee of less than one hundred thousand dollars ($100,000), this subsection and subsection (9) of this section shall govern the procurement process.

(b) The selection committee shall meet in executive session to:

1. Evaluate the materials with which it has been provided;
2. Select the three (3) most qualified firms and rank them in order of preference, based upon the weighted evaluation factors established in the request for proposals; and
3. Notify the procuring agency of the ranking.

(c) The procuring agency shall send a letter to each firm which responded to the request for proposals, informing the firm of:

1. The three (3) finalists;
2. Their ranking; and
3. The rest of the procedure that will be followed in the awarding of the contract.

(d) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.

(8) (a) When the Finance and Administration Cabinet is procuring architectural services for an estimated fee of fifty thousand dollars ($50,000) or more or engineering services for an estimated fee of one hundred thousand dollars ($100,000) or more, this subsection and subsection (9) of this section shall govern the procurement process.

(b) The selection committee shall meet in executive session to:

1. Evaluate the materials with which it has been provided;
2. Select, but not rank, the three (3) most qualified firms, based upon the weighted evaluation factors established in the request for proposals; and
3. Notify the procuring agency of the three (3) finalists.

(c) The procuring agency shall send a letter to each firm which responded to the request for proposals, informing the firm of:

1. The three (3) finalists; and
2. The rest of the procedure that will be followed in the awarding of the contract.

(d) The selection committee shall interview the three (3) finalists, preferably on the same day. The finalists shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the finalist and members of the selection committee. Members of the selection committee shall keep confidential the substance of an interview until the procuring agency has awarded a contract.

(e) The selection committee shall meet in executive session to:

1. Rank the three (3) finalists based upon the weighted evaluation factors established in the request for proposals; and
2. Forward the ranking to the procuring agency.

(f) The procuring agency shall send a letter to each finalist, informing the finalist of:

1. His ranking; and
2. The rest of the procedure that will be followed in the awarding of the contract.

(g) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.

(9) The secretary of the procuring agency shall designate a procuring agency ***merit*** employee as the procuring officer in charge of negotiating a contract with the top-ranked firm, as determined by the selection committee, at compensation which the procuring officer determines in writing to be fair and reasonable to the Commonwealth. In making this decision, the employee shall take into account the estimated value of the services to be rendered, and the scope, complexity, and professional nature thereof. Should the procuring officer be unable to negotiate a satisfactory contract with the top-ranked firm, at a price that he considers fair and reasonable to the Commonwealth, he shall formally terminate negotiations with the firm. The procuring officer shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, the purchasing officer shall formally terminate negotiations. The purchasing officer shall then undertake negotiations with the third-ranked firm. Should the purchasing officer be unable to negotiate a satisfactory contract with any of the selected firms, ***he shall formally terminate negotiations, and the procurement procedure shall start again from the beginning pursuant to section 2 of this Act.***[~~the selection committee~~

~~shall select additional firms in order of their competence and qualification, and the purchasing officer shall continue negotiations in accordance with this section until an agreement is reached~~].

(10) Once a procuring officer has negotiated a contract, the procuring agency shall send a letter to the other finalists, informing them of:

(a) Which firm has successfully negotiated a contract; and

(b) The rest of the procedure that will be followed in the awarding of the contract.

(11) Notwithstanding the provisions of KRS 45A.045, when the Transportation Cabinet is the procuring agency, the negotiated contract shall take effect without the approval of the secretary of the Finance and Administrative Cabinet.

Section 4. KRS 45A.830 is amended to read as follows:

(1) After the procuring officer has negotiated an architectural or engineering services contract, but before the contract is submitted to the Personal Service Contract Review Subcommittee, the procuring officer shall supply a copy of the proposed contract to each member of the selection committee involved in the procurement process.

(2) The secretary of the procuring agency, the procuring officer, and each ***voting*** member of the selection committee shall sign separate certificates, devised by the procuring agency, which shall provide the signatory with the option of certifying that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a violation of this chapter which has arisen in the procurement process. The representative of the Auditor of Public Accounts shall ***prepare and file a report with the Personal Service Contract Review Subcommittee certifying*** [~~also sign a certificate stating~~] that the applicable ***procedural*** provisions of subsections (4), (6), (7), and (8) of KRS 45A.825 were***, or were not,*** met.

(3) The procuring agency shall file with the Personal Service Contract Review Subcommittee:

(a) The certificates; and

(b) The selection committee's ranking of firms.

Section 5. KRS 45A.835 is amended to read as follows:

(1) (a) A person shall not serve in a pool from which selection committee members are drawn or on a selection committee if that person, his spouse, either of his parents, ***any of his siblings,*** or any of his children is employed by an architectural or engineering firm ***which has prequalified pursuant to subsection (1) of Section 3 of this Act*** or ***owns one percent (1%) or more of*** [~~has a financial interest in~~] an architectural or engineering firm ***which has prequalified pursuant to subsection (1) of Section 3 of this Act***.

(b) If, in the course of an individual's service, he, his spouse, either of his parents, ***any of his siblings,*** or any of his children becomes employed by an architectural or engineering firm ***which has prequalified pursuant to subsection (1) of Section 3 of this Act*** or ***owns one percent (1%) or more of*** [~~establishes a financial interest in~~] an architectural or engineering firm ***which has prequalified pursuant to subsection (1) of Section 3 of this Act***, then his service shall end.

(2) For a period of one (1) year after a person ends his service on a selection committee, the Commonwealth shall not consider a firm for an architectural or engineering services contract if that person, his spouse, either of his parents, ***any of his siblings*** or any of his children is employed by a firm ***which was awarded a contract by a selection committee on which he served*** or ***owns one percent (1%) or more of*** [~~has a financial interest in~~] a firm which was awarded a contract by a selection committee on which he served.

SECTION 6. A NEW SECTION OF KRS 45A.800 TO 45A.835 IS CREATED TO READ AS FOLLOWS:

If a selection committee vote results in a tie between two (2) firms, one (1) of which will perform more of the work tasks in Kentucky than the other, then the former firm shall be ranked one (1) place ahead of the latter.

SECTION 7. A NEW SECTION OF KRS CHAPTER 45A.800 TO 45A.835 IS CREATED TO READ AS FOLLOWS:

By January 1, 1995:

(1) The Finance and Administration Cabinet shall promulgate administrative regulations to implement its procurement of architectural and engineering services pursuant to KRS 45A.800 to 45A.835; and

(2) The Transportation Cabinet shall promulgate administrative regulations to implement its procurement of engineering services pursuant to KRS 45A.800 to 45A.835.

Section 8. KRS 45A.050 is amended to read as follows:

(1) Except as provided in KRS ***45A.800 to 45A.835 and KRS*** Chapters 175, 176, 177, and 180, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction now vested in or exercised by any state agency under the several statutes relating thereto, are hereby transferred to the secretary of the Finance and Administration Cabinet as provided in this code, subject to the provisions of subsection (2) of this section.

(2) Unless otherwise ordered by the secretary of the Finance and Administration Cabinet, the acquisition of the following shall not be required through the Finance and Administration Cabinet:

(a) Works of art for museum and public display;

(b) Published books, maps, periodicals, and technical pamphlets; and

(c) Services of visiting speakers, professors, and performing artists.

(3) The Finance and Administration Cabinet shall include in all state agency price contracts for the purchase of materials or supplies a provision that, as approved by the secretary of the Finance and Administration Cabinet, any political subdivision, including cities of all classes, counties, school districts, or special districts, may participate in such contracts to the same extent as the Commonwealth. Any political subdivision may purchase materials and supplies pursuant to a contract for such supplies and materials entered into by the Finance and Administration Cabinet for the Commonwealth, including those contracts negotiated by the cabinet with vendors who maintain a general service administration price agreement as provided in subsection (7) of KRS 45A.045. Political subdivisions of the Commonwealth must comply with other provisions of the Kentucky Revised Statutes which require purchase by competitive bidding, before participating in the contract, unless the state contract has been let by competitive bidding, or the contract was negotiated as provided in subsection (7) of KRS 45A.045.

(4) The Finance and Administration Cabinet shall inform the Department of Local Government, which shall then inform the appropriate purchasing agent of each political subdivision, interested in participating under this section, of all state agency contracts in effect between the Commonwealth and vendors.

(5) The secretary of the Finance and Administration Cabinet shall promulgate the rules and regulations necessary for the implementation of this section and necessary to provide that the Commonwealth be reimbursed for any additional expenses incurred by the Commonwealth in allowing political subdivisions to participate in contracts with vendors.

(6) The Finance and Administration Cabinet shall comply with all provisions relating to the methods of purchasing in the Kentucky Revised Statutes. This section is not intended to repeal or otherwise affect any provision of the Kentucky Revised Statutes regarding purchasing methods of the Finance and Administration Cabinet.

The Committee Substitute to **HB 242** is as follows:

HB 242, AN ACT relating to the Commonwealth of Kentucky's procurement of architectural and engineering services.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 45A.800 is amended to read as follows:

As used in KRS 45A.800 to 45A.835, 45A.195, 45A.440, and 45A.695, unless the context requires otherwise:

(1) "Architect" means an architect licensed to practice under KRS Chapter 323 or a landscape architect licensed to practice under KRS Chapter 323A;

(2) "Engineer" means an engineer licensed to practice under KRS Chapter 322;

(3) "Procuring agency" means either the Finance and Administration Cabinet or the Transportation Cabinet;

(4) "Project" means any undertaking requiring the professional services of an architect or engineer, except as provided in KRS 45A.100;

(5) "User agency" means the state agency ***or any public supported institution of higher education, when it declines to exercise the authority granted under KRS 164A.590,*** that will occupy or otherwise be the primary beneficiary of a completed Finance and Administration Cabinet project; and

(6) "User division" means the division of the Transportation Cabinet that requires the procuring of engineering services for a project.

Section 2. KRS 45A.810 is amended to read as follows:

(1) (a) One (1) or more architectural services selection committees and one (1) or more engineering services selection committees shall be created in the Finance and Administration Cabinet.

(b) One (1) or more engineering ***and related*** services selection committees shall be created in the Transportation Cabinet.

(2) Except when an emergency exists as defined by KRS 45A.095(3):

(a) An architectural services selection committee created in the Finance and Administration Cabinet shall participate in every instance of that cabinet's procuring architectural services;

(b) An engineering services selection committee created in the Finance and Administration Cabinet shall participate in every instance of that cabinet's procuring engineering services; and

(c) An engineering ***and related*** services selection committee created in the Transportation Cabinet shall participate in every instance of that cabinet's procuring engineering ***or related*** services.

(3) An architectural services selection committee created in the Finance and Administration Cabinet shall consist of the following six (6) members selected in the manner specified within each paragraph:

(a) Two (2) architects. The secretary of the Finance and Administration Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select the two (2) architects from a pool, appointed by the secretary, of six (6) architects, who are merit employees of the Finance and Administration Cabinet;

(b) Two (2) merit employees of the user agency appointed by the head of that agency to serve for the duration of the selection committee's participation in the project for which they were appointed by the user agency;

(c) An individual. The Kentucky Society of Architects shall nominate nine (9) individuals, and the Governor shall appoint three (3) of these individuals to serve in the pool from which the secretary of the Finance and Administration Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select one (1) individual to serve on the committee; and

(d) A merit employee of the Auditor of Public Accounts, appointed by the Auditor, who shall serve as a nonvoting member of the committee.

(4) The engineering services selection committee created in the Finance and Administration Cabinet shall consist of the following six (6) members selected in the manner specified in each paragraph:

(a) Two (2) engineers. The secretary of the Finance and Administration Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select the two (2) engineers from a pool, appointed by the secretary, of six (6) engineers, who are merit employees of the Finance and Administration Cabinet;

(b) Two (2) merit employees of the user agency appointed by the head of that agency to serve for the duration of the selection committee's participation in the project for which they were appointed by the user agency;

(c) An individual. The Kentucky Society of Professional Engineers and the Consulting Engineers Council of Kentucky shall together nominate nine (9) individuals, and the Governor shall appoint three (3) of these individuals to serve in the pool from which the secretary of the Finance and Administration Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select one (1) individual to serve on the committee; and

(d) A merit employee of the Auditor of Public Accounts, appointed by the Auditor, who shall serve as a nonvoting member of the committee.

(5) Notwithstanding the provisions of subsections (3) and (4) of this section, when the Finance and Administration Cabinet procures for one (1) project architectural services for an estimated fee of fifty thousand dollars ($50,000) or more and engineering services for an estimated fee of one hundred thousand dollars ($100,000) or more, then:

(a) The secretary of the Finance and Administration Cabinet shall appoint one (1) of the cabinet engineers serving on the engineering services selection committee to serve as a nonvoting member of the architectural services selection committee; and

(b) He shall appoint one (1) of the cabinet architects serving on the architectural services selection committee to serve as a nonvoting member of the engineering services selection committee.

(6)[~~(5)~~] The engineering ***and related*** services selection committee created in the Transportation Cabinet shall consist of the following six (6) members selected in the manner specified in each paragraph:

(a) Two (2) engineers. The secretary of the Transportation Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select the two (2) engineers from a pool, appointed by the secretary, of six (6) engineers, who are merit employees of the Transportation Cabinet;

(b) Two (2) engineers who are merit employees of the user division appointed by the head of that division to serve for the duration of the selection committee's participation in the project for which they were appointed by the user agency***. However, if two (2) user divisions have approximately equal responsibilities or separate responsibilities for the project, each user division head shall appoint one (1) member to the selection committee***;

(c) An individual. The Kentucky Society of Professional Engineers and the Consulting Engineers Council of Kentucky shall together nominate nine (9) individuals, and the Governor shall appoint three (3) of these individuals to serve in the pool from which the secretary of the Transportation Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select one (1) individual to serve on the committee; and

(d) A merit employee of the Auditor of Public Accounts, appointed by the Auditor, who shall serve as a nonvoting member of the committee.

(7)[~~(6)~~] (a) All selection committee members shall have experience which qualifies them to serve on the committee.

(b) The same appointment procedures set out in this section apply to any user agency or user division listed in subsection (3), (4), or ***(6)***[~~(5)~~] of this section that does not operate under a merit system.

(c) Any individual appointed to serve in a pool from which selection committee members are drawn shall serve in the pool for an initial one (1) year term and may be reappointed ***for additional successive one (1) year terms*** [~~to succeed himself for another one (1) year term~~]. He shall serve until his successor is appointed and qualified. [~~At the conclusion of his service in a pool, he shall be prohibited from serving in a pool until a year has elapsed.~~] A successor or a replacement, in the case of a vacancy in the pool, shall be appointed in the same manner as the initial appointee.

(d) Any individual appointed by the Auditor of Public Accounts to serve on selection committees shall serve an initial one (1) year term and may be reappointed ***for additional successive one (1) year terms*** [~~to succeed himself for another one (1) year term~~]. He shall serve until his successor is appointed and qualified. [~~At the conclusion of his service, he shall be prohibited from serving on a selection committee until a year has elapsed.~~] A successor or a replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.

(e) The selection committee members appointed by the head of a user agency or user division ***or pursuant to subsection (5) of this section*** shall serve on a project-by-project basis. These members shall participate only in committee action related to the project for which they were appointed. A replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.

Section 3. KRS 45A.825 is amended to read as follows:

(1) ***(a) A firm shall not be considered for providing architectural or engineering services to the Finance and Administration Cabinet or engineering or related services to the Transportation Cabinet unless the relevant procuring agency has prequalified the firm prior to advertised notice of a request for proposals to which that firm intends to respond.***

(b) A firm's prequalification shall remain in effect for twelve (12) months from the date of prequalification [~~A firm interested in providing architectural or engineering services to the Commonwealth shall, each Commonwealth fiscal year, submit to the relevant procuring agency a statement of general qualifications on a form devised by that agency. A firm may submit a completed form at the same time or at any time before the firm responds to a request for proposals. A firm which fails to submit a completed form in a timely fashion shall be barred from the procurement process. A statement of general qualifications shall remain in effect until the end of the fiscal year during which the statement is submitted~~].

(2) The procuring agency shall consult with the user agency or user division before arriving at a request for proposals. The request for proposals shall ***include as an evaluation factor the location of the office where the work tasks are to be performed and shall*** indicate the relative weight of evaluation factors. Through advertisement, and any other available means, the procuring agency shall provide notice of a request for proposals and notice of the materials that the procuring agency will provide to a firm to assist that firm in responding to a request for proposals. Those materials shall include, but not be limited to, the request for proposals and the project evaluation sheet to be used by the relevant selection committee. The advertisement shall also set a deadline for filing responses to a request for proposals with the procuring agency.

(3) A firm shall respond to a request for proposals by submitting, before the deadline, a one (1) page letter of interest as well as a completed form, devised by the procuring agency, which states the firm's experience and its qualifications for the project as described in the request for proposals. A firm which fails to meet the deadline shall be barred from the procurement process.

(4) The employees of a procuring agency and the members of the selection committee shall keep all responses to a request for proposals confidential until the procuring agency has awarded a contract.

(5) The secretary of the procuring agency shall designate a procuring agency employee to determine which firms have ***prequalified pursuant to subsection (1) of this section and have*** filed, in a timely fashion, [~~statements of general qualifications and~~] responses to a request for proposals. He shall create a list of the firms which have done so and certify the list.

(6) The procuring agency shall organize the selection committee's first meeting. At that meeting, ***each selection committee member shall sign a statement of confidentiality. Also, at that meeting,*** the selection committee shall:

(a) Elect from among the voting members of the committee a chairman and a vice chairman who shall hold their positions for the duration of the selection committee's participation in the project;

(b) Be provided with:

1. The certified list created pursuant to subsection (5) of this section;

[~~2. The current general qualification statements of these firms;~~]

2.[~~3.~~] The firms' responses to the request for proposals;

3.[~~4.~~] The request for proposals;

4.[~~5.~~]The advertised notice of request for proposals; and

5.[~~6.~~] The project evaluation sheets; and

(c) Discuss the future conduct of its affairs.

(7) (a) When the Department of Transportation procures any engineering ***or related*** services, or when the Finance and Administration Cabinet procures architectural services for an estimated fee of less than fifty thousand dollars ($50,000) or engineering services for an estimated fee of less than one hundred thousand dollars ($100,000), this subsection and subsection (9) of this section shall govern the procurement process.

(b) The selection committee shall meet in executive session to:

1. Evaluate the materials with which it has been provided;

2. Select the three (3) most qualified firms and rank them in order of preference, based upon the weighted evaluation factors established in the request for proposals; and

3. Notify the procuring agency of the ranking.

(c) The procuring agency shall send a letter to each firm which responded to the request for proposals, informing the firm of:

1. The three (3) finalists;

2. Their ranking; and

3. The rest of the procedure that will be followed in the awarding of the contract.

(d) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.

(8) (a) When the Finance and Administration Cabinet is procuring architectural services for an estimated fee of fifty thousand dollars ($50,000) or more or engineering services for an estimated fee of one hundred thousand dollars ($100,000) or more, this subsection and subsection (9) of this section shall govern the procurement process.

(b) The selection committee shall meet in executive session to:

1. Evaluate the materials with which it has been provided;

2. Select, but not rank, the three (3) most qualified firms, based upon the weighted evaluation factors established in the request for proposals; and

3. Notify the procuring agency of the three (3) finalists.

(c) The procuring agency shall send a letter to each firm which responded to the request for proposals, informing the firm of:

1. The three (3) finalists; and

2. The rest of the procedure that will be followed in the awarding of the contract.

(d) The selection committee shall interview the three (3) finalists, preferably on the same day. The finalists shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the finalist and members of the selection committee. Members of the selection committee shall keep confidential the substance of an interview until the procuring agency has awarded a contract.

(e) The selection committee shall meet in executive session to:

1. Rank the three (3) finalists based upon the weighted evaluation factors established in the request for proposals; and

2. Forward the ranking to the procuring agency.

(f) The procuring agency shall send a letter to each finalist, informing the finalist of:

1. His ranking; and

2. The rest of the procedure that will be followed in the awarding of the contract.

(g) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.

(9) The secretary of the procuring agency shall designate a procuring agency employee as the procuring officer in charge of negotiating a contract with the top-ranked firm, as determined by the selection committee, at compensation which the procuring officer determines in writing to be fair and reasonable to the Commonwealth. In making this decision, the employee shall take into account the estimated value of the services to be rendered, and the scope, complexity, and professional nature thereof. Should the procuring officer be unable to negotiate a satisfactory contract with the top-ranked firm, at a price that he considers fair and reasonable to the Commonwealth, he shall formally terminate negotiations with the firm. The procuring officer shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, the purchasing officer shall formally terminate negotiations. The purchasing officer shall then undertake negotiations with the third-ranked firm. Should the purchasing officer be unable to negotiate a satisfactory contract with any of the selected firms, ***he shall formally terminate negotiations, and the procurement procedure shall start again from the beginning pursuant to Section 2 of this Act*** [~~the selection committee shall select additional firms in order of their competence and qualification, and the purchasing officer shall continue negotiations in accordance with this section until an agreement is reached~~].

(10) Once a procuring officer has negotiated a contract, the procuring agency shall send a letter to the other finalists, informing them of:

(a) Which firm has successfully negotiated a contract; and

(b) The rest of the procedure that will be followed in the awarding of the contract.

(11) Notwithstanding the provisions of KRS 45A.045, when the Transportation Cabinet is the procuring agency, the negotiated contract shall take effect without the approval of the secretary of the Finance and Administration Cabinet.

Section 4. KRS 45A.830 is amended to read as follows:

(1) After the procuring officer has negotiated an architectural or engineering services contract ***for the Finance and Administration Cabinet or an engineering or related services contract for the Transportation Cabinet***, but before the contract is submitted to the Personal Service Contract Review Subcommittee, the procuring officer shall supply a copy of the proposed contract to each member of the selection committee involved in the procurement process.

(2) The secretary of the procuring agency, the procuring officer, and each ***voting*** member of the selection committee shall sign separate certificates, devised by the procuring agency, which shall provide the signatory with the option of certifying that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a violation of this chapter which has arisen in the procurement process. The representative of the Auditor of Public Accounts shall ***prepare and file a report with the Personal Service Contract Review Subcommittee certifying*** ~~[also sign a certificate stating]~~ that the applicable ***procedural*** provisions of subsections (4), (6), (7), and (8) of KRS 45A.825 were***, or were not,*** met.

(3) The procuring agency shall file with the Personal Service Contract Review Subcommittee:

(a) The certificates; and

(b) The selection committee's ranking of firms.

Section 5. KRS 45A.835 is amended to read as follows:

(1) (a) A person shall not serve in a pool from which selection committee members are drawn or on a selection committee if that person, his spouse, either of his parents, ***any of his siblings,*** or any of his children is employed by ***a*** ~~[an architectural or engineering]~~ firm ***which has been prequalified by the procuring agency relevant to the selection committee pursuant to subsection (1) of Section 3 of this Act*** or ***owns one percent (1%) or more of a*** ~~[has a financial interest in an architectural or engineering]~~ firm ***which has been prequalified by the procuring agency relevant to the selection committee pursuant to subsection (1) of Section 3 of this Act***.

(b) If, in the course of an individual's service, he, his spouse, either of his parents, ***any of his siblings,*** or any of his children becomes employed by ***a*** ~~[an architectural or engineering]~~ firm ***which has been prequalified by the procuring agency relevant to the selection committee pursuant to subsection (1) of Section 3 of this Act*** or ***owns one percent (1%) or more of a*** ~~[establishes a financial interest in an architectural or engineering]~~ firm ***which has been prequalified by the procuring agency relevant to the selection committee pursuant to subsection (1) of Section 3 of this Act***, then his service shall end.

(2) For a period of one (1) year after a person ends his service on a selection committee, the Commonwealth shall not consider a firm for an architectural***,*** ~~[or]~~ engineering***, or engineering related*** services contract if that person, his spouse, either of his parents, ***any of his siblings*** or any of his children is employed by a firm ***which was awarded a contract by a selection committee on which he served*** or ***owns one percent (1%) or more of*** ~~[has a financial interest in]~~ a firm which was awarded a contract by a selection committee on which he served.

SECTION 6. A NEW SECTION OF KRS 45A.800 TO 45A.835 IS CREATED TO READ AS FOLLOWS:

If a selection committee vote results in a tie between two (2) firms, one (1) of which will perform more of the work tasks in Kentucky than the other, then the former firm shall be ranked one (1) place ahead of the latter.

SECTION 7. A NEW SECTION OF KRS CHAPTER 45A.800 TO 45A.835 IS CREATED TO READ AS FOLLOWS:

By January 1, 1995:

(1) The Finance and Administration Cabinet shall promulgate administrative regulations to implement its procurement of architectural and engineering services pursuant to KRS 45A.800 to 45A.835; and

(2) The Transportation Cabinet shall promulgate administrative regulations to implement its procurement of engineering services pursuant to KRS 45A.800 to 45A.835.

Section 8. KRS 45A.050 is amended to read as follows:

(1) Except as provided in KRS ***45A.800 to 45A.835 and KRS*** Chapters 175, 176, 177, and 180, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction now vested in or exercised by any state agency under the several statutes relating thereto, are hereby transferred to the secretary of the Finance and Administration Cabinet as provided in this code, subject to the provisions of subsection (2) of this section.

(2) Unless otherwise ordered by the secretary of the Finance and Administration Cabinet, the acquisition of the following shall not be required through the Finance and Administration Cabinet:

  (a) Works of art for museum and public display;

  (b) Published books, maps, periodicals, and technical pamphlets; and

  (c) Services of visiting speakers, professors, and performing artists.

(3) The Finance and Administration Cabinet shall include in all state agency price contracts for the purchase of materials or supplies a provision that, as approved by the secretary of the Finance and Administration Cabinet, any ~~political~~ subdivision, including cities of all classes, counties, school districts, or special districts, may participate in such contracts to the same extent as the Commonwealth. Any political subdivision may purchase materials and supplies pursuant to a contract for such supplies and materials entered into by the Finance and Administration Cabinet for the Commonwealth, including those contracts negotiated by the cabinet with vendors who maintain a general service administration price agreement as provided in subsection (7) of KRS 45A.045. Political subdivisions of the Commonwealth must comply with other provisions of the Kentucky Revised Statutes which require purchase by competitive bidding, before participating in the contract, unless the state contract has been let by competitive bidding, or the contract was negotiated as provided in subsection (7) of KRS 45A.045.

(4) The Finance and Administration Cabinet shall inform the Department of Local Government, which shall then inform the appropriate purchasing agent of each political subdivision, interested in participating under this section, of all state agency contracts in effect between the Commonwealth and vendors.

(5) The secretary of the Finance and Administration Cabinet shall promulgate the rules and regulations necessary for the implementation of this section and necessary to provide that the Commonwealth be reimbursed for any additional expenses incurred by the Commonwealth in allowing political subdivisions to participate in contracts with vendors.

(6) The Finance and Administration Cabinet shall comply with all provisions relating to the methods of purchasing in the Kentucky Revised Statutes. This section is not intended to repeal or otherwise affect any provision of the Kentucky Revised Statutes regarding purchasing methods of the Finance and Administration Cabinet.

Motions, Petitions and Communications (Continued)

Representative Bruce moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Bruce moved that he be recorded as voting "yea" on **HB 18**. Agreed.

Representative Collins moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Collins moved that his vote be changed from "abstain" to "yea" on **HB 170**. Agreed.

Representative Hancock moved the adoption of the following **Legislative Citation No. 28**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in loving memory of Thomas Greenwell. The House of Representatives joins Speaker Joe Clarke in expressing its deepest sympathy to The Greenwell Family.

The following members filed requests to have their names added as co-sponsors of Bills: **HB 10**, Representative Maricle; **HB 254**, Representative Treesh; **HB 280**, Representative Bentley; **HB 311**, Representative Riggs; **HB 312**, Representative Coleman, Gevеden, Graham; **HB 355**, Representative Allen, Ford, Morris; **HB 359**, Representative Simpson, R. Smith.

Announcements

The Clerk announced the following meetings:

Appropriations and Revenue, 10 minutes upon adjournment

Natural Resources and Environment, 2:00 p.m., January 31, 1994, Room 149

Tourism Development and Energy, 10:00 a.m., February 2, 1994, Room 129

Higher Education, upon adjournment, Room 149

Adjournment

Representative Stumbo moved that the House adjourn until 9:00 a.m., Friday, January 28, 1994.

On the roll call the vote was **Yeas 79**--Adams, Adkins, Altman, Arnold, Ballard, Barrows, Bondurant, Bowling, Brown, Bruce, Bryant, Buis, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Geveden, Graham, Gray, Hampton, Hatcher, Jensen, Johnson, Keith, Kerr, Lear, Lee, Lindsay, Little, Lyne, Maricle, Mason, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rasche, Reinhardt, Richards, Ridley, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, Stacy, Stengel, Stumbo, Todd, Treesh, Turner, Wayne, Worthington, Yates, Zimmerman. **Nays 3**--Heleringer, LeMaster, Lile.

The motion to adjourn was adopted.

FRIDAY, JANUARY 28, 1994

SIXTEENTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend K. L. Moore, First Baptist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Deskins, Little, Marzian, Riggs and R. Smith.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of January 27, 1994 be dispensed with and the same approved. Agreed.

Introduction of Bills and Resolutions

HB 362, by Representatives Adkins, Collins, Maggard, Bentley, Donnermeyer, Stumbo and Cyrus: AN ACT relating to school athletics.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Banking and Insurance: **HB 361**

Business Organizations and Professions: **HB 352**

Education: **HB 356**

Elections and Constitutional Amendments: **SB 1**

Health and Welfare: **HB 353, HB 354**

Judiciary: **HB 358, HB 359**

Labor and Industry: **HB 360**

State Government: **HCR 24, HCR 25, HJR 26, HB 351, HB 355, HB 357**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Agriculture and Small Business: **HB 6, HB 347, HB 348**

Report of Committees

The Committee on Appropriations and Revenue reported **HB 13,** with Committee Substitute attached thereto, **HB 31, HB 85,** with Committee Substitute attached thereto, **HB 100, HB 104, HB 113** and **HB 157** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 13, AN ACT relating to revenue and taxation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 138.450 is amended to read as follows:

As used in KRS 138.455 to 138.470, unless the context requires otherwise:

(1) "Dealer" means any person engaged in the sale of motor vehicles at retail;

(2) "Motor vehicle" means any vehicle that is propelled by other than muscular power and that is used for transportation of persons or property over the public highways of the state, except road rollers, mopeds, vehicles that travel exclusively on rails, and vehicles propelled by electric power obtained from overhead wires;

(3) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;

(4) Except as provided in subsection (5) of this section, "retail price" shall be determined as follows:

(a) For new motor vehicles "retail price" shall be ninety percent (90%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges. "Retail price" shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate a physically handicapped operator or passenger;

(b) For used motor vehicles whose values appear in the automotive reference manual prescribed by the Revenue Cabinet, "retail price" shall be the value given in such reference manual;

(c) For the older used motor vehicles whose values no longer appear in the automotive reference manual, "retail price" shall be determined as follows:

Number of Years Removed From Manual	Retail Price
1	75% of value of same make vehicle last appearing in manual
2	50% of value of same make vehicle last appearing in manual
3	25% of value of same make vehicle last appearing in manual
All Others	10% of value of same make vehicle last appearing in manual;

(d) In the case of used motor vehicles previously registered in this state, which are sold in this state, a trade-in allowance equal to the "retail price" of the vehicle taken in trade shall be deducted in computing the "retail price" of the vehicle sold.

(e) If a holder of a U-Drive-It permit transfers a vehicle which he has registered as a U-Drive-It within one hundred eighty (180) days of ***the*** [~~such~~] registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a U-Drive-It, then the "retail price" of ***the*** [~~such~~] vehicle shall be the same as the retail price determined in subsection (4)(b) or (c) of this section computed as of the date on which the vehicle is transferred except that the provisions of subsection (d) of this section shall not apply.

(5) "Wrecked motor vehicle" means any motor vehicle damaged by any cause except wear and tear or rust, including but not limited to damage caused by collision, fire, flood, wind, or vandalism. Any [~~other~~] provision of subsection (4) notwithstanding, the retail price of a wrecked motor vehicle shall be the retail price as determined without reference to this subsection minus the average of the repair estimates submitted to the county clerk. The owner of the wrecked motor vehicle shall obtain a minimum of two (2) repair estimates from disinterested persons regularly engaged in the repair of motor vehicles and submit them to the county clerk. ***The estimates of repair and the wrecked condition of the vehicle shall be physically verified by a certified inspector as provided in KRS 186A.115. The fees imposed by KRS 186A.115 shall apply to verification services provided by a certified inspector.***

Section 2. KRS 138.470 is amended to read as follows:

There is expressly exempted from the tax imposed by KRS 138.460:

(1) Motor vehicles sold to the United States, or to the Commonwealth of Kentucky or any of its political subdivisions;

(2) Motor vehicles sold to institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation;

(3) Motor vehicles which have been previously registered and titled in any state or by the federal government when being sold or transferred to licensed motor vehicle dealers for resale. Such motor vehicles shall not be leased, rented, or loaned to any person and ***shall*** [~~must~~] be held for resale only;

(4) Motor vehicles sold by or transferred from dealers registered and licensed in compliance with the provisions of KRS

186.070 and KRS 190.010 to 190.080 to nonresident members of the Armed Forces on duty in this Commonwealth under orders from the United States government;

(5) Commercial motor vehicles, excluding passenger vehicles having a seating capacity for nine (9) persons or less, owned by nonresident owners and used primarily in interstate commerce and based in a state other than Kentucky which are required to be registered in Kentucky by reason of operational requirements or fleet proration agreements and are registered pursuant to KRS 186.145;

(6) Motor vehicles previously registered in Kentucky, transferred between husband and wife***,*** [~~or~~] parent and child***, stepparent and stepchild, or grandparent and grandchild***;

(7) Motor vehicles transferred when a business changes its name and no other transaction has taken place or an individual changes his or her name;

(8) Motor vehicles transferred to a corporation from a proprietorship, or from a corporation to a proprietorship, within six (6) months from the time that the business is incorporated or dissolved;

(9) Motor vehicles transferred by will, court order, or under the statutes covering descent and distribution of property, ***if*** [~~provided that~~] the vehicles were previously registered in Kentucky;

(10) Motor vehicles transferred between a subsidiary corporation and its parent corporation ***if*** [~~when~~] there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;

(11) The interest of a partner in a motor vehicle when other interests are transferred to him;

(12) Motor vehicles repossessed by a secured party who has a security interest in effect at the time of repossession and a repossession affidavit as required by KRS 186.045(4). The repossessor ***shall*** [~~must~~] hold the vehicle for resale only and not for personal use, unless he has previously paid the motor vehicle usage tax on ***the*** [~~said~~] vehicle; ***and***

(13) Motor vehicles transferred to an insurance company to settle a claim. ***These*** [~~Such~~] vehicles shall be junked or held for resale only[~~; and~~

~~(14) Motor vehicles previously registered in Kentucky, transferred between grandparent and grandchild~~].

The Committee Substitute to **HB 13** is as follows:

HB 13, AN ACT relating to revenue and taxation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 138.450 is amended to read as follows:

As used in KRS 138.455 to 138.470, unless the context requires otherwise:

(1) ***"Current model year" means a motor vehicle of either the model year corresponding to the current calendar year or of the succeeding calendar year if, the same model and make is being offered for sale by local dealers;***

(2) "Dealer" means any person engaged in the sale of motor vehicles at retail;

(3)[~~(2)~~] ***"Dealer demonstrator" means a new motor vehicle or a previous model year motor vehicle with an odometer reading of least one thousand (1,000) miles that has been used either by representatives of the manufacturer or by a licensed Kentucky dealer, franchised to sell the particular model and make, for demonstration;***

(4) "Motor vehicle" means any vehicle that is propelled by other than muscular power and that is used for transportation of persons or property over the public highways of the state, except road rollers, mopeds, vehicles that travel exclusively on rails, and vehicles propelled by electric power obtained from overhead wires;

(5)[~~(3)~~] "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;

(6) "New motor vehicle" means a motor vehicle of the current model year which has not previously been registered in any state or country;

(7) "Previous model year motor vehicle" means a motor vehicle not previously registered in any state or country which is neither of the current model year nor a dealer demonstrator;

(8) "Used motor vehicle" means a motor vehicle which has been previously registered in any state or country;

(9)[~~(4)~~] Except as provided in subsection ***(10)***[~~(5)~~] of this section, "retail price" shall be determined as follows:

(a) For new motor vehicles***,*** "retail price" shall be ninety percent (90%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges. "Retail price" shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate a physically handicapped operator or passenger;

(b) For used motor vehicles whose values appear in the automotive reference manual prescribed by the Revenue Cabinet, "retail price" shall be the value given in such reference manual;

(c) For the older used motor vehicles whose values no longer appear in the automotive reference manual, "retail price" shall be determined as follows:

Number of Years Removed From Manual	Retail Price
1	75% of value of same make vehicle last appearing in manual
2	50% of value of same make vehicle last appearing in manual
3	25% of value of same make vehicle last appearing in manual
All Others	10% of value of same make vehicle last appearing in manual;

(d) In the case of used motor vehicles previously registered in this state, which are sold in this state, a trade-in allowance equal to the "retail price" of the vehicle taken in trade shall be deducted in computing the "retail price" of the vehicle sold.

(e) If a holder of a U-Drive-It permit transfers a vehicle which he has registered as a U-Drive-It within one hundred eighty (180) days of ***the*** ~~[such]~~ registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a U-Drive-It, then the "retail price" of ***the*** ~~[such]~~ vehicle shall be the same as the retail price determined in subsection ***(9)***~~[(4)]~~(b) or (c) of this section computed as of the date on which the vehicle is transferred except that the provisions of ***paragraph (d) of this*** subsection ~~[(d) of this section]~~ shall not apply.

(f) For dealer demonstrator motor vehicles and previous model year vehicles, "retail price" shall be eighty-five percent (85%) of the retail price as determined in paragraph (a) of this subsection or the actual sales price, exclusive of any trade-in allowance, whichever is greater. In no case shall the retail price determined under this paragraph exceed the retail price determined in paragraph (a) of this subsection or be less than the retail price determined under paragraph (b) of this subsection.

(10)~~[(5)]~~ "Wrecked motor vehicle" means any motor vehicle damaged by any cause except wear and tear or rust, including but not limited to damage caused by collision, fire, flood, wind, or vandalism. ~~[Any other provision of subsection (4) notwithstanding,]~~ The retail price of a wrecked motor vehicle shall be the retail price as determined ***under*** ~~[without reference to this]~~ subsection ***(9) of this section*** minus the average of the repair estimates submitted to the county clerk. The owner of the wrecked motor vehicle shall obtain a minimum of two (2) repair estimates from disinterested persons regularly engaged in the repair of motor vehicles and submit them to the county clerk. ***The estimates of repair and the wrecked condition of the vehicle shall be physically verified by a certified inspector as provided in KRS 186A.115. The fees imposed by KRS 186A.115 shall apply to verification services provided by a certified inspector.***

Section 2. KRS 138.470 is amended to read as follows:

There is expressly exempted from the tax imposed by KRS 138.460:

(1) Motor vehicles sold to the United States, or to the Commonwealth of Kentucky or any of its political subdivisions;

(2) Motor vehicles sold to institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation;

(3) Motor vehicles which have been previously registered and titled in any state or by the federal government when being sold or transferred to licensed motor vehicle dealers for resale. Such motor vehicles shall not be leased, rented, or loaned to any person and ***shall*** ~~[must]~~ be held for resale only;

(4) Motor vehicles sold by or transferred from dealers registered and licensed in compliance with the provisions of KRS 186.070 and KRS 190.010 to 190.080 to nonresident members of the Armed Forces on duty in this Commonwealth under orders from the United States government;

(5) Commercial motor vehicles, excluding passenger vehicles having a seating capacity for nine (9) persons or less, owned

by nonresident owners and used primarily in interstate commerce and based in a state other than Kentucky which are required to be registered in Kentucky by reason of operational requirements or fleet proration agreements and are registered pursuant to KRS 186.145;

(6) Motor vehicles previously registered in Kentucky, transferred between husband and wife***,*** [~~or~~] parent and child***, stepparent and stepchild, or grandparent and grandchild***;

(7) Motor vehicles transferred when a business changes its name and no other transaction has taken place or an individual changes his or her name;

(8) Motor vehicles transferred to a corporation from a proprietorship, or from a corporation to a proprietorship, within six (6) months from the time that the business is incorporated or dissolved;

(9) Motor vehicles transferred by will, court order, or under the statutes covering descent and distribution of property, ***if*** [~~provided that~~] the vehicles were previously registered in Kentucky;

(10) Motor vehicles transferred between a subsidiary corporation and its parent corporation ***if*** [~~when~~] there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;

(11) The interest of a partner in a motor vehicle when other interests are transferred to him;

(12) Motor vehicles repossessed by a secured party who has a security interest in effect at the time of repossession and a repossession affidavit as required by KRS 186.045(4). The repossessor ***shall*** [~~must~~] hold the vehicle for resale only and not for personal use, unless he has previously paid the motor vehicle usage tax on ***the*** [~~said~~] vehicle; ***and***

(13) Motor vehicles transferred to an insurance company to settle a claim. ***These*** [~~Such~~] vehicles shall be junked or held for resale only[~~; and~~

~~(14) Motor vehicles previously registered in Kentucky, transferred between grandparent and grandchild~~].

Section 3. KRS 138.460 is amended to read as follows:

(1) On and after July 1, 1990, a tax levied upon its retail price at the rate of six percent (6%) shall be paid on the use in this state of every motor vehicle, except those exempted by KRS 138.470, at the time and in the manner provided in this section. In the case of trucks of gross weight in excess of ten thousand (10,000) pounds, the tax shall be levied upon ninety percent (90%) of the retail price of the vehicle.

(2) The tax shall be collected by the county clerk or other officer with whom the vehicle is required to be registered:

(a) When he collects the registration fee for registering and licensing a motor vehicle the first time it is offered for registration in this state;

(b) Or upon the transfer of ownership of any motor vehicle previously registered in this state.

(3) The tax collected by the county clerk under this section shall be reported and remitted to the Revenue Cabinet on forms provided by the cabinet and on [~~such~~] forms as the cabinet may prescribe. The county clerk shall for his services in collecting the tax be entitled to retain an amount equal to three percent (3%) of the tax collected and accounted for.

(4) No county clerk or other officer shall register or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is then being offered for registration for the first time, or transfer the ownership of any motor vehicle previously registered in this state, unless the owner or his agent pays the tax levied under this section in addition to the transfer, registration, and license fees.

(5) When a resident of this state offers a motor vehicle for registration for the first time in this state which was registered in another state that levied a tax substantially identical to the tax levied under this section, such person shall be entitled to receive a credit against the tax imposed by this section equal to the amount of tax paid to the other state. No credit shall be given under this subsection for taxes paid in another state if that state does not grant similar credit for substantially identical taxes paid in this state.

(6) No county clerk or other officer shall register or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is then being offered for registration for the first time, unless the seller or his agent delivers to the county clerk or other officer a certified or photostat copy of the manufacturer's price label for passenger cars or a certified or photostat copy of the itemized billing to the customer in the case of all other motor vehicles; and the clerk shall attach the certified or photostat copy to the copy of the certificate of registration and ownership mailed to the cabinet.

(7) Notwithstanding the provisions of KRS 138.450***(9) and (10)***[~~(4)~~], in no case shall the tax be less than five dollars ($5) upon first registration of or any transfer of ownership of a motor vehicle in this state, except where ***the*** [~~such~~] vehicle is exempt from tax under KRS 138.470.

(8) Where a motor vehicle is sold by a dealer in this state and the purchaser returns the vehicle for any reason to the same dealer within sixty (60) days for a vehicle replacement or a refund of the purchase price, the purchaser shall be entitled to a refund of the amount of usage tax received by the Revenue Cabinet as a result of the registration of the returned vehicle. In the case of a new motor vehicle, the registration of the returned vehicle shall be canceled and the vehicle shall be considered to have not been previously registered in Kentucky when resold by the dealer.

(9) When a manufacturer refunds the retail purchase price or replaces a new motor vehicle for the original purchaser within

ninety (90) days because of malfunction or defect, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the Revenue Cabinet as a result of the first registration. No person shall be entitled to a refund unless he shall have filed with the Revenue Cabinet a report from the manufacturer identifying the vehicle that was replaced and stating the date of replacement.

(10) Notwithstanding the time limitations of subsections (8) and (9) of this section, when a dealer or manufacturer refunds the retail purchase price or replaces a motor vehicle for the purchaser as a result of formal arbitration or litigation, or, in the case of a manufacturer, because ordered to do so by a dispute resolution system established under KRS 367.865 or 16 C.F.R. 703, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the Revenue Cabinet as a result of the registration. No person shall be entitled to a refund unless he shall have filed with the Revenue Cabinet a report from the dealer or manufacturer identifying the vehicle that was replaced.

Section 4. KRS 139.050 is amended to read as follows:

(1) "Gross receipts" means the total amount of the sale, lease or rental price, as the case may be, of "retail sales," or "sales at retail," valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

- (a) The cost of the property sold. However, in accordance with ~~[such]~~ rules and ***administrative*** regulations as the cabinet may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If ~~[such]~~ a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property;
- (b) The cost of the materials used, labor or service cost, interest paid, losses or any other expense;
- (c) The cost of transportation of the property prior to its sale to the purchaser.

(2) The total amount of the sale or lease or rental price includes all of the following:

- (a) Any services that are a part of the sale;
- (b) All receipts, cash, credits and property of any kind;
- (c) Any amount for which credit is allowed by the seller to the purchaser.

(3) "Gross receipts" do not include any of the following:

- (a) Cash discounts allowed and taken on sales (provided that premium or trading stamps shall not be considered as cash discounts);
- (b) Sale price of property returned by customers when the full sale price is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned;
- (c) The price received for labor or services used in installing or applying the property sold;
- (d) The amount of any tax (not including, however, any manufacturer's excise or import duty) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer;
- (e) Sales of gasoline and special fuels subjected to tax under KRS Chapter 138;
- (f) The sales price of any motor vehicle as defined by KRS 138.450~~[(2)]~~ which is registered for use on the public highways and upon which any applicable tax levied under KRS 138.460 has been paid; or, the sales price of vehicles defined under KRS 189.010(11) and 189.010(16);
- (g) Sales of distilled spirits, wine and malt beverages not consumed on the premises licensed for their sale under the provisions of KRS Chapter 243.

(4) For purposes of the sales tax, if the retailer establishes to the satisfaction of the cabinet that the sales tax has been added to the total amount of the sale price and has not been absorbed by the retailer, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

Section 5. KRS 224.50-822 is amended to read as follows:

(1) Any person making retail sales of new motor vehicle tires within the Commonwealth, except as provided in KRS 224.50-838, shall pay a one dollar ($1) fee on each new motor vehicle tire sold. For the purposes of KRS 224.50-820 to 224.50-846, a new tire shall mean a tire which has never been placed on a motor vehicle wheel rim and shall not include tires placed on a motor vehicle prior to its original retail sale. The fees shall be paid and reported to the Revenue Cabinet on or before the twentieth day of each month for the preceding month by each person making sales of new motor vehicle tires. The Revenue Cabinet shall transfer monthly the fees collected to the Treasury of the Commonwealth which shall deposit the money into the Waste Tire Trust Fund.

(2) The report shall be filed on forms and contain information as the Revenue Cabinet may require. Payment of the fees levied by subsection (1) of this section shall accompany the required reports.

(3) For proper administration and compliance, the provisions of KRS Chapter 139 shall apply to the fee levied by KRS 224.50-820 to 224.50-846. All assessment and collection powers generally conveyed to the Revenue Cabinet by the Kentucky Revised Statutes for the assessment and collection of taxes shall apply to the assessment and collection of the fees levied by KRS 224.50-820 to 224.50-846.

(4) The term "motor vehicle" as used in this section shall mean "motor vehicle" as defined in KRS 138.450[~~(2)~~].

(5) The Revenue Cabinet shall be reimbursed for its actual operational expenses incurred in administering and enforcing the fees levied pursuant to this section. The reimbursement shall not exceed one hundred thousand dollars ($100,000) per year.

(6) The fee shall not be paid on the retail sale of recapped tires.

HB 31, AN ACT relating to property taxes.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 132.454 is amended to read as follows:

[~~(1)~~] When land which is valued and taxed as agricultural or horticultural land under paragraph (c) of subsection (2) of KRS 132.450 is converted to any other use ***after January 1 of the tax year***, that portion of the land upon which the use is changed shall be subject to ***tax for the succeeding***[~~deferred taxes for the current~~] tax year ***at its fair cash value***[~~, and the taxes shall become a lien on the property~~]. The owner of the property at the time the land use change is initiated shall, within ninety (90) days, report the change to the property valuation administrator. The owner shall also provide to the property valuation administrator information concerning the most recent sale or lease of the property, copies of any appraisal or feasibility reports made, and any other information useful in determining the fair cash value of the property.

[~~(2) When land becomes subject to the deferred taxes provided for in subsection (1) of this section, the property valuation administrator shall determine the fair cash value of the property for the current year. The notification and appeal provisions of KRS Chapters 132 and 133 relating to the assessment of omitted real property shall be followed. After the assessment is finally determined the property valuation administrator or other assessing official shall certify the difference in value subject to deferred tax for each of the years for which deferred taxes are due to the county clerk or other person responsible for preparation of tax bills who shall prepare a supplemental tax bill for each year computed at the rates applicable for the year for delivery to the sheriff or tax collector for collection. The bills shall be due and payable within thirty (30) days after the date of issue. If unpaid within thirty (30) days, a penalty of ten percent (10%) shall be added to these bills.~~

~~(3) The provisions of KRS Chapters 134 and 135 relating to the collection of delinquent taxes on real property shall apply to collection of the deferred taxes provided herein.~~

~~(4) If the owner fails to report the change in use to the property valuation administrator, and if the property valuation administrator otherwise fails to initiate the deferred assessment procedure, the deferred tax liability shall be subject to assessment as "omitted property."~~]

Section 2. The provisions of this Act shall be effective for tax years beginning on or after January 1, 1994.

HB 85, AN ACT relating to state depositories.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 41.070 is amended to read as follows:

(1) Unless otherwise expressly provided by law, no receipts from any source of state money or money for which the state is responsible shall be held, used or deposited in any personal or special bank account, temporarily or otherwise, by any agent or employee of any budget unit, to meet expenditures or for any other purpose. All receipts of any character of any budget unit, all revenue collected for the state, and all public money and dues to the state shall be deposited in state depositories in the most prompt and cost-efficient manner available***. However*** [~~, except that~~] in the case of state departments or agencies located outside Frankfort, and all state institutions, the Finance and Administration Cabinet may permit temporary deposits to be made to the accounts maintained by the agency, department, or institution in a bank which has been designated as a depository for state funds for a period not to exceed thirty (30) days, and may require that the money be forwarded to the State Treasury at the time and in the manner and form prescribed by the cabinet. Nothing in this section shall be construed as authorizing any representative of any agency, department, or institution to enforce or cash, even for the purpose of a deposit, any check or other instrument of value payable to the Commonwealth or any agency thereof.

(2) Each agency depositing its receipts directly with the State Treasurer shall do so on a pay-in-voucher form approved by the State Treasurer as agent in charge of public fund deposits.

(3) ***The Revenue Cabinet may deposit tax receipts to the credit of the State Treasury directly with a depository utilized by the Commonwealth for its primary banking services.*** The State Treasurer, with the approval of the Finance and Administration Cabinet, may authorize ***other agencies*** [~~an agency~~] to deposit [~~its~~] receipts directly with a depository

designated by the Treasury to the credit of the State Treasury ***if*** [~~provided that~~] the Treasurer ***prescribes*** [~~shall prescribe~~] the manner in which the deposit is to be made, and the forms and reports to be filed with the Treasury Department. The Finance and Administration Cabinet shall prescribe the forms and reports to be filed with it when this type of deposit is made.

(4) Each department, agency, or other budget unit which receives funds to be deposited into the State Treasury shall maintain records to report adequately each amount received, from whom received, and date received***.*** [~~; such~~] Agency records shall be easily reconcilable with the pay-in-vouchers forwarded to the State Treasurer.

The Committee Substitute to **HB 85** is as follows:

HB 85, AN ACT relating to state depositories.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 41.070 is amended to read as follows:

(1) Unless otherwise expressly provided by law, no receipts from any source of state money or money for which the state is responsible shall be held, used or deposited in any personal or special bank account, temporarily or otherwise, by any agent or employee of any budget unit, to meet expenditures or for any other purpose. All receipts of any character of any budget unit, all revenue collected for the state, and all public money and dues to the state shall be deposited in state depositories in the most prompt and cost-efficient manner available***. However*** [~~, except that~~] in the case of state departments or agencies located outside Frankfort, and all state institutions, the Finance and Administration Cabinet may permit temporary deposits to be made to the accounts maintained by the agency, department, or institution in a bank which has been designated as a depository for state funds for a period not to exceed thirty (30) days, and may require that the money be forwarded to the State Treasury at the time and in the manner and form prescribed by the cabinet. Nothing in this section shall be construed as authorizing any representative of any agency, department, or institution to enforce or cash, even for the purpose of a deposit, any check or other instrument of value payable to the Commonwealth or any agency thereof.

(2) Each agency depositing its receipts directly with the State Treasurer shall do so on a pay-in-voucher form approved by the State Treasurer as agent in charge of public fund deposits.

(3) ***The Revenue Cabinet may deposit tax receipts to the credit of the State Treasury directly with a depository designated by the Treasurer and utilized by the Commonwealth for its primary banking services.*** The State Treasurer, with the approval of the Finance and Administration Cabinet, may authorize ***other agencies*** [~~an agency~~] to deposit [~~its~~] receipts directly with a depository designated by the Treasury to the credit of the State Treasury ***if*** [~~provided that~~] the Treasurer ***prescribes*** [~~shall prescribe~~] the manner in which the deposit is to be made, and the forms and reports to be filed with the Treasury Department. The Finance and Administration Cabinet shall prescribe the forms and reports to be filed with it when this type of deposit is made.

(4) Each department, agency, or other budget unit which receives funds to be deposited into the State Treasury shall maintain records to report adequately each amount received, from whom received, and date received***.*** [~~; such~~] Agency records shall be easily reconcilable with the pay-in-vouchers forwarded to the State Treasurer.

Section 2. KRS 393.010 is amended to read as follows:

(1) As used in this chapter, unless the context requires otherwise:

(a) "Banking organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state;

(b) "Business association" means any corporation, joint stock company, business trust, partnership, or any association for business purposes of two (2) or more individuals;

(c) "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company, engaged in business in this state;

(d) "Life insurance corporation" means any corporation or association transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities;

(e) "Claim" means to demand payment or surrender of property from the person whose duty it is to pay the claimant, or surrender to him the property involved;

(f) ***"Treasurer"*** [~~"Secretary"~~] means the ***State Treasurer*** [~~secretary of revenue~~];

(g) ***"Department"*** [~~"Cabinet"~~] means the ***Department of the Treasury*** [~~Revenue Cabinet~~];

(h) "Person" means any individual, state or national bank, partnership, joint stock company, business, trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent.

(2) This chapter does not apply to bonds of counties, cities, school districts or other tax-levying subdivisions of this state or to any money, funds, or other intangible property at any time held or owing for any minerals or other raw materials

capable of being used for fuel in the course of manufacturing, processing, production, or mining. The provisions of this paragraph shall be effective retroactively to all such moneys, funds, or other intangible property held or owing by any person on June 1, 1960 or thereafter.

Section 3. KRS 393.020 is amended to read as follows:

If any property having a situs in this state has been devised or bequeathed to any person and is not claimed by that person or by his heirs, distributees or devisees within eight (8) years after the death of the testator, or if the owner of any property having a situs in this state dies without heirs or distributees entitled to it and without disposing of it by will, it shall vest in the state, subject to all legal and equitable demands. Also, any property abandoned by the owner, except a perfect title to a corporeal hereditament, shall vest in the state, subject to all legal and equitable demands. Any property that vests in the state under this section shall be liquidated, and the proceeds, less costs, fees and expenses incidental to all legal proceedings of the liquidation shall be paid to the ***department*** [~~cabinet~~].

Section 4. KRS 393.030 is amended to read as follows:

(1) The personal representative of a person, any part of whose property is not distributed by will, and who died without heirs or distributees entitled to it shall settle their accounts within one (1) year after qualifying, and pay to the ***department*** [~~cabinet~~] the proceeds of all personal property, first deducting the proper legal liabilities of the estate.

(2) If the whole personal property cannot be settled and the accounts closed within one year, the settlement as far as practicable, shall then be made and the proceeds paid to the ***department*** [~~cabinet~~], and the residue shall be settled and paid as soon thereafter as can be properly done.

(3) The personal representative shall take possession of the real property of the decedent not disposed of by his will, and rent it out from year to year until it is otherwise legally disposed of, and pay the net proceeds to the ***department*** [~~cabinet~~].

(4) The personal representative shall also make out and transmit to the ***department*** [~~cabinet~~] a description of the quantity, quality, and estimated value of the real property and its probable annual profits.

Section 5. KRS 393.040 is amended to read as follows:

If any devisee or legatee, or his heir, devisee or distributee, has failed for eight (8) years to claim his legacy or devise, the personal representative of the testator, or other person possessing it shall, after deducting the legal liabilities thereon, pay and deliver it, and the net profits from it to the ***department*** [~~cabinet~~].

Section 6. KRS 393.050 is amended to read as follows:

When a person owning any property having a situs in this state is not known to be living for seven (7) successive years, and neither he nor his heirs, devisees or distributees can be located or proved to have been living for seven (7) successive years, he shall be presumed to have died without heirs, devisees or distributees, and his property shall be liquidated and the proceeds, less costs incident to the liquidation and any legal proceedings, and the liabilities which have been properly claimed and approved against it, shall be paid to the ***department*** [~~cabinet~~].

Section 7. KRS 393.068 is amended to read as follows:

(1) All tangible personal property or intangible personal property, including choses in action in amounts certain, and all debts owed or entrusted funds or other property held by the federal government or any federal agency, or any officer, or appointee thereof, shall be presumed abandoned in this state if the last known address of the owner of the property is in this state and the property has remained unclaimed for five (5) years.

(2) The federal government or any federal agency thereof which pays or delivers abandoned property to the ***department*** [~~cabinet~~] under this section is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property.

(3) The federal government or any federal agency thereof may deduct from the amounts to be paid or delivered to the ***department*** [~~cabinet~~] the proportionate share of the actual and necessary costs of examining records and reporting such information.

Section 8. KRS 393.110 is amended to read as follows:

(1) Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the ***department*** [~~cabinet~~] with respect to the property annually as of July 1. The report shall be filed in the office of the ***department*** [~~cabinet~~] on or before September 1 of each year for the preceding July 1. The report shall include:

  (a) Except with respect to travelers' checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of twenty-five dollars ($25) or more presumed abandoned under this chapter and in the case of unclaimed funds of life insurance corporations the full name of the insured or annuitant and his last known address according to the records of the life insurance corporation;

  (b) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under twenty-five dollars ($25) each may be reported in the aggregate. The holder of abandoned property shall maintain its records for a period of five (5) years from the date of its report for items reported in the aggregate. If the owner of property reported in the aggregate makes a valid claim therefor within five (5) years, the holder shall refund the property and deduct the amount refunded from the next report due to the ***department*** ~~[cabinet]~~;

(c) The date when the property became payable, demandable, or returnable, and the date of the last known transaction with the owner with respect to the property if readily available; and

(d) Any other information which the ***department*** ~~[cabinet]~~ prescribes by administrative regulations necessary for the administration of this chapter. The report shall be made in duplicate; the original shall be retained by the ***department*** ~~[cabinet]~~, and the copy shall be mailed to the sheriff of the county where the property is located or held. It shall be the duty of the sheriff to post for not less than twenty (20) consecutive days said copy on the courthouse door or the courthouse bulletin board, and also to publish said copy pursuant to KRS Chapter 424; except the sheriff shall not be required to publish any item with a fair cash value of twenty-five dollars ($25) or less. The list shall be published within thirty (30) days of its receipt by the sheriff and this publication shall constitute compliance with the requirements of KRS Chapter 424. The cost of the publication shall be paid by the state. The sheriff shall immediately certify in writing to the ***department*** ~~[cabinet]~~ the dates when the list was posted and published. The list shall be posted and published as required on or before October 1 of the year when it is made, and such posting and publishing shall be constructive notice to all interested parties.

(2) Within sixty (60) days after the receipt of the report required by subsection (1) of this section, the ***department*** ~~[cabinet]~~ shall mail notice to each person having an address listed therein who appears to be entitled to property presumed abandoned under this chapter; except the ***department*** ~~[cabinet]~~ shall not be required to mail a notice to any person whose name appears on the abandoned property list where the fair cash value of the property is twenty-five dollars ($25) or less. The notice shall contain:

(a) A statement that according to a report filed with the ***department*** ~~[cabinet]~~ properties are being held to which the addressee appears entitled;

(b) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder; and

(c) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the ***department*** ~~[cabinet]~~ to whom all further claims must be directed.

(3) Any person who has made a report of any estate or property presumed abandoned, as required by this chapter, shall, between November 1 and November 15 of each year, turn over to the ***department*** ~~[cabinet]~~ all property so reported; but if the person making the report or the owner of the property shall certify to the ***department*** ~~[cabinet]~~ that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exist or never did exist, or shall report the existence of any fact or circumstance which has a substantial tendency to rebut such presumption, then, the person reporting or holding the property shall not be required to turn the property over to the ***department*** ~~[cabinet]~~ except on order of court. If a person files an action in court claiming any property which has been reported under the provisions of this chapter, the person reporting or holding such property shall be under no duty while any such action is pending to turn the property over to the ***department*** ~~[cabinet]~~, but shall have the duty of notifying the ***department*** ~~[cabinet]~~ of the pendency of such action.

(4) The person reporting or holding the property or any claimant thereof shall always have the right to a judicial determination of his rights under this chapter and nothing therein shall be construed otherwise; and the Commonwealth may institute an action to recover such property as is presumed abandoned whether it has been reported or not and may include in one (1) petition all such property within the jurisdiction of the court in which the action is brought provided the property of different persons is set out in separate paragraphs.

Section 9. KRS 393.120 is amended to read as follows:

(1) Tangible personal property required by KRS Chapter 393 to be liquidated in order to permit payment to the ***department*** ~~[cabinet]~~ shall be delivered to the master commissioner of the county in which such property is located. The master commissioner shall within a reasonable time advertise the property for sale in accordance with KRS Chapter 424 and shall sell it at public auction to the highest bidder. The master commissioner shall pay to the ***department*** ~~[cabinet]~~ the proceeds of such sale, less costs incidental to the liquidation or any legal proceedings, and any liabilities against the property which have been properly claimed and approved.

(2) For intangible personal property required by KRS Chapter 393 to be liquidated so as to permit payment to the ***department*** ~~[cabinet]~~, the ***department*** ~~[cabinet]~~ shall require the agencies or holders of abandoned intangible personal property to sell or dispose of the property on a given date at the quoted market value in the case of property listed in recognized market exchanges, or, in the case of property not listed in a recognized market exchange, at a price recommended by the ***department*** ~~[cabinet]~~ or at the highest price offered at a public sale, whichever is greater. In the event that the intangible property is of a nature such that there is not a readily available market, the ***department*** ~~[cabinet]~~ may offer the property to the highest bidder at public sale at Frankfort, or in whatever city in the state affords, in its judgment, the most favorable market for the particular property involved. If a sale is required to permit payment to the ***department*** ~~[cabinet]~~, the ***department*** ~~[cabinet]~~ may decline the highest bid and reoffer the property for sale if it

considers the price offered insufficient. The sale shall be advertised by publication pursuant to KRS Chapter 424 in the county where the property was found or abandoned, and in the county where the sale is to be made. The sale shall be held at the courthouse door.

Section 10. KRS 393.130 is amended to read as follows:

Upon the payment or delivery of abandoned property to the ***department*** [~~cabinet~~], the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the ***department*** [~~cabinet~~] under this chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder of deposits or any life insurance company who has paid moneys to the ***department*** [~~cabinet~~] pursuant to this chapter shall make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the ***department*** [~~cabinet~~] shall forthwith reimburse the holder or company. Notwithstanding the provisions of KRS 393.140 posting or advertising is not required in the event payment is made to persons entitled thereto by holders of deposits of life insurance companies in compliance with this section. The claim shall be paid without deduction for the cost of advertising or services provided in KRS 393.115.

Section 11. KRS 393.140 is amended to read as follows:

(1) Any person claiming an interest in any property paid or surrendered to the state in accordance with KRS 393.020 to 393.050 who was not actually served with notice, and who did not appear, and whose claim was not considered during the action or at the proceedings that resulted in its payment to the state, may, within five (5) years after the judgment, file his claim to it with the ***department*** [~~cabinet~~].

(2) Any person claiming an interest in any estate or property paid or surrendered to the state in accordance with KRS 393.060 to 393.120, that was not subsequently adjudged under the procedure set out in KRS 393.230 to have been actually abandoned, or owned by a decedent who had no heir, distributee, devisee or other person entitled under the laws of this state relating to wills, descent and distribution to take the legal or equitable title, may file his claim to it at any time after it was paid to this state.

(3) The claimant shall, within fifteen (15) days after filing any claim permitted under this section in excess of twenty-five dollars ($25), publish notice of the claim pursuant to KRS Chapter 424 in the county in which the property was held before being transferred to the state. If the claim is for twenty-five dollars ($25) or less, the claimant shall post at the courthouse door and three (3) other conspicuous places in that county, and shall file proof of publication or posted notice with the ***department*** [~~cabinet~~]. No such claim shall be allowed until fifteen (15) days after proof of the notice is received by the department at its offices in Frankfort.

Section 12. KRS 393.150 is amended to read as follows:

The ***Treasurer*** [~~commissioner~~] shall consider any claim or defense permitted to be filed before the ***department*** [~~cabinet~~] and hear evidence concerning it. If the claimant establishes his claim, the ***Treasurer*** [~~commissioner~~] shall, when the time for appeal or further legal procedure has expired, authorize payment to him of a sum equal to the amount paid into the State Treasury in compliance with this chapter. The decision shall be in writing and shall state the substance of the evidence heard by the ***Treasurer*** [~~commissioner~~], if a transcript is not kept. The decision shall be a matter of public record.

Section 13. KRS 393.180 is amended to read as follows:

Any legal proceeding to enforce KRS 393.020 to 393.050 and to recover any sum due the state thereunder shall be instituted, on the relation of the ***Treasurer*** [~~commissioner~~], by the county attorney of the county in which any such property is located. The petition and all necessary pleadings shall be sent to the ***Treasurer*** [~~commissioner~~] for his signature and approval. The petition shall be accompanied by an affidavit of the county attorney, stating the facts on which it is based. For all other pleadings, there shall be a statement by the county attorney of the reason for the particular pleading.

Section 14. KRS 393.190 is amended to read as follows:

On any action filed by a county attorney under the provisions of this chapter, the assistant attorney general provided for in KRS 15.105 shall offer assistance and suggestions to the county attorney in the preparation of the petition or any pleadings, and revise and correct them as he considers necessary, subject to the ultimate approval of the ***Treasurer*** [~~commissioner~~], when he is required to sign them.

Section 15. KRS 393.200 is amended to read as follows:

If the county attorney declines to perform the duties imposed upon him by this chapter, they may be performed by the ***Treasurer*** [~~commissioner~~]. When he considers it to the best interest of the state, the ***Treasurer*** [~~commissioner~~] may institute any action authorized by this chapter to be brought by the county attorney, or join the county attorney in the active prosecution of any such action.

Section 16. KRS 393.230 is amended to read as follows:

(1) If any person or the agent of any court refuses to pay or surrender intangible property to the ***department*** [~~cabinet~~] as provided in KRS 393.060 to 393.110, an equitable proceeding may be brought on the relation of the ***Treasurer*** [~~commissioner~~] to force payment or surrender. All property subject to KRS 393.060 to 393.110 may be listed and

included in a single action.

(2) If any intangible property is turned over to the ***department*** ~~[cabinet]~~ on presumption of abandonment, in accordance with KRS 393.060 to 393.120, the ***Treasurer*** ~~[commissioner]~~ may at any subsequent time institute proceedings to establish conclusively that it was actually abandoned, or that the owner has died and there is no person entitled to it.

Section 17. KRS 393.240 is amended to read as follows:

(1) If any person has property coming within the purview of KRS 393.020 to 393.050, and also of KRS 393.060 to 393.110, the actions required to be brought by the county attorney and the ***Treasurer*** ~~[commissioner]~~ may be joined, but joinder is not required, and if separate actions are brought, they shall not be considered as coming within the rule against splitting a cause of action. The county attorney is not charged with the duty of enforcing sections KRS 393.060 to 393.120, 393.150 or 393.160.

(2) The procedure for all actions under this chapter shall be filed as equity actions and follow the procedure provided by the Rules of Civil Procedure, unless otherwise provided in this chapter.

Section 18. KRS 393.250 is amended to read as follows:

(1) Any necessary expense required to be paid by the state in administering and enforcing this chapter shall be paid out of appropriations made to the ***department*** ~~[cabinet]~~.

(2) The county attorney shall act as agent of the ***department*** ~~[cabinet]~~ for the collection of all judgments recovered in actions prosecuted by him under this chapter. He shall promptly remit the judgment recovered to the ***department*** ~~[cabinet]~~ with such information relating thereto as the ***department*** ~~[cabinet]~~ requires.

Section 19. KRS 393.280 is amended to read as follows:

(1) The ***department*** ~~[cabinet]~~, through its employees, may examine all records of any person where there is reason to believe that there has been or is a failure to report property that should be reported under this chapter.

(2) The ***Treasurer*** ~~[commissioner]~~ may promulgate any reasonable and necessary rules for the enforcement of this chapter, and govern hearings held before him. He may delegate in writing to any regular employee of the ***department*** ~~[cabinet]~~ authority to perform any of the duties imposed on him by this chapter, except the promulgation of rules.

Section 20. KRS 393.290 is amended to read as follows:

(1) The ***department*** ~~[cabinet]~~ may require the production of reports, or the surrender of property as provided in this chapter by civil action, including an action in the nature of a bill of discovery, in which case the defendant shall pay a penalty equal to ten percent (10%) of all amounts that he is ultimately required to surrender. This penalty shall not exceed five hundred dollars ($500).

(2) Any person who in good faith contests the applicability of this chapter to him may be relieved of the threat of any penalty by posting a compliance bond in an amount and of surety sufficient to the court.

Section 21. Whereas it is necessary for the changes proposed in this Act to become effective as soon as possible to ease administrative burdens, and to ensure that the enacted budget reflects the appropriate allocation of funding to the effected budget units, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor.

HB 100, AN ACT relating to alcohol beverage licenses.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 243.500 is amended to read as follows:

Any license issued under KRS 243.020 to 243.670 ***shall*** ~~[must]~~ be revoked or suspended for the following causes:

(1) Conviction of the licensee or his agent or employee for selling any illegal beverages on the premises licensed.

(2) Making any false, material statements in an application for a license.

(3) Violation of the provisions of KRS 243.670.

(4) If, within a period of two (2) consecutive years, any licensee or any of his clerks, servants, agents, or employees shall have been convicted of two (2) violations of the terms and provisions of KRS Chapter 241, 243, or 244 or any act ~~[heretofore or hereafter in effect]~~ relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages or if~~[, within such period,]~~ any licensee or any of his clerks, servants, agents, or employees shall have twice been convicted of any felony or of any misdemeanor directly or indirectly attributable to the use of intoxicating liquors, or of one (1) such felony and one (1) such misdemeanor.

(5) Willful and deliberate failure or default of a licensee to pay ***any*** ~~[an excise]~~ tax***, interest, penalty, or cost of collection fee*** ~~[or any part thereof, or any penalties]~~ imposed by ~~[or under the provisions of]~~ any statutes, ordinances, or acts of Congress relative to taxation, or for a violation of any administrative regulations of the Revenue Cabinet ~~[made in pursuance thereof]~~.

(6) Revocation of any license or permit provided in KRS 243.060, 243.070, 243.600, and 243.610, or granted under any act of Congress relative to the regulation of the manufacture, sale, and transportation of alcoholic beverages. Any license

issued under KRS 243.020 to 243.670 ***shall*** [~~must~~] be revoked or suspended in the case of sale of alcoholic beverages by the licensee at a price in excess of the price set by federal or state regulations.

(7) Setting up, conducting, operating, or keeping, on the licensed premises, any gambling game, device, machine, or contrivance, or lottery or gift enterprise, or handbook or facility for betting or transmitting bets on horse races; or permitting to be set up, conducted, operated, kept, or engaged in, on the licensed premises, any [~~such~~] game, device, machine, contrivance, lottery, gift enterprise, handbook, or facility. This section shall not apply to contests in which eligibility to participate is determined by chance and the ultimate winner is determined by skill and the licensee has no direct interest, or to the sale of lottery tickets sold under the provisions of KRS Chapter 154A.

(8) Conviction of the licensee, his agents, servants, or employees for:

(a) The sale or use upon the licensed premises of those items described in KRS 218A.050 to 218A.130 as controlled substances;

(b) Knowingly permitting the sale or use by patrons upon the licensed premises of those items described in KRS 218A.050 to 218A.130 as controlled substances.

HB 104, AN ACT relating to property tax administration.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 132.375 is amended to read as follows:

Whenever a vacancy occurs in the property valuation administrator's office, the secretary of revenue shall designate a qualified cabinet employee to carry on the duties of the office until the vacancy is filled by appointment ***under the provisions of KRS 63.190*** or by election. The cabinet employee so designated shall be compensated from Revenue Cabinet funds in the same manner and at the same rate as compensated prior to his receiving the designation, plus necessary expenses, including travel. The individual shall have all the powers and be subject to all the administrative regulations applying to property valuation administrators.

Section 2. KRS 132.380 is amended to read as follows:

(1) Before any person's name shall appear before the voters on election day as a candidate for the office of property valuation administrator in any primary or general election, except as a candidate to succeed himself in office, or before he may be appointed property valuation administrator, except as an interim appointee as provided by KRS 132.375, he shall hold a ***valid*** certificate issued by the Revenue Cabinet, showing that he has ***passed the examination offered*** [~~been examined~~] by ***the Revenue Cabinet*** [~~it~~] and that he is qualified for the office. All certificates issued shall expire one (1) year from the date of issuance. The examinations shall be written and formulated so as to test fairly the ability and fitness of the applicant to serve as property valuation administrator. The Revenue Cabinet shall hold the ***examination*** [~~examinations~~] in ***Frankfort, Kentucky on the second Saturday of January of*** [~~at least one (1) place in each Supreme Court district during the month of October of each year immediately preceding~~] each year in which property valuation administrators are to be elected. The Revenue Cabinet shall ***cause to be published in the newspaper of largest circulation in each county approximately thirty (30) days before the examination an announcement of the examination and the manner in which interested persons may obtain information on the examination and the office of property valuation administrator. The Revenue Cabinet shall also issue a statewide press release containing similar information*** [~~advise each county attorney of the time and place of the examination, and the county attorney shall post a notice thereof in a conspicuous place in the courthouse two (2) weeks before the examination is given~~]. Any person desiring to take ***the*** [~~an~~] examination shall appear at the time and place designated.

(2) [~~If, after the giving of the examination, as provided in subsection (1), there is only one (1) person qualified to be a candidate in the county, the Revenue Cabinet shall hold a second examination prior to the filing date in each Supreme Court district where necessary. Applicants from only those counties having not more than one (1) person qualified shall be eligible to take the examination. Notice of the second examination shall be posted in the manner provided in subsection (1).~~

~~(3)~~] Whenever there is a vacancy in the office of property valuation administrator to be filled by appointment or by election, [~~and there is not more than one (1) person holding a valid certificate and eligible for appointment or election,~~] the Revenue Cabinet ***shall*** [~~may~~] hold a special examination for applicants seeking a certificate for the office. If, after the giving of a special examination, ***no candidate*** [~~only one (1) person~~] is qualified, ***additional special examinations shall be held at approximately thirty (30) day intervals until at least one (1) candidate is qualified*** [~~the county judge/executive may request a second examination~~]. Special examinations shall be held in the same manner as regular examinations ***except that they shall be held in each county with a vacancy***.

(3) A person holding a certificate issued as a result of the regular examination shall be eligible for appointment or election to fill a vacancy only if the one (1) year time limit has not expired as of the date of his appointment or election to the office. A person holding a certificate issued as a result of a special examination may be a candidate in the regular election only if the one (1) year time limit has not expired as of the date of the general election.

(4) Any person holding a certificate who chooses not to be a candidate for either election or appointment and who wishes to surrender his certificate may do so by submitting a sworn, notarized, affidavit to the secretary of the Revenue Cabinet.

(5) A person elected to the office of property valuation administrator as a write-in candidate who does not hold a valid certificate shall be required to pass a special examination conducted by the Revenue Cabinet prior to assuming office. If the person fails this examination, the office shall be declared vacant upon the expiration of the incumbent's term, if there is an incumbent, and immediately if there is no incumbent.

(6)[~~(4)~~] Examinations shall be given and graded in accordance with rules of the cabinet published at the time of the examination. Within ten (10) days after the examination, a certificate of fitness and qualification to fill the office of property valuation administrator shall be issued by the Revenue Cabinet to each person passing the examination. ***The name and address of each person passing the examination shall be a public record. All other information, including the name and address of each person failing the examination, shall be held confidential by the Revenue Cabinet.***

(7)[~~(5)~~] Examination records shall be preserved by the cabinet for twelve (12) months after the examination, and the record of any person who took the examination may be seen by him ***or his designated representative,*** at the office of the Revenue Cabinet in Frankfort, Kentucky.

HB 113, AN ACT relating to property taxation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 136.180 is amended to read as follows:

(1) The Revenue Cabinet shall, immediately after fixing the assessed value of the operating property and other property of a public service corporation for taxation, notify the corporation of the valuation[~~,~~] and the amount of assessment for state and local purposes. When the valuation has been finally determined, the cabinet shall immediately certify***, unless otherwise specified,*** to the county clerk of each county in which any of the operating property or nonoperating tangible property assessment of the corporation is liable to local taxation, the amount ***of property*** [~~thereof~~] liable for county, city, or district tax.

(2) The Revenue Cabinet shall ***compute annually*** [~~provide to all local taxing districts each year~~] a multiplier for use in establishing the local tax rate for the operating property of railroads or railway companies that operate solely within the Commonwealth. The applicable local tax rates on the operating property shall be adjusted by the multiplier. The multiplier shall be calculated by dividing the statewide locally taxable business tangible personal property by the total statewide business tangible personal property.

(3) ***The Revenue Cabinet shall annually calculate an aggregate local rate for each local taxing district to be used in determining local taxes to be collected for railroad carlines. The rate shall be the statewide tangible tax rate for each type of local taxing district multiplied by a fraction, the numerator of which is the commercial and industrial tangible property assessment subject to full local rates and the denominator of which is the total commercial and industrial tangible personal property assessment. Effective January 1, 1994, state and local taxes on railroad carline property shall become due forty-five (45) days from the date of notice and shall be collected directly by the Revenue Cabinet. The local taxes collected by the Revenue Cabinet shall be distributed to each local taxing district levying a tax on railroad carlines based on the statewide average rate for each type of local taxing district. However, prior to distribution any fees owed to the Revenue Cabinet by any local taxing district under the provisions of subsection (4) of this section shall be deducted*** [~~The Revenue Cabinet shall provide each year for railroad car line property to all local taxing districts a multiplier. The multiplier shall be applied against the local tangible personal property tax rate. The multiplier shall be calculated by dividing the statewide locally taxable business tangible personal property by the total statewide business tangible personal property~~].

(4) The ***certification of valuation*** [~~certificate~~] shall be filed by each county clerk in his office, and ***shall be certified*** by ***the county clerk*** [~~him certified~~] to the proper collecting officer of the county, city, or taxing district for collection. Any district which has ***the*** [~~such~~] value certified by the cabinet shall pay ***an annual fee*** [~~annually~~] to the cabinet [~~a fee~~] which represents an allocation of cabinet operating and overhead expenses incurred in generating ***the*** [~~said~~] valuations. This fee shall be determined by the cabinet and shall apply to valuations for tax periods beginning on or after December 31, 1981.

HB 157, AN ACT relating to real estate transfer tax.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 142.050 is amended to read as follows:

(1) As used in this section, unless the context otherwise requires:

(a) "Deed" means any document, instrument, or writing other than a will and other than a lease or easement, regardless of where made, executed, or delivered by which any real property in Kentucky, or any interest therein, is conveyed, vested, granted, bargained, sold, transferred, or assigned.

(b) "Value" means:

1. In the case of any deed not a gift, the amount of the full actual consideration therefor, paid or to be paid, including the amount of any lien or liens thereon; and

2. In the case of a gift, or any deed with nominal consideration or without stated consideration, the estimated price the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

(2) A tax upon the grantor named in the deed shall be imposed at the rate of fifty cents ($0.50) for each $500 of value or fraction thereof, which value is declared in the deed upon the privilege of transferring title to real property.

(3) (a) If any deed evidencing a transfer of title subject to the tax herein imposed is offered for recordation, the county clerk shall ascertain and compute the amount of the tax due thereon and shall collect the amount as prerequisite to acceptance of the deed for recordation.

(b) The amount of tax shall be computed on the basis of the value of the transferred property as set forth in the deed.

(c) The tax required to be levied by this section shall be collected only once on each transaction and in the county in which the deed is required to be recorded by KRS 382.110(1).

(4) The county clerk shall collect the amount due and certify the date of payment and the amount of collection on the deed. The county clerk shall retain five percent (5%) as his fee for collection and remit the balance every three (3) months to the county treasurer, who shall deposit the money in the county general fund.

(5) The Revenue Cabinet may prescribe regulations necessary to carry out the purposes of this section.

(6) Any county clerk who willfully shall record any deed upon which a tax is imposed by this section without collecting the proper amount of tax and certifying the date and amount of collection on the deed as required by this section based on the declared value indicated in the affidavit appended to the deed shall, upon conviction, be fined $50 for each offense.

(7) The tax imposed by this section shall not apply to a transfer of title:

(a) Recorded prior to March 27, 1968;

(b) To, in the event of a deed of gift or deed with nominal consideration, or from the United States of America, this state, any city or county within this state, or any instrumentality, agency, or subdivision hereof;

(c) Solely in order to provide or release security for a debt or obligation;

(d) Which confirms or corrects a deed previously recorded;

(e) Between husband and wife, or between former spouses as part of a divorce proceeding;

(f) On sale for delinquent taxes or assessments;

(g) On partition;

(h) Pursuant to mergers of corporations;

(i) By a subsidiary corporation to its parent corporation for no consideration, nominal consideration, or in sole consideration of the cancellation or surrender of the subsidiary's stock;

(j) Under a foreclosure proceeding;

(k) Between individuals and a corporation, with only nominal consideration therefor, if those individuals are the exclusive owners of that corporation; ~~[and]~~

(l) Between parent and child or grandparent and grandchild, with only nominal consideration therefor***; and***

(m) Of property to a trustee, to be held in trust, or by a trustee to a beneficiary of the trust, if a direct transfer from the grantor of the trust to each individual beneficiary of the trust would have qualified for an exemption from the tax pursuant to one of the provisions of this section. As used in this paragraph, "trust" shall have the same definition as contained in KRS 386.800.

Calendar

HB 36, HB 161, HB 173, HB 183, HB 191, HB 155, HB 208, HB 48, HB 128, HB 185, HB 244, HR 16, SB 10 and **HB 98** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Consent Calendar

HB 242 taken from the Consent Calendar and ordered read at length for the second time. Representative Stumbo moved that it be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Representative Stumbo moved that the rules be suspended for a meeting of the Committee on Rules. Agreed.

Recess

Representative Stumbo moved that the House recess for five minutes for a meeting of the Committee on Rules. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Floor Amendments

Floor Amendment No. 1 to the Committee Substitute to **HB 7**, by Representative Donnermeyer:

On page 14, line 10, by deleting the word "*or*"

On page 14, line 13, by deleting the period "." and inserting in lieu thereof the following: "*; or*" and

On page 14, after line 13, by inserting the following: "***(14) A person conducting routine maintenance of heating, ventilation, or air conditioning as a volunteer for any church or religious organization, provided he receives no compensation for the services rendered.***"

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Representative Stumbo moved that the rules be suspended for a Rules Committee Report. Agreed.

Report of Committees

The Committee on Rules reported the following Consent Bill has been posted for passage in the Regular Orders of the Day, January 31, 1994: **HB 242**

The Committee on Rules reported that **HB 128, HB 155, HB 161, HB 173, HB 185, HB 191, HB 208, HB 244** and **SB 10** have been posted for passage in the Orders of the Day for January 31, 1994.

The Committee on Rules reported that the following Bill has been recommitted:

Appropriations and Revenue: **HB 98**

Orders of the Day

HB 95, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Mason moved the adoption of Floor Amendment No. 1 to **HB 95**. Agreed.

Representative Mason moved that **HB 95**, as amended, be passed.

On the roll call the vote was: Yeas 90, Nays 1. (See January 28, 1994 roll call on **HB 95** - Appendix)

HB 95, as amended, was passed and the title agreed to.

Representative Mason moved that the vote by which **HB 95**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 51, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

Representative Curd moved the adoption of Floor Amendment No. 3 to the Committee Substitute to **HB 51**. Agreed.

Representative Curd moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 51**. Agreed.

Representative Curd moved the adoption of Floor Amendment No. 2 to the Committee Substitute to **HB 51**. Agreed.

Representative Curd moved that **HB 51**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 76, Nays 11. (See January 28, 1994 roll call on **HB 51** - Appendix)

HB 51, by way of Committee Substitute as amended, was passed and the title agreed to.

Representative Curd moved that the vote by which **HB 51**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 4 to **HB 84**, by Representative Bruce:

On page 2, after line 1, by adding the following:

"Section 2. KRS 132.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Cabinet" means the Revenue Cabinet.

(2) "Taxpayer" means any person made liable by law to file a return or pay a tax.

(3) "Real property" includes all lands within this state and improvements thereon.

(4) "Personal property" includes every species and character of property, tangible and intangible, other than real property.

(5) "Resident" means any person who has taken up a place of abode within this state with the intention of continuing to abide in this state; any person who has had his actual or habitual place of abode in this state for the larger portion of the twelve (12) months next preceding the date as of which an assessment is due to be made shall be deemed to have intended to become a resident of this state.

(6) "Compensating tax rate" means that rate which, rounded to the next higher one-tenth of one cent per one hundred dollars of assessed value and applied to the current year's assessment of the property subject to taxation by a taxing district, excluding new property and personal property, produces an amount of revenue approximately equal to that produced in the preceding year from real property. However, in no event shall the compensating tax rate be a rate which, when applied to the total current year assessment of all classes of taxable property, produces an amount of revenue less than was produced in the preceding year from all classes of taxable property. For purposes of this subsection, "property subject to taxation" means the total fair cash value of all property subject to full local rates, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution and the difference between the fair cash value and agricultural or horticultural value of agricultural or horticultural land.

(7) "Net assessment growth" means the difference between:

  (a) The total valuation of property subject to taxation by the county, city, school district, or special district in the preceding year, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution in the current year over that exempted in the preceding year, and

  (b) The total valuation of property subject to taxation by the county, city, school district, or special district for the current year.

(8) "New property" means the net difference in taxable value between real property additions and deletions to the property tax roll for the current year. "Real property additions" shall mean:

  (a) Property annexed or incorporated by a municipal corporation, or any other taxing jurisdiction; however, this definition shall not apply to property acquired through the merger or consolidation of school districts, or the transfer of property from one school district to another;

  (b) Property, the ownership of which has been transferred from a tax-exempt entity to a nontax-exempt entity;

  (c) The value of improvements to existing nonresidential property;

  (d) The value of new residential improvements to property;

  (e) The value of improvements to existing residential property when the improvement increases the assessed value of the property by fifty percent (50%) or more;

  (f) Property created by the subdivision of unimproved property, provided, that when such property is reclassified from farm to subdivision by the property valuation administrator, the value of such property as a farm shall be a deletion from that category;

  (g) Property exempt from taxation, as an inducement for industrial or business use, at the expiration of its tax exempt status;

  (h) Property, the tax rate of which will change, according to the provisions of KRS 82.085, to reflect additional urban services to be provided by the taxing jurisdiction, provided, however, that such property shall be considered "real property additions" only in proportion to the additional urban services to be provided to the property over the urban services previously provided; and

(i) The value of improvements to real property previously under assessment moratorium.

"Real property deletions" shall be limited to the value of real property removed from, or reduced over the preceding year on, the property tax roll for the current year.

(9) "Agricultural land" means any tract of land, including all income-producing improvements, of at least ten (10) contiguous acres in area used for the production of livestock, livestock products, poultry, poultry products and/or the growing of tobacco and/or other crops including timber, or where devoted to and meeting the requirements and qualifications for payments pursuant to agriculture programs under an agreement with the state or federal government.

(10) "Horticultural land" means any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables, flowers, or ornamental plants.

(11) "Agricultural or horticultural value" means the use value of "agricultural or horticultural land" based upon income-producing capability and comparable sales of farmland purchased for farm purposes where the price is indicative of farm use value, excluding sales representing purchases for farm expansion, better accessibility, and other factors which inflate the purchase price beyond farm use value, if any, considering the following factors as they affect a taxable unit:

(a) Relative percentages of tillable land, pasture land, and woodland;

(b) Degree of productivity of the soil;

(c) Risk of flooding;

(d) Improvements to and on the land that relate to the production of income;

(e) Row crop capability including allotted crops ***other than tobacco***;

(f) Accessibility to all-weather roads and markets; and

(g) Factors which affect the general agricultural or horticultural economy, such as: interest, price of farm products, cost of farm materials and supplies, labor, or any economic factor which would affect net farm income.

(12) "Deferred tax" means the difference in the tax based on agricultural or horticultural value and the tax based on fair cash value.

(13) "Homestead" means real property maintained as the permanent residence of the owner with all land and improvements adjoining and contiguous thereto including, but not limited to, lawns, drives, flower or vegetable gardens, outbuildings, and all other land connected thereto.

(14) "Residential unit" means all or that part of real property occupied as the permanent residence of the owner.

(15) "Special benefits" are those which are provided by public works not financed through the general tax levy but through special assessments against the benefited property.

(16) "Mobile home" means a structure, transportable in one (1) or more sections, which when erected on site measures eight (8) body feet or more in width and thirty-two (32) body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. It may be used as a place of residence, business, profession, or trade by the owner, lessee, or their assigns and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure.

(17) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, and motor home.

(a) Travel trailer: A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require special highway movement permits when drawn by a motorized vehicle, and with a living area of less than two hundred twenty (220) square feet, excluding built-in equipment (such as wardrobes, closets, cabinets, kitchen units or fixtures) and bath and toilet rooms.

(b) Camping trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use.

(c) Truck camper: A portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pick-up truck.

(d) Motor home: A vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle.

Section 3. KRS 132.020 is amended to read as follows:

(1) An annual ad valorem tax for state purposes of thirty-one and one-half cents ($0.315) upon each one hundred dollars ($100) of value of all real property directed to be assessed for taxation, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 directed to be assessed for taxation, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all tobacco directed to be assessed for taxation, and twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of all money in hand, shares of stock, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, except as otherwise provided in subsection (2) of this section, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of unmanufactured agricultural products, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all livestock and domestic fowl, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all tangible personal property located in a foreign trade zone as designated under 19 U.S.C. Sec. 81, fifteen cents ($0.15) upon machinery of individuals or corporations actually engaged in manufacturing, fifteen cents ($0.15) upon commercial radio, television and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna, fifteen cents ($0.15) upon property which has been certified as a pollution control facility as defined in KRS 224.01-300, one-tenth of one cent ($0.001) upon property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390, twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043, and forty-five cents ($0.45) upon each one hundred dollars ($100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed except as provided in subsection (2) of this section and KRS 132.030, 132.050, 132.200, 136.270, 136.300, 136.320, and other sections providing a different tax rate for particular property.

(2) An annual ad valorem tax for state purposes of one and one-half cents ($0.015) upon each one hundred dollars ($100) of value shall be paid upon the ~~[following]~~ classes of intangible personal properties ***listed in paragraphs (a) to (c) of this subsection***, when such intangible personal properties have not acquired a taxable situs without this state ***, and one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of intangible personal property listed in paragraph (d) of this subsection***:

(a) Accounts receivable, notes, bonds, credits, nondomestic bank deposits, and any other intangible property rights arising out of or created in the course of regular and continuing business transactions substantially performed outside this state;

(b) Patents, trademarks, copyrights, and licensing or royalty agreements, relating thereto; ~~[and]~~

(c) Shares of capital stock of any affiliated company as defined in subsection (3) of this section and notes, bonds, accounts receivable, and all other intercompany intangible personal property due from such company***; and***

(d) Tobacco base allotments.

(3) "Affiliated company" shall mean a parent corporation or subsidiary corporation, and any corporation principally engaged in business outside the United States in which the owner or the person assessed directly or indirectly owns or controls not less than ten percent (10%) of the outstanding voting stock.

(4) With respect to the intangible properties taxed pursuant to subsection (2) of this section, no other ad valorem tax shall be levied by the state or any county, city, school, or other taxing district on such intangible properties, or directly or indirectly against the owner with respect thereto.

(5) Thirty cents ($0.30) of the thirty-one and one-half cents ($0.315) state tax rate on real property and thirty cents ($0.30) of the forty-five cents ($0.45) state tax on tangible personalty subject to local taxation shall be considered as local school district tax levies for purposes of computing any direct payments of state or federal funds to said districts as replacement for ad valorem taxes lost on property acquired by a governmental agency. Should the equivalency ever be less than thirty cents ($0.30), as certified by the Department of Education, the direct payments shall be reduced proportionately.

(6) The provisions of subsection (1) of this section notwithstanding, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that such increase exceeds the preceding year's assessment by more than four percent (4%). In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.

(7) By July 1 each year, the Revenue Cabinet shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (5) of this section and certify the rate to the county clerks for their use in preparing the tax bills. In the event the assessments for all counties have not been certified by July 1, the cabinet shall, when real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been certified, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.

(8) In the event that the tax rate set by the cabinet as provided in subsection (6) of this section produces more than a four percent (4%) increase in real property tax revenues, the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.

(9) Effective on or after January 1, 1990, an ad valorem tax for state purposes of five cents ($0.05) upon each one hundred dollars ($100) of value shall be paid upon goods held for sale in the regular course of business and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business.

(10) An ad valorem tax for state purposes of ten cents ($0.10) per one hundred dollars ($100) of assessed value shall be paid on the operating property of railroads or railway companies that operate solely within the Commonwealth."

Orders of the Day (Continued)

HB 39, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Yates moved the adoption of the Committee Substitute to **HB 39**. Agreed.

Representative Treesh moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 39**. Agreed.

Representative Yates moved that **HB 39**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 48, Nays 46. (See January 28, 1994 roll call on **HB 39** - Appendix)

HB 39, by way of Committee Substitute as amended, was passed and the title agreed to.

Representative Yates moved that the vote by which **HB 39**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 135, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Graham moved the adoption of Committee Amendment No. 1 to **HB 135**. Agreed.

Representative Graham moved that **HB 135**, as amended, be passed.

On the roll call the vote was: Yeas 87, Nays 0. (See January 28 , 1994 roll call on **HB 135** - Appendix)

HB 135, as amended, was passed and the title agreed to.

Representative Graham moved that the vote by which **HB 135**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HJR 5 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rapier moved that **HJR 5** be adopted.

On the roll call the vote was: Yeas 88, Nays 0. (See January 28 , 1994 roll call on **HJR 5** - Appendix)

HJR 5 was adopted.

Representative Rapier moved that the vote by which **HJR 5** was adopted be reconsidered and said motion be placed on the table. Agreed.

HB 203 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lewis moved that **HB 203** be passed.

On the roll call the vote was: Yeas 85, Nays 0. (See January 28 , 1994 roll call on **HB 203** - Appendix)

HB 203 was passed and the title agreed to.

Representative Lewis moved that the vote by which **HB 203** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 123, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative L. Clark moved the adoption of Committee Amendment No. 1 to **HB 123**. Agreed.

Representative L. Clark moved that **HB 123**, as amended, be passed.

On the roll call the vote was: Yeas 90, Nays 0. (See January 28, 1994 roll call on **HB 123** - Appendix)

HB 123, as amended, was passed and the title agreed to.

Representative L. Clark moved that the vote by which **HB 123**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 238, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Callahan moved the adoption of the Committee Substitute to **HB 238**. Agreed.

Representative Callahan moved that **HB 238**, by way of Committee Substitute, be passed.

Representative Lindsay moved the adoption of Floor Amendment No. 1 to **HB 238.**

On the roll call the vote was **Yeas 21**--Ackerson, Bentley, Burch, P. Clark, Collins, Farrow, Fox, Heleringer, Lear, Lile, Lindsay, Mason, McElroy, Nunn, Reinhardt, Richards, Riner, Stacy, Stumbo, Turner, Yates. **Nays 66**--, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bondurant, Bowling, Brown, Bruce, Bryant, Buis, Butler, Callahan, Cave, L. Clark, Coleman, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Ford, French, Gedling, Gee, Graham, Gray, Hampton, Hancock, Harper, Jensen, Johnson, Kerr, Lee, Lewis, Long, Lyne, Maggard, Maricle, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Palumbo, Rapier, Rasche, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, Stengel, Todd, Trapp, Treesh, Walton, Wayne, Worthington, Zimmerman.

The motion to adopt Floor Amendment No. 1 to **HB 238** was rejected.

Representative Callahan moved that **HB 238**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 84, Nays 10. (See January 28, 1994 roll call on **HB 238** - Appendix)

HB 238, by way of Committee Substitute, was passed and the title agreed to.

Representative Callahan moved that the vote by which **HB 238**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that **HB 352** be reassigned to the Committee on Health and Welfare. Agreed.

Representative Stumbo moved that **HB 351** be reassigned to the Committee on Banking and Insurance. Agreed.

Representative Stumbo moved that he be withdrawn as co-sponsor to **HB 238**. Agreed.

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions and Report of Committees. Agreed.

Introduction of Bills and Resolutions

HB 363, by Representative Barrows: AN ACT relating to driving under the influence.

HB 364, by Representative Geveden: AN ACT relating to jailers.

HB 365, by Representative Ford: AN ACT relating to motor vehicle operator's licenses.

HB 366, by Representatives Heleringer, Northup, Deweese and Ackerson: AN ACT relating to health care, providing for revenues related thereto, and making an appropriation therefor.

HB 367, by Representative Barrows: AN ACT relating to insurance premium tax.

HB 368, by Representatives Brown, Bowling, Geveden, Ridley, Moberly and Barrows: AN ACT relating to conservation of natural resources through heritage land conservation and environmental education and providing funding therefor.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills have been posted for Committee consideration:

Banking and Insurance: **HB 361, HB 351**

Education: **HB 115, HB 154, HB 211**

Business Organizations and Professions: **HB 222**

Appropriations and Revenue: **HB 300, HB 301, HB 302**

Motions, Petitions and Communications (Continued)

The following members filed requests to have their names added as co-sponsors to Bills: **HB 11, HB 23, HB 355**, Representative Reinhardt; **HB 135**, Representatives Donnermeyer, Lyne, Scott, Todd; **HB 219**, Representative Trapp; **HB 287**, Representative Worthington; **HB 355**, Representatives Maricle, Stacy; **HB 359**, Representative Graham.

Announcements

The Clerk announced the following meetings:

Budget Review Subcommittee on General Government Human Services, 1: 00 p.m., January 31, 1994

Natural Resources and Environment, 2:00 p.m., January 31, 1994, Room 149

Budget Review Subcommittee Chairs upon adjournment today.

Adjournment

Representative Stumbo moved that the House adjourn until 4:00 p.m., Monday, January 31, 1994.

On the roll call the vote was **Yeas 80**--Ackerson, Adams, Adkins, Altman, Arnold, Ballard, Bentley, Bondurant, Brown, Bruce, Bryant, Buis, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Graham, Gray, Hampton, Hancock, Harper, Johnson, Keith, Kerr, Lear, Lee, Lindsay, Lyne, Maggard, Maricle, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Ridley, Riner, Sanders, Scorsone, Scott, Shacklette, B. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates. **Nays 1**--LeMaster.

The motion to adjourn was adopted.

MONDAY, JANUARY 31, 1994

SEVENTEENTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Father Theodore Keller, Church of the Good Shepherd, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representative Mullinix.

Representative McElroy moved that the absent member be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of January 28, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 2, SB 15, SB 24, SB 27, SB 45**. (Time: 4:05 p.m.)

Introduction of Bills and Resolutions

HB 369, by Representative Northup: AN ACT changing the classification of the City of Indian Hills-Cherokee, in Jefferson County.

HB 370, by Representatives Clarke and Coleman: AN ACT relating to the purchase of animals.

HB 371, by Representatives Little, Keith, Nunn, Turner, Mason, Todd, Gedling, Bryant, Sanders, Farley, Ford, Altman, Cave, Harper, Northup, Hampton, Allen, Buis, Jensen, Heleringer, Noland, Walton and Kerr: AN ACT relating to retirement.

HB 372, by Representatives LeMaster, Lear, Harper, Trapp, Walton, Damron, Graham and Stengel: AN ACT relating to inheritance and estate taxes.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Banking and Insurance: **HB 367**

Counties and Special Districts: **HB 364**

Education: **HB 362**

Health and Welfare: **HB 366**

Judiciary: **HB 363**

State government: **HB 368**

Transportation: **HB 365**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Judiciary: **HB 130, HB 197, HB 204, HB 205, HB 224, HB 231, HB 271, HB 272**

The Clerk announced that Representative Maricle has been removed from the Committee on Transportation and appointed to the Committee on Tourism Development and Energy and the Committee on Economic Development, and that Representative Treesh has been removed from the Committee on Tourism Development and Energy and appointed to the Committee on Transportation.

Report of Committees

The Committee on Natural Resources and Environment reported **HB 283,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 283, AN ACT relating to a groundwater monitoring network and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

It is a finding of the General Assembly that groundwater makes up over ninety-five percent (95%) of the freshwater resources in Kentucky. Groundwater accounts for over thirty percent (30%) of the public and domestic water supplies in the Commonwealth, and up to ninety percent (90%) of all rural domestic supplies, and is the major source of water to streams during drought conditions. Groundwater is essential for the present and future economic and physical well being of our citizens, and it is critical that Kentucky maintain this resource for its highest and best use, and minimize or prevent waste and degradation. It is imperative that a system for characterizing and monitoring groundwater be developed, so that information acquired through existing programs will allow Kentucky to build an adequate and reliable data base through identifying and characterizing the groundwater resource. Groundwater systems can be modeled, and plans formulated, for recognizing and dealing with degradation if it occurs. The information from the monitoring network can be used to identify new contamination problems, properly assess potential or suspected problems, set realistic regulatory standards, address resource allocation concerns, set boundaries on well-head protection areas, evaluate and improve the quality and quantity of data collected through all programs, and support a groundwater data management system.

SECTION 2. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 4 of this Act, unless the context clearly requires otherwise:

(1) "Committee" means the Interagency Technical Advisory Committee on Groundwater as created in Section 4 of this Act.

(2) "KGS" means the Kentucky Geological Survey.

(3) "Groundwater system" means a body of groundwater that is separated from other bodies of groundwater by flow direction or water chemistry.

(4) "Monitoring network" means a series of wells that will be tested on a periodic basis for water level and water chemistry.

(5) "Groundwater resource" means groundwater that is currently being used or is capable of being used.

SECTION 3. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

(1) The KGS shall establish a long-term groundwater monitoring network for the purpose of characterizing the quality, quantity, and distribution of Kentucky's groundwater resources.

(2) The monitoring network shall include:

(a) The development of protocols needed for standardization of the data being collected by regulatory programs;

(b) The utilization of newly drilled domestic water wells as part of the network; and

(c) The statewide installation of monitoring wells in areas of demonstrated need.

This information shall be collected on a statewide basis and provide long-term data collection to determine the quality, quantity, and occurrence of groundwater throughout the Commonwealth, in order to assist in the protection of those resources by the proper regulatory agencies. The KGS shall utilize collected data to support research efforts that develop models for groundwater systems, and to determine and monitor trends of groundwater movement, water quality, and quantity.

(3) The KGS shall enter data from the network into a groundwater data base which is readily available to the public, government agencies, industry, and other entities that request access. Analyzed data shall be made available in the form of maps, charts, bulletins, and reports.

(4) The KGS shall solicit input from state and local agencies, industry, agriculture, universities, and the public, to determine priority areas to be covered by the network as it is developed.

(5) Within forty-five (45) days of the end of the state fiscal year, the KGS shall annually provide to the Governor and the General Assembly a summary of the groundwater monitoring network data collection and analysis activities.

SECTION 4. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby established an Interagency Technical Advisory Committee on Groundwater, to assist the KGS in the development, coordination, and implementation of a groundwater monitoring network for the Commonwealth. The committee shall consist of one (1) representative from each of the following agencies, to be appointed by that agency:

(a) Kentucky Department for Environmental Protection, one (1) member each from the Division of Water, and the Division of Waste Management;

(b) Cabinet for Human Resources, Division of Environmental Sanitation and Community Safety;

(c) Department of Mines and Minerals;

(d) Kentucky Geological Survey;

(e) U.S. Geological Survey;

(f) Department for Surface Mining Reclamation and Enforcement;

(g) Department for Natural Resources;

(h) University of Kentucky Water Resources Research Institute;

(i) Department of Agriculture;

(j) University of Kentucky College of Agriculture; and

(k) Kentucky Water Well Association.

(2) The committee shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission. The chair of the committee shall be the director of the University of Kentucky Water Resources Research Institute. The duties and responsibilities of the committee shall include:

(a) Developing a plan for the overall characterization of the state's groundwater, including distribution, water quantity, and water quality;

(b) Reviewing the data entry process to ensure that all data collected is placed into the Kentucky groundwater repository;

(c) Establishing a long-term groundwater monitoring plan for the Commonwealth;

(d) Making recommendations for prioritization of the state's groundwater research needs;

(e) Reviewing and evaluating annually ground water data collection and analysis; and

(f) Making recommendations regarding the Commonwealth's needs for groundwater research.

Section 5. To carry out the purposes of this Act, there is appropriated to the Kentucky Geological Survey out of the general fund in the State Treasury the sum of $446,000 for the 1994-95 fiscal year, and $406,000 for the 1995-96 fiscal year.

The Committee Substitute to **HB 283** is as follows:

HB 283, AN ACT relating to a groundwater monitoring network and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

It is a finding of the General Assembly that groundwater makes up over ninety-five percent (95%) of the freshwater resources in Kentucky. Groundwater accounts for over thirty percent (30%) of the public and domestic water supplies in the Commonwealth, and up to ninety percent (90%) of all rural domestic supplies, and is the major source of water to streams during drought conditions. Groundwater is essential for the present and future economic, physical, and environmental well being of Kentucky, and it is critical that Kentucky maintain this resource for its highest and best use, and minimize or prevent waste and degradation. It is imperative that a system for characterizing and monitoring groundwater be developed, so that information acquired through existing programs will allow Kentucky to build an adequate and reliable data base through identifying and characterizing the groundwater resource. Groundwater systems can be modeled, and plans formulated, for recognizing and dealing with degradation if it occurs. The information from the monitoring network can be used to identify new contamination problems, properly assess potential or suspected problems, set realistic regulatory standards, address resource allocation concerns, set boundaries on well-head protection areas, evaluate and improve the quality and quantity of data collected through all programs, and support a groundwater data management system.

SECTION 2. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 4 of this Act, unless the context clearly requires otherwise:

(1) "Committee" means the Interagency Technical Advisory Committee on Groundwater as created in Section 4 of this Act.

(2) "KGS" means the Kentucky Geological Survey.

(3) "Groundwater system" means a body of groundwater that is separated from other bodies of groundwater by flow

direction or water chemistry.

(4) "Monitoring network" means a series of wells that will be tested on a periodic basis for water level and water chemistry.

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(a) The development of protocols needed for standardization of the data being collected by regulatory programs;

(b) The utilization of newly drilled domestic water wells as part of the network; and

(c) The statewide installation of monitoring wells in areas of demonstrated need.

This information shall be collected on a statewide basis and provide long-term data collection to determine the quality, quantity, and occurrence of groundwater throughout the Commonwealth, in order to assist in the protection of those resources by the proper regulatory agencies. The KGS shall utilize collected data to support research efforts that develop models for groundwater systems, and to determine and monitor trends of groundwater movement, water quality, and quantity.

(3) The KGS shall enter data from the network into a groundwater data base which is readily available to the public, government agencies, industry, and other entities that request access. Analyzed data shall be made available in the form of maps, charts, bulletins, and reports.

(4) The KGS shall solicit input from state and local agencies, industry, agriculture, universities, and the public, to determine priority areas to be covered by the network as it is developed.

(5) Within forty-five (45) days of the end of the state fiscal year, the KGS shall annually provide to the Governor and the General Assembly a summary of the groundwater monitoring network data collection and analysis activities.

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(a) Kentucky Department for Environmental Protection, one (1) member each from the Division of Water, and the Division of Waste Management;

(b) Cabinet for Human Resources, Division of Environmental Sanitation and Community Safety;

(c) Department of Mines and Minerals;

(d) Kentucky Geological Survey;

(e) U.S. Geological Survey;

(f) Department for Surface Mining Reclamation and Enforcement;

(g) Department for Natural Resources, one (1) member each from the Division of Conservation and the Division of Forestry;

(h) University of Kentucky Water Resources Research Institute;

(i) Department of Agriculture;

(j) University of Kentucky College of Agriculture; and

(k) Kentucky Water Well Association.

(2) The committee shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission. The chair of the committee shall be the director of the University of Kentucky Water Resources Research Institute. The duties and responsibilities of the committee shall include:

(a) Developing a plan for the overall characterization of the state's groundwater, including distribution, water quantity, and water quality;

(b) Reviewing the data entry process to ensure that all data collected is placed into the Kentucky groundwater repository;

(c) Establishing a long-term groundwater monitoring plan for the Commonwealth;

(d) Making recommendations for prioritization of the state's groundwater research needs;

(e) Reviewing and evaluating annually ground water data collection and analysis; and

(f) Making recommendations regarding the Commonwealth's needs for groundwater research.

Section 5. To carry out the purposes of this Act, there is appropriated to the Kentucky Geological Survey out of the general fund in the State Treasury the sum of $446,000 for the 1994-95 fiscal year, and $406,000 for the 1995-96 fiscal year.

Calendar

HB 13, HB 31, HB 85, HB 100, HB 104, HB 113 and **HB 157** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Recess

Representative Stumbo moved that the House recess for five minutes for a meeting of the Committee on Rules. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Floor Amendments

Floor Amendment No. 1 to **HB 176**, by Representative Riner:

On page 7, line 14, insert the following after the period " . " :

"KRS 156.160 is amended to read as follows:

(1) The State Board for Elementary and Secondary Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:

- (a) Courses of study for the different grades and kinds of common schools, including procedures for developing an ungraded primary program as defined in KRS 158.030 which shall be implemented by the beginning of the 1992-93 school year, and the program, in its entirety, shall be fully implemented for all students who have not entered the fourth grade in every elementary school in every district by the beginning of the 1993-1994 school year. The primary program shall include the following critical attributes: developmentally appropriate educational practices, multiage and multiability classrooms; continuous progress; authentic assessment; qualitative reporting methods; professional teamwork; and positive parent involvement. The implementation of the primary program may take into consideration the necessary arrangements required for students attending part-time. The courses of study for students shall include American sign language and it shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;
- (b) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;
- (c) The minimum requirements for high school graduation. Prior to the beginning of the 1994-95 school year, the State Board for Elementary and Secondary Education shall review graduation requirements in light of the expected outcomes for students and schools set forth in KRS 158.6451;
- (d) Taking, and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. ***Social Security numbers shall not be used to track students***~~[The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number]~~;
- (e) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the State Board for Elementary and Secondary Education shall adopt the Uniform State Building Code;
- (f) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The regulations shall permit a student who received a physical examination no more than six (6) months prior to his initial admission to Head Start to substitute that physical examination for the physical examination required by the State Board for Elementary and Secondary Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the State Board for Elementary and Secondary Education;

(g) The transportation of children to and from school;

(h) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;

(i) The preparation of budgets and salary schedules for the several school districts under the management and control of the State Board for Elementary and Secondary Education;

(j) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and

(k) The disposal of real and personal property owned by local boards of education.

(2) At the request of a local school council, any local school district superintendent shall request that the State Board for Elementary and Secondary Education waive any administrative regulation promulgated by that board. Prior to the 1994-95 school year, the requested waiver shall be granted to any school meeting the standards adopted pursuant to subsection (1) of this section. After the 1994-95 school year begins, a school shall exceed its threshold to be granted a waiver from regulations. Regulations relating to health and safety, civil rights, any state regulation required by a federal law, and regulations promulgated pursuant to KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful schools shall not be subject to waiver. Any waiver granted under this subsection shall be subject to revocation upon a determination by the State Board for Elementary and Secondary Education that the school holding the waiver has subsequently failed to reach its threshold level as provided for in KRS 158.6455.

(3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the State Board for Elementary and Secondary Education and be certified upon application to the board by such schools.

Section 11. KRS 213.031 is amended to read as follows:

The state registrar, under the supervision of the commissioner of health, shall:

(1) Administer and enforce the provisions of this chapter and the administrative regulations issued hereunder; issue instructions for the efficient administration of the system of vital statistics; direct the system and Office of Vital Statistics and be custodian of its records; supervise the activities of all persons when they are engaged in the operation of the system; and conduct training programs to promote uniformity of the system's policy and procedures throughout the Commonwealth;

(2) With the approval of the cabinet, design, furnish, and distribute forms required by this chapter and the administrative regulations issued hereunder, or prescribe other means for transmission of data to accomplish the purpose of complete and accurate reporting and registration;

(3) [~~Coordinate and maintain in accordance with administrative regulations promulgated pursuant to this subsection, a system by which a child's Social Security number is transferred by the Office of Vital Statistics to the Department of Education after receiving parental permission for the number to be used for planning and tracking purposes by the Department of Education, local school districts, and the office. The regulations, at a minimum, shall establish a process to allow a parent or guardian when completing a certificate of birth to request that a Social Security number be assigned the child and that the number be automatically transmitted to the Department of Education for student identification purposes;~~

~~(4)~~] Assist in preparing and publishing reports of vital statistics of the Commonwealth and other reports as required;

(4)[~~(5)~~] Provide to local health departments copies of or data derived from certificates and reports required under this chapter. The state registrar shall establish a schedule with each local health department for transmittal of the copies or data. The copies shall remain the property of the Office of Vital Statistics, and the uses which may be made of them and the period of their retention in the county shall be governed by the state registrar;

(5)[~~(6)~~] Prepare and maintain a complete continuous index of all vital records registered under this chapter and provide, at not more than two (2) year intervals, a copy of the index to each local registrar; and

(6)[~~(7)~~] Investigate cases of irregularity or violation of this chapter and when the cabinet deems it necessary, report violations to the Commonwealth's attorney of the proper county for prosecution.

Section 12.".

Representative Stumbo moved that the rules be suspended for a Rules Committee Report. Agreed.

Report of Committees (Continued)

The Committee on Rules reported that **HB 36, HB 183, HB 13, HB 31, HB 85, HB 100, HB 104, HB 113,** and **HB 157** have been posted for passage in the Orders of the Day for February 1, 1994.

The Committee on Rules reported that the following Bills have been recommitted:

Appropriations and Revenue: **HB 190, HB 48**

Orders of the Day

HB 84, with Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lindsay moved the adoption of Floor Amendment No. 1 to **HB 84**. Agreed.

Representative Long moved the adoption of Floor Amendment No. 3 to **HB 84**. Agreed.

Representative Bruce moved the adoption of Floor Amendment No. 4 to **HB 84**. Agreed.

Representative Long moved that **HB 84**, as amended, be passed.

On the roll call the vote was: Yeas 74, Nays 22. (See January 31, 1994 roll call on **HB 84** - Appendix)

HB 84, as amended, was passed and the title agreed to.

Representative Long moved that the vote by which **HB 84**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 99, with Floor Amendments attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

Representative Long moved that **HB 99**, as amended, be passed.

Representative Bentley moved the adoption of Floor Amendment No. 2 to **HB 99**. Rejected.

Representative Long moved that **HB 99**, as amended, be passed.

On the roll call the vote was: Yeas 47, Nays 44. (See January 31, 1994 roll call on **HB 99** - Appendix)

HB 99, as amended, was passed and the title agreed to.

Representative Long moved that the vote by which **HB 99**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 7, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Donnermeyer moved the adoption of the Committee Substitute to **HB 7**. Agreed.

Representative Donnermeyer moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 7**, Agreed.

Representative Donnermeyer moved that **HB 7**, by way of Committee Substitute as amended, be passed.

Representative Mason inquired if **HB 7** was in violation of House Rule 53 since an analysis of administrative promulgation authority regulation was not attached.

Representative Donnermeyer stated that the analysis was on file, but not attached to **HB 7**.

Representative Donnermeyer moved that **HB 7**, by way of Committee Substitute as amended, be laid on the Clerk's Desk. Agreed.

HB 46, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Scorsone moved the adoption of the Committee Substitute to **HB 46**. Agreed.

Representative Scorsone moved that **HB 46**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 83, Nays 11. (See January 31, 1994 roll call on **HB 46** - Appendix)

HB 46, by way of Committee Substitute, was passed.

Representative Scorsone moved the adoption of the Committee Title Amendment to **HB 46**. Agreed; and the title was agreed to.

Representative Scorsone moved that the vote by which **HB 46**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Representative Barrows pointed out that the Committee Title Amendment pertained to **HB 46** and not to the Committee Substitute.

HB 126, with Committee Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Ridley moved the adoption of Committee Amendment No. 1 to **HB 126**. Agreed.

Representative Ridley moved the adoption of Committee Amendment No. 2 to **HB 126**. Agreed.

Representative Ridley moved that **HB 126**, as amended, be passed.

On the roll call the vote was: Yeas 80, Nays 11. (See January 31, 1994 roll call on **HB 126** - Appendix)

HB 126, as amended, was passed and the title agreed to.

Representative Ridley moved that the vote by which **HB 126**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 242, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of the Committee Substitute to **HB 242**. Agreed.

Representative Long moved that **HB 242**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 94, Nays 0. (See January 31, 1994 roll call on **HB 242** - Appendix)

HB 242, by way of Committee Substitute, was passed and the title agreed to.

Representative Long moved that the vote by which **HB 242**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 161 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Johnson moved that **HB 161** be passed.

On the roll call the vote was: Yeas 97, Nays 0. (See January 31 , 1994 roll call on **HB 161** - Appendix)

HB 161 was passed and the title agreed to.

Representative Johnson moved that the vote by which **HB 161** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 155 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Donnermeyer moved that **HB 155** be passed.

On the roll call the vote was: Yeas 93, Nays 0. (See January 31 , 1994 roll call on **HB 155** - Appendix)

HB 155 was passed and the title agreed to.

Representative Donnermeyer moved that the vote by which **HB 155** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 185 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Arnold moved that **HB 185** be passed.

On the roll call the vote was: Yeas 94, Nays 0. (See January 31 , 1994 roll call on **HB 185** - Appendix)

HB 185 was passed and the title agreed to.

Representative Arnold moved that the vote by which **HB 185** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 244 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Little moved that **HB 244** be passed.

On the roll call the vote was: Yeas 95, Nays 0. (See January 31 , 1994 roll call on **HB 244** - Appendix)

HB 244 was passed and the title agreed to.

Representative Little moved that the vote by which **HB 244** was passed be reconsidered and said motion be placed on the table. Agreed.

SB 10 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **SB 10** be passed.

On the roll call the vote was: Yeas 95, Nays 0. (See January 31 , 1994 roll call on **SB 10** - Appendix)

SB 10 was passed and the title agreed to.

Representative Stumbo moved that the vote by which **SB 10** was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that **SB 78** be reassigned to the Committee on Banking and Insurance. Agreed.

Representative Stumbo moved that the rules be suspended for the Introduction of Bills and Resolutions and Committee Reports. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 373, by Representative Lear: AN ACT relating to the Kentucky Judicial Form Retirement System.

HB 374, by Representatives Nunn, Mason, Gray, Farrow, Turner, Noland and Bryant: AN ACT relating to the accountability of local officials to the public for funds provided for administering the program of child support recovery.

HB 375, by Representative R. Smith: AN ACT relating to the trial and punishment of certain juveniles as adults.

HB 376, by Representatives Crenshaw, Mason, Scorsone, Arnold, Palumbo, Gray, Damron, Hatcher and Butler: AN ACT relating to child sexual abuse and exploitation.

HB 377, by Representatives Arnold, Farrow and Graham: AN ACT relating to soil and water conservation.

HB 378, by Representative L. Clark: AN ACT relating to teachers retirement.

HB 379, by Representative L. Clark: AN ACT relating to environmental protection.

HB 380, by Representative Barrows: AN ACT relating to alcoholic beverages.

HB 381, by Representative Mason: AN ACT changing the classification of the City of Whitesburg, in Letcher County.

HB 382, by Representative McElroy: AN ACT proposing amendments to Sections 36 and 42 of the Constitution of Kentucky relating to legislative sessions.

HB 383, by Representative McElroy: AN ACT relating to taxation and declaring an emergency.

HB 384, by Representative Kerr: AN ACT relating to administrative regulations.

HB 385, by Representative R. Smith: AN ACT relating to fish and wildlife resources.

HB 386, by Representatives Burch and Rapier: AN ACT relating to funding of the equine industry program at the University of Louisville.

HB 387, by Representative Bowling: AN ACT relating to fish and wildlife.

HB 388, by Representative Stumbo: AN ACT relating to the funding of the statewide public advocacy system, and making an appropriation therefor.

HB 389, by Representative Stumbo: AN ACT relating to firearms.

HB 390, by Representative Stumbo: AN ACT relating to crimes and punishments.

HB 391, by Representatives Morris, Burch, Bruce and Zimmerman: AN ACT relating to assistance program fraud and abuse.

HJR 27, by Representative Long: A JOINT RESOLUTION relating to the budget process.

HJR 28, by Representative Long: A JOINT RESOLUTION relating to the budget process.

HJR 29, by Representative Long: A JOINT RESOLUTION relating to the budget process .

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills have been posted for Committee consideration:

Appropriations and Revenue: **HB 152, HB 98, HB 207, HB 206**

Floor Amendments (Continued)

Floor Amendment No. 2 to **HB 176**, by Representative Rasche:

On page 1, line 7, by deleting after "***activities,***" the word "***and***" and insert the words "***height and weight of members of athletic teams,***";

On page 1, line 7, by inserting after "***attendance***" the words "***, degrees and awards received, major field of study, and the most recent previous educational agency or institution attended by the student,***";

On page 1, line 13, by deleting after "***means***" the words "***all types of***";

On page 1, line 13, by inserting after "***data***" the words "***and information directly relating to a student that is***"

On page 1, line 13, by inserting after "***collected***", the words "***or maintained***";

On page 1, line 14, by inserting after "***institutions***" the words "***or by a person acting for an institution***";

On page 1, line 14, by deleting the words "***, but not limited to:***";

On page 1, line 19 by deleting after "***institution***" the "***;***" and in its place, insert the following words: "***or a person acting for an institution. "Education record" shall not include:***

a) Records of instructional, supervisory, and assisting administrative personnel which are in the sole possession of the maker and are not accessible or revealed to any other person except a substitute for any of those persons;

b) Records maintained by a law enforcement unit of the educational institution that were created by that law enforcement unit for the purpose of law enforcement;

c) In the case of persons who are employed by an educational agency or institution but who are not in attendance at that agency or institution, records made and maintained in the normal course of business which relate exclusively to that person in the person's capacity as an employee and are not available for use for any other purpose; or

d) Records on a student who is eighteen (18) years of age or older, or is attending an institution of postsecondary education, which are made, used, or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional for treatment of the student, and are not available to anyone other than persons providing this treatment, except a physician or other appropriate professional of the student's choice."

On page 1, line 21, by inserting before "***;***" the words "***and therefore the permission or consent required of, and the rights accorded to the parents of the student shall thereafter be required of, and accorded to the student***";

On page 2, after line 9 and before line 10, insert the following:

"***(3) Postsecondary educational institutions shall not make available to students the following:***

a) Financial records of parents of the student or any information contained therein; or

b) Confidential letters and statements of recommendation, placed in records prior to January 1, 1975, used for purposes other than those intended.

On page 2, line 12, by deleting after the word "***Parents***", the word "***and***" and inserting in lieu thereof, "***or***";

On page 2, line 18, by deleting after the words "***Parents of students***", the word "***and***" and inserting in lieu thereof "***or***";

On page 2, line 27, by deleting after "***Parents***", the word "***and***" and inserting in lieu thereof "***or***";

On page 3, line 5, by inserting after "***parties***", the words "***other than directory information as defined in Section 1 of this Act,***";

On page 3, line 6, by inserting after "***or***" the word "***eligible***";

On page 3, by inserting after line 24 and before line 25, the following:

"***(h) Parents of a dependent student of such parent as defined in Section 152 of the Internal Revenue Code of 1954 (26 USC § 152).***"

On page 3, line 25, after the "***(3)***", insert the following:

"***Students may waive the right to inspect confidential recommendations relating to admission to educational institutions, application for employment and receipt of an honor or honorary recognition. In the case of admissions, the waiver of release shall apply if the student, upon request, is notified of names of persons or organizations making confidential recommendations, and those recommendations are used solely for the purpose intended.***";

On page 3, line 25, by deleting "***(3)***" and inserting in lieu thereof, "***(4)***";

On page 3, line 25, by inserting after "release", the words "***for information contained in education records, other than directory information***";

On page 4, line 2, by deleting the words "***the same as education records.***" and inserting in lieu thereof, "***by parents, eligible students, school officials and their assistants who are responsible for custody of education records; by school officials within the educational institution who have legitimate educational interests; and by federal and state officials and representatives conducting audits and evaluations of the education programs or in connection with the enforcement of federal or state legal requirements relating to the programs.***";

On page 4, line 10, by inserting after "***give***" the word "***public***";

On page 4, line 11, by deleting after "***it***", the words "***intends to publish***" and inserting in lieu thereof, the words "***has designated as directory information with respect to each student in attendance***";

On page 4, line 12, by inserting after "***or***", the word "***eligible***";

On page 4, line 13, by inserting after "***that***", the words "***any or all of***";

On page 4, line 13, by inserting after "***information***", the words "***designated***";

On page 4, line 13, by inserting after "***released***" the words "***without prior consent***"; and

On page 4, line 22, by inserting after "***or***" the word "***eligible***".

Floor Amendment No. 1 to **HB 128**, by Representative Lewis:

On page 1, line 2, by inserting "***and the***" after "***poplar***", and by deleting the brackets and strikethroughs from "Kentucky coffee tree", and by inserting "***are***" after "tree" and by bracketing and striking through "is"; and

On page 1, line 3, by inserting "***trees***" at the beginning of line 3 and by bracketing and striking through "tree".

Motions, Petitions and Communications (Continued)

Representative Gray moved that the rules be suspended to withdraw **HB 153.** Agreed.

The following members filed requests to have their names added as co-sponsors to the following bills under the rules previously suspended: **HB 146, HB 191**, Representative Lile; **HB 220**, Representatives Riner, Wayne; **HB 296**, Representative L. Clark; **HB 306**, Representative Geveden; **HB 355**, Representative Northup.

The following members filed requests to have their names withdrawn as co-sponsors of the following bill: **HB 153**, Representative L. Clark, Marzian.

Representative Heleringer moved the adoption of the following **Legislative Citation No. 36**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes National Appreciation Day for Catholic Schools The Catholic school serves as a resplendent guide in the community of how to form today's students into tomorrow's citizens. This honorable body joins Representative Bob Heleringer in commending students and faculty for their valuable contributions toward the growth and development of their schools and communities.

Representative Stumbo announced the following revised Committee changes: Representative Maricle removed from the Committee on Transportation and appointed to the Committee on Tourism Development and Energy and the Committee on Economic Development. Representative Hampton removed from the Committee on Tourism Development and Energy and appointed to the Committee on Transportation.

Representative Stumbo moved that **HB 7** be taken off the Clerk's Desk and placed in the Orders of the Day for February 1, 1994. Agreed.

Representative Bruce moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Bruce moved that his vote be changed from "abstain" to "yea" on **HB 51**. Agreed.

Representative Deskins moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Deskins moved that he be recorded as voting "nay" on **HB 238** and Floor Amendment No. 1 to **HB 238**. Agreed.

Representative Deskins moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Deskins moved that he be recorded as voting "yea" on **HB 18, HB 50, HB 119, HB 170, HB 39, HB 51, HB 95, HB 123, HB 135, HB 203,** and **HJR 5**. Agreed.

Representative Nesler moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Nesler moved that he be recorded as voting "yea" on **HB 126**. Agreed.

Representative Marzian moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Marzian moved that she be recorded as voting "yea" on **HB 18, HB 50, HB 170, HB 203, HB 51, HB 95, HB 238, HB 135, HB 123** and **HJR 5**. Agreed.

Representative L. Clark moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative L. Clark moved that he be recorded as voting "yea" on **HB 99**. Agreed.

Representative Trapp moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Trapp moved that he be recorded as voting "nay" on **HB 99**. Agreed.

Representative Zimmerman moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Zimmerman moved that he be recorded as voting "yea" on **SB 10**. Agreed.

Representative Riggs moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Riggs moved that he be recorded as voting "yea" on **HB 39, HB 95, HB 135,** and **HB 203**. Agreed.

Representative Riggs moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Riggs moved that he be recorded as voting "nay" on **HB 238**. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 2 to the Committee Substitute to **HB 7**, by Representative Damron:

On page 12, line 21, by deleting Section 13 in its entirety and renumbering subsequent sections accordingly;
On page 1, line 3, by deleting the number "***21***" and inserting in lieu thereof the number "***20***";
On page 5, lines 11, 17, 22, and 27 by deleting the number "***21***" and inserting in lieu thereof the number "***20***";
On page 6, lines 10, 15, and 17, by deleting the number "***21***" and inserting in lieu thereof the number "***20***";
On page 11, line 18, by deleting the number "***21***" and inserting in lieu thereof the number "***20***";
On page 12, lines 7, 10, 12, and 17, by deleting the number "***21***" and inserting in lieu thereof the number "***20***";
On page 14, line 4, by deleting the number "***21***" and inserting in lieu thereof the number "***20***";
On page 15, line 8, by deleting the number "***21***" and inserting in lieu thereof the number "***20***";
On page 16, line 15, by deleting the number "***21***" and inserting in lieu thereof the number "***20***"; and
On page 17, line 11, by deleting the number "***21***" and inserting in lieu thereof the number "***20***".

Announcements

The Clerk announced the following meetings:

Budget Review Subcommittee on Education, upon adjournment, February 1, 1994

Appropriations and Revenue, 10:00 a.m., February 1, 1994

Banking and Insurance, 10:00 a.m., February 1, 1994 and **HB 177** has been added to the Agenda

Agriculture and Small Business, 9:00 a.m., February 1, 1994, Room 125

Budget Review Subcommittee on Transportation, 8:30 a.m., February 1, 1994

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Tuesday, February 1, 1994.

On the roll call the vote was **Yeas 86**--Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bruce, Bryant, Buis, Butler, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Jensen, Johnson, Kerr, Lee, Lindsay, Little, Lyne, Maggard, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 3**--Heleringer, LeMaster, Lile.

The motion to adjourn was adopted.

TUESDAY, FEBRUARY 1, 1994

EIGHTEENTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend K. L. Moore, First Baptist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present.

Representative McElroy moved that the reading of the Journal of January 31, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Introduction of Bills and Resolutions

HB 392, by Representatives Nunn, Burch, Johnson and Palumbo: AN ACT relating to domestic relations.

HB 393, by Representative Ballard: AN ACT relating to motor vehicles.

HB 394, by Representatives Zimmerman, Collins, Morris, Ridley, Ballard, Cyrus and Worthington: AN ACT relating to motor vehicle operator's licenses.

HB 395, by Representatives Farrow and Gedling: AN ACT relating to an agricultural logo program.

HB 396, by Representative Lewis: AN ACT relating to enforcement of paternity judgments.

HB 397, by Representative Lewis: AN ACT relating to hazardous duty positions and declaring an emergency.

HB 398, by Representative Damron: AN ACT relating to fire protection.

HB 399, by Representative Brown: AN ACT relating to waste tires.

HB 400, by Representative Barrows: AN ACT relating to hospital taxing districts.

Senate Message

Announcing passage of **SB 29, SB 84, HB 43**. (Time: 2:05 p.m.)

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Agriculture and Small Business: **HB 370**

Appropriations and Revenue: **HJR 27, HJR 28, HJR 29, HB 372, HB 383**

Business Organizations and Professions: **HB 380, HB 386**

Cities: **HB 369, HB 381**

Education: **SB 2, SB 15, SB 24, HB 378**

Elections and Constitutional Amendments: **HB 382**

Health and Welfare: **HB 374, HB 391**

Judiciary: **HB 373, HB 375, HB 388, HB 389, HB 390**

Natural Resources and Environment: **HB 377, HB 379, HB 385, HB 387**

State Government: **SB 27, SB 45, HB 371, HB 376, HB 384**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bill has been posted for Committee consideration:

Health and Welfare: **HB 366**

Report of Committees

The Committee on Appropriations and Revenue reported **HB 107**, with Committee Substitute and Committee Title Amendment attached thereto, **HB 298, HB 307**, with Committee Amendment attached thereto, **HB 309**, with Committee Substitute attached thereto, and **HB 310** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 107, AN ACT relating to income tax and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 141.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Secretary" means the secretary of revenue;

(2) "Cabinet" means the Revenue Cabinet;

(3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, ***1993, including the provisions of the Revenue Reconciliation Act of 1993 at the effective dates specified in that Act*** [~~1991~~], exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, ***1993*** [~~1991~~], that would otherwise terminate, and as modified by KRS 141.0101;

(4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;

(5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;

(6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;

(7) "Individual" means a natural person;

(8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable income as defined in Section 63 of the Internal Revenue Code, and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;

(9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;

(10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

  (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;

  (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;

  (c) Include interest income derived from obligations of sister states and political subdivisions thereof;

  (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;

  (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;

  (f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;

  (g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990; and

  (h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the armed forces of the United States or any dependent of such person who served in Vietnam;

(11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the

deduction allowed by KRS 141.0202 and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;

(b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);

(c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and

(d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;

(b) Exclude all dividend income received after December 31, 1969;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;

(e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;

(f) Include the amount calculated under KRS 141.205;

(g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income; and

(h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

(13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202 and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:

(a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;

(b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;

(c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;

(d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;

(e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and

(f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;

(b) "Taxable net income," in the case of corporations having property or payroll both within and without this state means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;

(c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction; and

(d) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year;

(15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;

(16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;

(17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;

(18) "Nonresident" means any individual not a resident of this state;

(19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;

(20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;

(21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;

(22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;

(23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;

(24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;

(25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

Section 2. Whereas the Internal Revenue Code update effects the 1993 tax returns which are due April 15, 1994, an emergency is declared to exist and this Act shall become effective upon its passage and approval by the Governor.

The Committee Substitute to **HB 107** is as follows:

HB 107, AN ACT relating to income tax and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 141.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Secretary" means the secretary of revenue;

(2) "Cabinet" means the Revenue Cabinet;

(3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, ***1993*** [~~1991~~], exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, ***1993*** [~~1991~~], that would otherwise terminate, and as modified by KRS 141.0101;

(4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;

(5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;

(6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;

(7) "Individual" means a natural person;

(8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable income as defined in Section 63 of the Internal Revenue Code, and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;

(9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;

(10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;

(b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;

(e) Exclude Social Security and railroad retirement benefits subject to federal income tax;

(f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;

(g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990; and

(h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the armed forces of the United States or any dependent of such person who served in Vietnam;

(11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202 and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;

(b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);

(c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and

(d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;

(b) Exclude all dividend income received after December 31, 1969;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;

(e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;

(f) Include the amount calculated under KRS 141.205;

(g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income; and

(h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

(13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202 and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:

(a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;

(b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;

(c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;

(d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;

(e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and

(f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;

(b) "Taxable net income," in the case of corporations having property or payroll both within and without this state means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;

(c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction; and

(d) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year;

(15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;

(16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;

(17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;

(18) "Nonresident" means any individual not a resident of this state;

(19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;

(20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;

(21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;

(22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;

(23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;

(24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;

(25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

Section 2. KRS 141.0101 is amended to read as follows:

(1) For property placed in service prior to January 1, 1990, in lieu of the depreciation and expense deductions allowed under Internal Revenue Code Sections 168 and 179, a deduction for a reasonable allowance for depreciation, exhaustion, wear and tear, and obsolescence of property used in a trade or business shall be allowed and computed as set out in subsections (2) to (10) of this section. For property placed in service after December 31, 1989, the depreciation and expense deductions allowed under Sections 168 and 179 of the Internal Revenue Code [~~in effect on December 31, 1989,~~] shall be allowed.

(2) Effective August 1, 1985, "reasonable allowance" as used in subsection (1) of this section shall mean depreciation computed in accordance with Section 167 of the Internal Revenue Code and related regulations in effect on December 31, 1980, for all property placed in service on or after January 1, 1981, except as provided in subsections (5) to (7) of this section.

(3) Depreciation of property placed in service prior to January 1, 1981, shall be computed under Section 167 of the Internal Revenue Code, and the method elected thereunder at the time the property was first placed in service or as changed with the approval of the Commissioner of Internal Revenue Service or as required by changes in federal regulations.

(4) Taxpayers other than corporations shall be allowed to deduct as depreciation on recovery property placed in service before August 1, 1985, an amount calculated under Section 168 of the Internal Revenue Code subject to the provisions of subsections (5) and (7) of this section. Corporations with a taxable year beginning on or after July 1, 1984, and before August 1, 1985, shall calculate a deduction for depreciation on recovery property placed in service prior to August 1, 1985, using either of the following alternative methods:

(a) Dividing the total of the deductions allowed under Internal Revenue Code Section 168 by one and four tenths (1.4); and

(b) Calculating the deduction that would be allowed or allowable under the provisions of Section 167 of the Internal Revenue Code.

(5) Recovery property placed in service on or after January 1, 1981, and before August 1, 1985, and subject to transition under subsection (7) of this section, shall be subject to depreciation under Section 167 of the Internal Revenue Code, restricted to the straight line method therein provided over the remaining useful life of such assets.

(6) Depreciation of property placed in service on or after August 1, 1985, shall be computed under Section 167 of the Internal Revenue Code.

(7) Transition from Section 168 of the Internal Revenue Code, Accelerated Cost Recovery System (ACRS) depreciation, to the depreciation allowed or allowable under this section shall be reported in the first taxable year beginning on or after August 1, 1985. To implement the transition, the following adjustments shall be made:

(a) Taxpayers other than corporations shall use the adjusted Kentucky basis for property placed in service on or after January 1, 1981. "Adjusted Kentucky basis" means the basis used for determining depreciation under Section 168 of the Internal Revenue Code less the allowed or allowable depreciation and adjustment for election to expense an asset (Section 179 of the Internal Revenue Code);

(b) Corporations shall adjust the federal unadjusted basis by increasing such basis by the ACRS depreciation not allowed as a deduction in determining Kentucky net income for tax years beginning after June 30, 1984, less allowed or allowable ACRS depreciation for federal income tax purposes. Corporations will not be permitted to adjust the basis by the ACRS depreciation not allowed for Kentucky income tax purposes in tax years beginning on or before June 30, 1984.

(8) A taxpayer may elect to treat the cost of property placed in service on or before July 31, 1985, as an expense as provided in Section 179 of the Internal Revenue Code in effect on December 31, 1981, except that the aggregate cost which may be expensed for corporations shall not exceed five thousand dollars ($5,000). A taxpayer may elect to treat the cost of property placed in service on or after August 1, 1985, as an expense as provided in Section 179 of the Internal Revenue Code in effect on December 31, 1980. Computations, limitations, definitions, exceptions, and other provisions of Section 179 of the Internal Revenue Code and related regulations shall be construed to govern the computation of the allowable deduction.

(9) Upon the sale, exchange, or disposition of any depreciable property placed in service on or after January 1, 1981, capital gains or losses and the amount of ordinary income determined under the provisions of the Internal Revenue Code shall be computed for Kentucky income tax purposes as follows:

(a) Compute the Kentucky unadjusted basis which is the cost of the asset reduced by any basis adjustment made by the taxpayer under Section 48(q)(1) of the Internal Revenue Code and any expense allowed and utilized under Section 179 of the Internal Revenue Code (First Year Expense) in determining Kentucky net income in prior years, and

(b) Compute the adjusted basis by subtracting the depreciation allowed or allowable for Kentucky income tax purposes from the unadjusted basis, except corporations will not be permitted to adjust the basis of assets by the ACRS depreciation not allowed for Kentucky income tax purposes in the tax years beginning on or before June 30, 1984, and

(c) Compute the gain or loss by subtracting the adjusted basis from the value received from the disposition of the depreciable property, and

(d) Compute the recapture of depreciation required under Sections 1245 through 1256 of the Internal Revenue Code and related regulations, and

(e) Unless otherwise provided in this subsection the provisions of the Internal Revenue Code and related regulations governing the determination of capital gains or losses shall apply for Kentucky income tax purposes.

(10) Unless otherwise provided by this chapter, the basis of property placed in service prior to January 1, 1990, for purposes of Kentucky income tax shall be the basis, adjusted or unadjusted, required to be used under Section 167 of the Internal Revenue Code in effect on December 31, 1980.

Section 3. Except as otherwise provided, the provisions of this Act shall apply for taxable years beginning after December 31, 1993.

The Committee Title Amendment to **HB 107** is as follows:

By amending the title to read as follows: "AN ACT relating to income taxation."

HB 298, AN ACT relating to income taxation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 141.0101 is amended to read as follows:

(1) For property placed in service prior to January 1, 1990, in lieu of the depreciation and expense deductions allowed under Internal Revenue Code Sections 168 and 179, a deduction for a reasonable allowance for depreciation, exhaustion, wear and tear, and obsolescence of property used in a trade or business shall be allowed and computed as set out in subsections (2) to (10) of this section. For property placed in service after December 31, 1989, the depreciation and expense deductions allowed under Sections 168 and 179 of the Internal Revenue Code ~~[in effect on December 31, 1989,]~~ shall be allowed.

(2) Effective August 1, 1985, "reasonable allowance" as used in subsection (1) of this section shall mean depreciation computed in accordance with Section 167 of the Internal Revenue Code and related regulations in effect on December 31, 1980, for all property placed in service on or after January 1, 1981, except as provided in subsections (5) to (7) of this section.

(3) Depreciation of property placed in service prior to January 1, 1981, shall be computed under Section 167 of the Internal Revenue Code, and the method elected thereunder at the time the property was first placed in service or as changed with the approval of the Commissioner of Internal Revenue Service or as required by changes in federal regulations.

(4) Taxpayers other than corporations shall be allowed to deduct as depreciation on recovery property placed in service before August 1, 1985, an amount calculated under Section 168 of the Internal Revenue Code subject to the provisions of subsections (5) and (7) of this section. Corporations with a taxable year beginning on or after July 1, 1984, and before August 1, 1985, shall calculate a deduction for depreciation on recovery property placed in service prior to August 1, 1985, using either of the following alternative methods:

(a) Dividing the total of the deductions allowed under Internal Revenue Code Section 168 by one and four tenths (1.4); and

(b) Calculating the deduction that would be allowed or allowable under the provisions of Section 167 of the Internal Revenue Code.

(5) Recovery property placed in service on or after January 1, 1981, and before August 1, 1985, and subject to transition under subsection (7) of this section, shall be subject to depreciation under Section 167 of the Internal Revenue Code, restricted to the straight line method therein provided over the remaining useful life of such assets.

(6) Depreciation of property placed in service on or after August 1, 1985, shall be computed under Section 167 of the Internal Revenue Code.

(7) Transition from Section 168 of the Internal Revenue Code, Accelerated Cost Recovery System (ACRS) depreciation, to the depreciation allowed or allowable under this section shall be reported in the first taxable year beginning on or after August 1, 1985. To implement the transition, the following adjustments shall be made:

(a) Taxpayers other than corporations shall use the adjusted Kentucky basis for property placed in service on or after January 1, 1981. "Adjusted Kentucky basis" means the basis used for determining depreciation under Section 168 of the Internal Revenue Code less the allowed or allowable depreciation and adjustment for election to expense an asset (Section 179 of the Internal Revenue Code);

(b) Corporations shall adjust the federal unadjusted basis by increasing such basis by the ACRS depreciation not allowed as a deduction in determining Kentucky net income for tax years beginning after June 30, 1984, less allowed or allowable ACRS depreciation for federal income tax purposes. Corporations will not be permitted to adjust the basis by the ACRS depreciation not allowed for Kentucky income tax purposes in tax years beginning on or before June 30, 1984.

(8) A taxpayer may elect to treat the cost of property placed in service on or before July 31, 1985, as an expense as provided in Section 179 of the Internal Revenue Code in effect on December 31, 1981, except that the aggregate cost which may be expensed for corporations shall not exceed five thousand dollars ($5,000). A taxpayer may elect to treat the cost of property placed in service on or after August 1, 1985, as an expense as provided in Section 179 of the Internal Revenue Code in effect on December 31, 1980. Computations, limitations, definitions, exceptions, and other provisions of Section 179 of the Internal Revenue Code and related regulations shall be construed to govern the computation of the allowable deduction.

(9) Upon the sale, exchange, or disposition of any depreciable property placed in service on or after January 1, 1981, capital gains or losses and the amount of ordinary income determined under the provisions of the Internal Revenue Code shall be computed for Kentucky income tax purposes as follows:

(a) Compute the Kentucky unadjusted basis which is the cost of the asset reduced by any basis adjustment made by the taxpayer under Section 48(q)(1) of the Internal Revenue Code and any expense allowed and utilized under Section 179 of the Internal Revenue Code (First Year Expense) in determining Kentucky net income in prior years, and

(b) Compute the adjusted basis by subtracting the depreciation allowed or allowable for Kentucky income tax purposes from the unadjusted basis, except corporations will not be permitted to adjust the basis of assets by the ACRS depreciation not allowed for Kentucky income tax purposes in the tax years beginning on or before June 30, 1984, and

(c) Compute the gain or loss by subtracting the adjusted basis from the value received from the disposition of the depreciable property, and

(d) Compute the recapture of depreciation required under Sections 1245 through 1256 of the Internal Revenue Code and related regulations, and

(e) Unless otherwise provided in this subsection the provisions of the Internal Revenue Code and related regulations governing the determination of capital gains or losses shall apply for Kentucky income tax purposes.

(10) Unless otherwise provided by this chapter, the basis of property placed in service prior to January 1, 1990, for purposes of Kentucky income tax shall be the basis, adjusted or unadjusted, required to be used under Section 167 of the Internal Revenue Code in effect on December 31, 1980.

(11) The provisions of subsections (1) to (10) of this section shall apply to taxable years beginning before January 1, 1994, and the provisions of subsections (12) to (15) shall apply to taxable years beginning after December 31, 1993.

(12) As used in subsections (13) to (15) of this section:

(a) "Transition property" means any property placed in service before the first day of the first taxable year beginning after December 31, 1993, and owned by the taxpayer on the first day of the first taxable year beginning after December 31, 1993.

(b) "Adjusted Kentucky basis" means the amount computed in accordance with the provisions of paragraph (b) of subsection (9) of this section for transition property.

(c) "Adjusted federal basis" means the original cost of transition property less:

1. Any basis adjustments required by the Internal Revenue Code for credits; and

2. The total accumulated depreciation and election to expense deductions allowed or allowable for federal income tax purposes.

(d) "Transition amount" means the net difference between the adjusted Kentucky basis and the adjusted federal basis of all transition property determined as of the first day of the first taxable year beginning after December 31, 1993.

(13) For taxable years beginning after December 31, 1993, the amounts of depreciation and election to expense deductions, allowed or allowable, the basis of assets, adjusted or unadjusted, and the gain or loss from the sale or other disposition of assets shall be the same for Kentucky income tax purposes as determined under Chapter 1 of the Internal Revenue Code.

(14) For taxable years beginning after December 31, 1993, the transition amount computed in accordance with the provisions of paragraph (d) of subsection (12) of this section shall be reported by the taxpayer as follows:

(a) In the first taxable year beginning after December 31, 1993 and the three (3) succeeding taxable years, if the transition amount exceeds one hundred thousand dollars ($100,000), or if the transition amount does not exceed one hundred thousand dollars ($100,000) and the taxpayer elects the provision of this paragraph with the filing of the income tax return for the first taxable year beginning after December 31, 1993, the taxpayer shall:

1. Deduct from gross income twenty-five percent (25%) of the transition amount if the adjusted Kentucky

basis of transition property exceeds the adjusted federal basis of transition property; or

2. Add to gross income twenty-five percent (25%) of the transition amount if the adjusted federal basis of transition property exceeds the adjusted Kentucky basis of transition property.

(b) In the first taxable year beginning after December 31, 1993, if the transition amount does not exceed one hundred thousand dollars ($100,000) and the taxpayer does not elect the provisions of paragraph (a) of this subsection, the taxpayer shall:

1. Deduct from gross income the total transition amount if the adjusted Kentucky basis of transition property exceeds the adjusted federal basis of transition property; or

2. Add to gross income the total transition amount if the adjusted federal basis of transition property exceeds the adjusted Kentucky basis of transition property.

(15) Notwithstanding the provisions of subsections (13) and (14), in no case shall the accumulated depreciation and election to expense deductions and the transition amount exceed the original cost of the property.

HB 307, AN ACT relating to revenue and taxation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186A.035 is amended to read as follows:

(1) All motor vehicles with a gross vehicular weight of six thousand (6,000) pounds or less, first registered, or for which the registration is renewed in this state on or after January 1, 1983, shall be placed in a system of year-round registration based upon the birth month of the owner, in order to distribute the work of registering motor vehicles as uniformly as practicable throughout the twelve (12) months of the year.

(2) If the owner of a motor vehicle is other than an individual, the month in which the owning entity came into being shall be used for purposes of this section. If a motor vehicle is jointly owned, the owners shall indicate to the county clerk the birth month of one (1) of them to be used for purposes of this section.

(3) The certificate of registration and license plate issued for a motor vehicle first registered, renewed, or titled in this state on or after January 1, 1983, shall be valid, unless canceled by the cabinet in accordance with KRS Chapter 186 or this chapter, upon payment of the required fee, for a period beginning on the first day of the month of the year in which registration is applied for, and expiring on the last day of the next birth month of the owner following the month during which registration is applied for***.***[~~, provided however that,~~] Upon the owner's request, and after payment of the proper prorated fee, an owner may obtain a certificate of registration and license plate valid through the last day of his second birth month following the month and year in which he applied for a certificate of registration. Any transaction relating to registration or registration renewal which would cause an unexpired Kentucky motor vehicle license plate to be surrendered shall have that unexpired fee prorated or credited against any additional fee required by a subsequent registration.

(4) After a motor vehicle has been initially placed in the system of year-round registration, the owner shall renew the registration annually during the owner's birth month, by making application to the county clerk and paying the fee required for twelve (12) consecutive months of registration, which shall take effect on the first day of the month succeeding the owner's birth month and shall expire on the last day of the owner's next birth month. The county clerk shall be entitled to a registration fee of two dollars ($2) for each registration, or if ***the*** [~~said~~] registration exceeds a twelve (12) month period the clerk shall receive a fee of three dollars ($3).

(5) At least ***forty-five (45)*** [~~thirty (30)~~] days prior to the expiration of the registration of any motor vehicle previously registered in the Commonwealth as provided by subsection (1) of this section, the owner of the vehicle shall be notified by mail on the same notice required by KRS 134.805(5) of the date of expiration. Any registration renewal ***or vehicle transfer notice*** by mail shall require payment of an additional one dollar ($1) fee which shall be received by the county clerk. Nonreceipt of the notice ***required by this subsection*** [~~herein~~] shall not constitute a defense to any registration related offense.

(6) Any owner who fails to renew the registration of a motor vehicle during the month in which the previous registration expired, shall, if he applies for renewal of the registration in some later month, pay the same fees that would have been required if the registration had been renewed in the month which the previous registration expired.

(7) Fees which must be prorated in carrying out the intent of this section shall be prorated on the basis of twelfths of the annual registration fee. Any vehicle which is registered at any time during a month[~~,~~] shall pay the fee required for that whole month plus any additional months of registration purchased consistent with the intent of the section.

(8) The county clerk shall ensure that the certificate of registration issued to an owner displays the month and year in which the registration period begins[~~,~~] and the month and year of its expiration, and shall issue to the owner a decal or decals corresponding to the month and year of expiration shown in the certificate of registration which shall be placed upon the corresponding license plate by the owner in the manner required by administrative regulations of the Department of Vehicle Regulation.

Section 2. KRS 131.345 is amended to read as follows:

(1) Appeals to the Kentucky Board of Tax Appeals shall be in accordance with rules prescribed by the board. All proceedings before the board shall be de novo. Findings by the board shall be restricted to those issues raised by the parties to the appeal. ***If*** [~~In the event~~] the board finds that other issues are necessary to a full determination of the controversy, it may remand the whole proceeding to the agency from which the appeal was prosecuted for further determination. The parties may stipulate to the determination of ***the*** [~~such~~] other issues without remand.

(2) Any person receiving compensation to represent a property owner in an appeal before the board of a real property assessment shall be an attorney, a certified public accountant, a certified real estate appraiser, a Kentucky licensed real estate broker, [~~or~~] an employee of the property owner***, or any other individual possessing a professional appraisal designation recognized by the cabinet. A person representing a property owner before the Kentucky Board of Tax Appeals shall present written authorization from the property owner which sets forth his professional capacity, and shall disclose to the Kentucky Board of Tax Appeals any personal or private interests he may have in the matter, including any contingency fee agreements.***

Section 3. KRS 133.020 is amended to read as follows:

(1) [~~Beginning with the 1992 tax assessment year,~~] The county board of assessment appeals shall be composed of reputable real property owners residing in the county at least five (5) years[~~, to be appointed for three (3) year terms~~]. ***The appointing authorities may appoint qualified property owners residing in adjacent counties when qualified members cannot be secured within the county.*** The board shall consist of three (3) members, one (1) to be appointed by the county judge/executive, one (1) to be appointed by the fiscal court, and one (1) to be appointed by the mayor of the city with the largest assessment using the county tax roll or appointed as otherwise provided by the comprehensive plan of an urban county government. ***Beginning with the 1995 appeals, the mayor's appointment shall serve for four (4) years, the county judge/executive's appointment shall serve for three (3) years, and the fiscal court's appointment shall serve for two (2) years. Each person appointed thereafter shall serve for three (3) years.*** If no city in the county uses the county assessment, the county judge/executive shall appoint two (2) members. Board members appointed prior to July 14, ***1994*** [~~1992~~], shall be eligible for reappointment by the appointing authority if they meet the requirements of subsection (2) of this section. A board member who has served for a full term shall not be eligible for reappointment. However, he shall be eligible for appointment after a hiatus of three (3) years. ***If*** [~~Should~~] the number of appeals to the board of assessment appeals filed with the county clerk ***exceeds*** [~~exceed~~] one hundred (100), temporary panels of the board may be appointed with approval of the Revenue Cabinet. Each ***temporary*** panel shall consist of three (3) members having the same qualifications and appointed in the same manner as the board members. The number of additional panels shall not exceed one (1) for each one hundred (100) appeals in excess of the first one hundred (100). The county judge/executive shall designate one (1) of the members ***of the board of assessment appeals*** to serve as chairman of the board. ***If*** [~~Where~~] additional panels are appointed, as provided ***in this subsection*** [~~herein~~], the chairman of the board of assessment appeals shall designate one (1) member of each additional panel as chairman of the panel. A majority of the board or of any panel may determine the action of the board or panel respectively and make decisions [~~therefor~~]. Each panel of the board shall have the same powers and duties given the board by KRS 133.120, except [~~that~~] the action of any panel shall be subject to review and final approval by the board. [~~The appointing authority shall appoint a person having the qualifications required of the original appointee to the board to fill a vacancy resulting from any cause, but the appointee shall hold office only to the end of the unexpired term of the member replaced.~~]

(2) Each member of the board shall have extensive knowledge of real estate values, preferably in real estate appraisal, sales, management, financing, or construction. In counties with cities of the first, second, or third class, the member appointed by the mayor shall be a certified real estate appraiser unless the mayor provides sufficient proof to the [~~Revenue~~] cabinet of his inability to secure ***a certified real estate appraiser*** [~~such a person~~].

(3) The board shall be subject to call by the county judge/executive at any time prescribed by law.

(4) The members of the county board of assessment appeals, and any panel ***of the board*** [~~thereof~~], before ***undertaking*** [~~entering upon the discharge of~~] their duties, shall take the following oath***,*** to be administered by the county judge/executive: "You swear (affirm) that you will***,*** to the best of your ability***,*** discharge the duties required of you as a member of the county board of assessment appeals***,*** and that you will fix at fair cash value all property assessments brought before you for review as prescribed by law."

(5) The [~~Revenue~~] cabinet shall prepare and furnish to each property valuation administrator guidelines and materials for an orientation and training program to be presented to the board by the property valuation administrator or his deputy each year.

(6) A board member shall produce evidence of his qualifications upon request of the cabinet. A board member shall be replaced by the appointing authority upon proof of the member's failure to meet the qualifications of the position. Any vacancy on the board shall be filled by the appointing authority that appointed the member to be replaced. The appointee shall have the qualifications required by statute for the board member appointed by the particular appointing authority and shall hold office only to the end of the unexpired term of the member replaced.

(7) Members of the county board of assessment appeals, and any temporary panel, shall abstain from hearing or ruling

on an appeal for any property in which they have any personal or private interests.

Section 4. KRS 133.045 is amended to read as follows:

(1) The real property tax roll being prepared by the property valuation administrator for the current year, shall be open for inspection in the property valuation administrator's office for thirteen (13) days beginning on the first Monday in May of each year and shall be open for inspection for six (6) days each week, one (1) of which shall be Saturday. In case of necessity, the [~~Revenue~~] cabinet may order a reasonable extension of time for the inspection period of the tax roll or it may order that the inspection period be at a different time than that provided ***in this section*** [~~herein~~]. However, the final day of the inspection period shall not be Saturday, Sunday, or a legal holiday.

(2) The property valuation administrator shall cause to be published once during the week before the beginning of the inspection period, as provided in subsection (1) of this section, in a display type advertisement, the following information:

(a) The fact that the real property tax roll is open for public inspection;

(b) The dates of the inspection period;

(c) The times available for public review of the real property tax roll; [~~and~~]

(d) ***The fact that any taxpayer desiring to appeal an assessment shall first request a conference with the property valuation administrator to be held prior to or during the inspection period; and***

(e) Instructions which provide details on the manner in which a taxpayer ***who has had a conference with the property valuation administrator*** may file an appeal, if he is aggrieved by an assessment made by the property valuation administrator.

The cost of ***the*** [~~such~~] notice shall be paid by the fiscal court of the county. ***The*** [~~Such~~] notice shall also be posted at the courthouse door. Failure to publish or post notices when the inspection period is at the regular time as provided in this section shall not invalidate assessments made by the property valuation administrator and recorded on the tax roll prior to the inspection period.

Section 5. KRS 133.120 is amended to read as follows:

(1) Any taxpayer desiring to appeal an assessment on real property made by the property valuation administrator shall first request a conference with the property valuation administrator or his designated deputy. The conference shall be held prior to or during the inspection period provided for in KRS 133.045. ***Any person receiving compensation to represent a property owner at a conference with the property valuation administrator for a real property assessment shall be an attorney, a certified public accountant, a certified real estate broker, a Kentucky licensed real estate broker, an employee of the property owner, or any other individual possessing a professional appraisal designation recognized by the cabinet. A person representing a property owner before the property valuation administrator shall present written authorization from the property owner which sets forth his professional capacity and shall disclose to the property valuation administrator any personal or private interests he may have in the matter, including any contingency fee arrangements.*** During this conference***,*** the property valuation administrator or his deputy shall provide an explanation to the taxpayer of the constitutional and statutory provisions governing property tax administration, including the appeal process, as well as an explanation of the procedures followed in deriving the assessed value for the taxpayer's property. The property valuation administrator or his deputy shall keep a record of each conference which shall include, but shall not be limited to, the initial assessed value, the value claimed by the taxpayer, an explanation of any changes offered or agreed to by each party, and a brief ***account*** [~~accounting~~] of the outcome of the conference. At the request of the taxpayer, the conference may be held by telephone.

(2) Any taxpayer still aggrieved by an assessment on real property made by the property valuation administrator after complying with the provisions of subsection (1) of this section may appeal to the board of assessment appeals. The taxpayer shall appeal his assessment by filing in person or sending a letter or other written petition stating the reasons for appeal, identifying the property for which the appeal is filed, and stating to the county clerk the taxpayer's opinion of the fair cash value of the property. The appeal shall be filed no later than one (1) workday following the conclusion of the inspection period provided for in KRS 133.045. The county clerk shall notify the [~~Revenue~~] cabinet of all assessment appeals and of the date and times of the hearings. The board of assessment appeals may review and change any assessment made by the property valuation administrator upon recommendation of the [~~Revenue Cabinet,~~] county judge/executive, mayor of any city using the county assessment, or the superintendent of any school district in which the property is located, ***if the*** [~~provided such~~] recommendation is made to the board in writing specifying the individual properties recommended for review ***and is made no later than one (1) work day following the conclusion of the inspection period provided for in KRS 133.045, or upon the written recommendation of the cabinet***. If the board of assessment appeals determines that ***the*** [~~any such~~] assessment should be increased, [~~then~~] it shall give the taxpayer notice in the manner required by subsection (4) of KRS 132.450, specifying a date when the board will hear the taxpayer, if he so desires, in protest of ***an*** [~~such~~] increase. Any real property owner who has listed his property with the property valuation administrator at its fair cash value [~~likewise~~] may ask the county board of assessment appeals to review the assessments of real properties he believes to be assessed at less than fair cash value, ***if*** [~~providing~~] he specifies in writing the individual properties for which the review is sought and factual information upon which his request is based, such as

comparable sales or cost data ***and if the request is made no later than one (1) work day following the conclusion of the inspection period provided for in KRS 133.045***. Nothing in this section shall be construed as granting any property owner the right to request a blanket review of properties or the board the power to conduct such a review.

(3) The board of assessment appeals shall hold a public hearing for each individual taxpayer appeal in protest of the assessment by the property valuation administrator filed in accordance with the provisions of subsection (2) of this section, and after hearing all the evidence, shall fix the assessment of the property at its fair cash value. The [~~Revenue~~] cabinet may be present at the hearing and present any pertinent evidence as it pertains to the appeal. The taxpayer shall provide factual evidence to support his appeal. If the taxpayer fails to provide reasonable information pertaining to the value of the property requested by the property valuation administrator, the [~~Revenue~~] cabinet, or any member of the board, his appeal shall be denied. This information shall include, but shall not be limited to, the physical characteristics of land and improvements, insurance policies, cost of construction, real estate sales listings and contracts, income and expense statements for commercial property, and loans or mortgages. ***The board of assessment appeals shall only hear and consider evidence which has been submitted to it in the presence of both the property valuation administrator or his designated deputy and the taxpayer or his authorized representative.***

(4) Any person receiving compensation to represent a property owner in an appeal before the board shall be an attorney, a certified public accountant, a certified real estate appraiser, a Kentucky licensed real estate broker, [~~or~~] an employee of the taxpayer***, or any other individual possessing a professional appraisal designation recognized by the cabinet. A person representing a property owner before the county board of assessment appeals shall present a written authorization from the property owner which sets forth his professional capacity and shall disclose to the county board of assessment appeals any personal or private interests he may have in the matter, including any contingency fee arrangements***.

(5) The board shall provide a written opinion justifying its action for each assessment either decreased or increased in the record of its proceedings and orders required in KRS 133.125 on forms or in a format provided or approved by the [~~Revenue~~] cabinet.

(6) The board shall report to the property valuation administrator any real property omitted from the tax roll. The property valuation administrator shall assess ***the*** [~~such~~] property and immediately give notice to the taxpayer in the manner required by KRS 132.450(4), specifying a date when the board of assessment appeals will hear the taxpayer, if he so desires, in protest of the action of the property valuation administrator.

(7) The board of assessment appeals shall have power to issue subpoenas, compel the attendance of witnesses, and adopt rules and regulations concerning the conduct of its business. Any member of the board shall have power to administer oaths to any witness in proceedings before the board.

(8) The powers of the board of assessment appeals shall be limited to those specifically granted by this section.

(9) No appeal shall delay the collection or payment of any taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which he claims as true value and stated in the petition of appeal filed in accordance with the provisions of subsection (1) of this section. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6) from the date when the tax would have become due if no appeal had been taken. The provisions of KRS 134.390 shall apply to ***the*** [~~such~~] tax bill.

(10) Any member of the county board of assessment appeals may be required to give evidence in support of the board's findings in any appeal from its actions to the Kentucky Board of Tax Appeals. Any persons aggrieved by a decision of the board, including the property valuation administrator, taxpayer, and [~~Revenue~~] cabinet, may appeal the decision to the Kentucky Board of Tax Appeals. Any taxpayer failing to appeal to the county board of assessment appeals, or failing to appear before the board, either in person or by designated representative, shall not be eligible to appeal directly to the Kentucky Board of Tax Appeals.

(11) [~~It shall be the duty of~~] The county attorney ***shall*** [~~to~~] represent the interest of the state and county in all hearings before the board of assessment appeals and on all appeals prosecuted from its decision. ***If*** [~~In the event~~] the county attorney is unable to represent the state and county, he or the fiscal court shall arrange for substitute representation.

(12) Taxpayers shall have the right to make audio recordings of the hearing before the county board of assessment appeals. The property valuation administrator may make similar audio recordings only if prior written notice is given to the taxpayer. The taxpayer shall be entitled to a copy of the cabinet's recording as provided in KRS 61.874.

(13) The county board of assessment appeals shall physically inspect a property upon the request of the property owner or property valuation administrator.

Section 6. The following KRS section is repealed:

135.070 Compromise or agreed judgment in action by Revenue Cabinet.

The Committee Amendment No. 1 to **HB 307** is as follows:

On page 3, line 22, after the period "." by inserting the following: "***Provided however, attorneys shall not be required to disclose the terms and conditions of any contingency fee arrangement.***"; and

On page 7, line 24, after the period "." but before the word "During" by inserting the following "***Provided however, attorneys shall not be required to disclose the terms and conditions of any contingency fee arrangement.***"; and

On page 10, line 7, after the period "." by inserting the following "***Provided however, attorneys shall not be required to disclose the terms and conditions of any contingency fee arrangement.***"

HB 309, AN ACT relating to property tax.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 134.370 is amended to read as follows:

[~~(1)~~] The sheriff, in reporting to the [~~fiscal court or the Revenue~~] cabinet the names of persons owing uncollectible delinquent tax claims other than certificates of delinquency, shall submit to the fiscal court all tax bills in his possession against those persons. ***The cabinet shall assume all duties related to the collection of these delinquent tax claims. The cabinet shall be entitled to twenty percent (20%) of the amount due each taxing district, whether the tax claim is paid voluntarily or is paid under court order. The county clerk will be entitled to the five percent (5%) commission provided for in KRS 134.480(2) to offset the costs associated with handling and storing these delinquent tax bills*** [~~That court shall then direct the county attorney to prosecute all remedies provided for the collection of these bills. If the county attorney has taken no action for the collection of the bills within one (1) year, the collection duties may be assumed by the Revenue Cabinet. Uncollectible tax claims shall bear interest at twelve percent (12%) per annum from the date the sheriff makes settlement with the cabinet and receives credit therefor. All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he makes his next regular settlement.~~

~~(2) Each county attorney who fulfills his duties with regard to the collection of these delinquent tax bills, shall be entitled to twenty percent (20%) of the amount due each taxing district, whether the tax claim is paid voluntarily or is paid under court order. The commission shall be paid by the county clerk when making distributions of the amounts collected. If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the commission on the amount collected for each taxing unit. When the cabinet performs the duties of the county attorney without his assistance or cooperation, the fee which would otherwise be paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400~~].

Section 2. KRS 134.500 is amended to read as follows:

(1) The ***cabinet shall assume all duties related to the collection of certificates of delinquency provided, however, that the cabinet shall first offer the collection duties to the county attorney. Any county attorney desiring to perform the duties associated with the collection of delinquent tax claims shall enter into a contract with the cabinet on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions*** [~~county attorney shall take the following action to enforce collection of delinquent taxes owed to the state, a county, or a taxing district~~]:

(a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.

(b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.

(c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.

(d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners whose tax bills remain delinquent. No second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information. A copy of the return receipt shall be filed by the county attorney in the office of the county clerk in the manner prescribed by the [~~Revenue~~] cabinet.

(e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the certificate of delinquency and, upon collection, the county attorney shall be reimbursed for the postage.

(2) ~~[The county attorney shall prosecute the remedy or remedies provided in this chapter that are most likely to effect collection of the amount due on the certificate of delinquency. Upon the failure of the county attorney to give the notices provided in this section, or to prosecute the remedies for collection of certificates within twelve (12) months after the right to collect accrued, or to duly complete the performance of any other duties necessary to collect the claims of the state, county, and taxing districts for taxes, the Revenue Cabinet may perform such duties. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, Chapters 131, 134, and 135.~~

~~(3)~~] The county attorney who ***enters into a contract with the cabinet and*** performs his duties in respect to the certificate of delinquency shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the commission shall be paid to him by the county clerk when making distribution, as provided in KRS 134.480. If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the commission on the amount collected for each taxing unit. When the ***county attorney's office, in an effort to collect a certificate of delinquency, files a court action which results in contested litigation, an additional county's attorney fee equal to thirteen percent (13%) of the total tax, interest, and penalties due may be added to the certificate and shall become part of the tax claim*** [~~cabinet performs the duties of the county attorney without his assistance or cooperation, the fee which would otherwise be paid the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400~~].

(3) If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the cabinet shall assume responsibility for the collection process. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400.

(4) Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the secretary [~~of revenue~~], and the petition may be sent to the cabinet, which may require revision [~~thereof~~] in instances where it deems revision or amendment necessary. The cabinet shall advise the county attorney in all [~~such~~] actions, and may send him special assistance when the secretary deems assistance necessary. A copy of the judgment shall also be sent to the cabinet. If the cabinet sends assistance to a county attorney who ***contracts to prosecute*** [~~cooperates in prosecuting~~] the suits or proceedings, the county attorney shall be entitled to his full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.

The Committee Substitute to **HB 309** is as follows:

HB 309, AN ACT relating to property tax.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 134.500 is amended to read as follows:

(1) ***Uncollectible tax claims shall bear interest at twelve percent (12%) per annum from the date the sheriff makes settlement with the cabinet and receives credit, therefor. All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he makes his next regular settlement.***

(2) The ***cabinet shall be responsible for the collection of certificates of delinquency and delinquent personal property tax bills; however, the cabinet shall first offer the collection duties to the county attorney. Any county attorney desiring to perform the duties associated with the collection of delinquent tax claims shall enter into a contract with the cabinet on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions*** [~~county attorney shall take the following action to enforce collection of delinquent taxes owed to the state, a county, or a taxing district~~]:

(a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent

(12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.

(b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.

(c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.

(d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners whose tax bills remain delinquent. No second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information. A copy of the return receipt shall be filed by the county attorney in the office of the county clerk in the manner prescribed by the [~~Revenue~~] cabinet.

(e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the certificate of delinquency and, upon collection, the county attorney shall be reimbursed for the postage.

(3)[~~(2) The county attorney shall prosecute the remedy or remedies provided in this chapter that are most likely to effect collection of the amount due on the certificate of delinquency. Upon the failure of the county attorney to give the notices provided in this section, or to prosecute the remedies for collection of certificates within twelve (12) months after the right to collect accrued, or to duly complete the performance of any other duties necessary to collect the claims of the state, county, and taxing districts for taxes, the Revenue Cabinet may perform such duties. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, Chapters 131, 134, and 135.~~

~~(3)~~] The county attorney who ***enters into a contract with the cabinet and*** performs his duties in respect to the certificate of delinquency ***and delinquent personal property tax bills*** shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the commission shall be paid to him by the county clerk when making distribution, as provided in KRS 134.480. If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the commission on the amount collected for each taxing unit. When the ***county attorney's office, in an effort to collect a certificate of delinquency, or delinquent personal property tax bills files a court action which results in contested litigation, an additional county's attorney fee equal to thirteen percent (13%) of the total tax, interest, and penalties due may be added to the certificate or the bill and shall become part of the tax claim*** [~~cabinet performs the duties of the county attorney without his assistance or cooperation, the fee which would otherwise be paid the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400~~].

(4) If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the cabinet shall assume responsibility for the collection process. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400.

(4) Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the secretary [~~of revenue~~], and the petition may be sent to the cabinet, which may require revision [~~thereof~~] in instances where it deems revision or amendment necessary. The cabinet shall advise the county attorney in all [~~such~~] actions, and may send him special assistance when the secretary deems assistance necessary. A copy of the judgment shall also be sent to the cabinet. If the cabinet sends assistance to a county attorney who ***contracts to prosecute*** [~~cooperates in prosecuting~~] the suits or proceedings, the county attorney shall be entitled to his full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.

Section 2. KRS 424.330 is amended to read as follows:

(1) When the sheriff of any county files with the fiscal court a list of uncollectible delinquent taxes, in accordance with KRS 134.360 [~~and 134.370~~], the fiscal court shall promptly cause a list, showing the name of and amount due from each delinquent taxpayer, to be advertised by newspaper publication. A fee of three dollars ($3) per name per publication shall be added to the amount of each tax claim published as publication costs.

(2) Cities may publish a list of uncollected delinquent taxes levied under Section 181 of the Kentucky Constitution, showing the name of and the amount due from each delinquent taxpayer, to be advertised by newspaper publication. A fee of three dollars ($3) per name per publication may be added to the amount of each tax claim published as publication costs.

Section 3. KRS 134.990 is amended to read as follows:

(1) Any sheriff who violates subsection (2) of KRS 134.140 shall be fined one hundred dollars ($100) for each offense.

(2) Any person who violates the provisions of KRS 134.150 shall, upon indictment and conviction in the county in which the act was done, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500), and be removed from office.

(3) Any sheriff who violates subsection (3) of KRS 134.170 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense.

(4) Any sheriff who violates subsection (2) of KRS 134.200 shall be fined not less than five hundred dollars ($500) for each offense.

(5) Any outgoing sheriff who fails for ten (10) days to comply with the provisions of KRS 134.215 shall be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500), and be liable on his bond for any default.

(6) Any sheriff who fails to report as required in KRS 134.300 shall be liable to indictment in the county of his residence, and upon conviction shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(7) Any sheriff who fails to report as provided in KRS 134.320 shall be liable to indictment in the Franklin Circuit Court, and upon conviction shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense.

(8) Any person who willfully fails to comply with any rule or regulation promulgated under subsection (4) of KRS 134.380 shall be fined not less than twenty dollars ($20) nor more than one thousand dollars ($1,000).

(9) Any sheriff who violates subsection (4) of KRS 134.430 shall be fined one hundred dollars ($100) and be liable on his official bond for the damages sustained by any person aggrieved.

(10) Any county attorney who fails to prepare, and any sheriff who fails to serve, the notice provided for in subsection ***(2)***[~~(1)~~] of KRS 134.500 shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100).

(11) Any sheriff who intentionally fails to keep his books in an intelligible manner and according to the form prescribed by the Revenue Cabinet, or to make the entries required by law, shall be fined not less than fifty dollars ($50) nor more than two hundred dollars ($200) for each offense.

(12) Any person who fails to do an act required, or does an act forbidden, by any provision of this chapter for which no other penalty is provided shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

Section 4. The following KRS section is repealed:

134.370 Collection of delinquent and omitted tax bills -- Percentage to county attorney for collection.

HB 310, AN ACT relating to income and taxation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

If a taxpayer is entitled to more than one of the tax credits allowed against the tax imposed by KRS 141.020 or 141.040, the priority of application and use of the credits shall be determined as follows:

(1) The nonrefundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:

- ***(a) The individual credits permitted by KRS 141.020(3);***
- ***(b) The economic development credits computed under KRS 141.347, 141.400, 141.403, and 141.407;***
- ***(c) The health insurance credit permitted by KRS 141.062;***
- ***(d) The tax paid to other states credit permitted by KRS 141.070;***
- ***(e) The credit for hiring the unemployed permitted by KRS 141.065;***
- ***(f) The recycling or composting equipment credit permitted by KRS 141.390;***
- ***(g) The Commonwealth Venture Fund credit permitted by KRS 154.20-340;***
- ***(h) The low income credit permitted by KRS 141.066; and***
- ***(i) The household and dependent care credit permitted by KRS 141.067.***

(2) After the application of the nonrefundable credits in subsection (1) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:

- ***(a) The individual withholding tax credit permitted by KRS 141.350; and***
- ***(b) The individual estimated tax payment credit permitted by KRS 141.305.***

(3) The nonrefundable credits against the tax imposed by KRS 141.040 shall be taken in the following order:

(a) The economic development credits computed under KRS 141.347, 141.400, 141.403, and 141.407;

(b) The health insurance credit permitted by KRS 141.062;

(c) The unemployment credit permitted by KRS 141.065;

(d) The recycling or composting equipment credit permitted by KRS 141.390;

(e) The coal conversion credit permitted by KRS 141.041;

(f) The enterprise zone credit permitted by KRS 154.45-090; and

(g) The Commonwealth Venture Fund credit permitted by KRS 154.20-340.

(4) After the application of the nonrefundable credits in subsection (3) of this section, the refundable corporation estimated tax payment credit permitted by KRS 141.044 shall be allowed as a credit against the tax imposed by KRS 141.040.

Section 2. KRS 141.041 is amended to read as follows:

(1) There shall be allowed a credit against the tax imposed on any corporation subject to taxation under KRS 141.040 and which, on or after January 1, 1984, installs, modifies, and utilizes facilities located in Kentucky for generating steam or hot water for space-heating or materials processing or for providing direct heat for industrial processes in the following ways:

(a) Replacement of an existing heat-generating facility not capable of using coal as a fuel with one in which coal can be used;

(b) Erection of a heat-generating facility additional to any existing heat-generating facility or facilities and capable of using coal as a fuel;

(c) Refurbishment for coal utilization of heat-generating facilities which were at one time capable of using coal but which had been altered to allow use of other fuels;

(d) Alteration of an existing heat-generating facility not capable of utilizing coal in such ways as to allow the use of coal;

(e) Substitution of coal for other fuels in any heat-generating facility which on January 1, 1984, was in existence and capable of utilizing coal and other fuels. Substitution means the increased heat input in BTU from coal matched by equal decreases of heat input in equivalent measures to BTU from other fuels, based upon relative fuel usage in the calendar year preceding the year in which the substitution occurred.

(2) The amount of the allowable credit shall be equal to four and one-half percent (4.5%) of the purchase price of the coal subject to taxation under KRS Chapter 143 consumed or substituted in each eligible heating facility as described in subsection (1) of this section, minus any transporting cost included in the purchase price.

(3) The credit shall be allowed for ten (10) years consecutive from the date of the initial installation, modification or utilization of any heat-generating facility installed or modified on and after January 1, 1984, as defined in subsection (1)(a), (b), (c) and (d) of this section or ten (10) years consecutive from the filing of a fuel-switching credit claim in subsection (1)(e) of this section.

(4) ***The credit allowable under this section shall be applied against the taxpayer's tax liability as provided in Section 1 of this Act*** [~~The amount of the tax credit allowable under this section in any year may not exceed the amount of the tax imposed by KRS 141.040 for that year less any other tax credit allowed under KRS Chapter 141~~], and no part of the credit shall be applicable to the tax imposed by KRS 141.040 for any other taxable year.

(5) A corporation claiming the credit under this section must submit proof of the installation, modification, utilization or substitution as required by regulations issued by the Revenue Cabinet prior to the claiming of such credit.

Section 3. KRS 141.066 is amended to read as follows:

(1) A resident individual whose adjusted gross income does not exceed the amounts set out in subsection (3) of this section, shall be eligible for a nonrefundable "low income" tax credit. The credit shall be ***applied against the taxpayer's*** [~~deducted from the amount of the~~] tax liability calculated under KRS 141.020***, and shall be taken in the order established by Section 1 of this Act*** [~~after deducting any credits claimed by the taxpayer under the provisions of KRS 141.065, 141.070, and 154.20-340~~].

(2) For a husband and wife filing jointly, the "low income" tax credit shall be computed on the basis of their joint adjusted gross income and shall be deductible from their joint tax liability. For a husband and wife living together, whether filing separate returns or separately on a combined return, the "low income" credit shall be computed on the basis of their combined adjusted gross income, except that a separately computed adjusted gross income of less than zero shall be treated as zero, and shall be deductible from their combined tax liability.

(3) The "low income" tax credit shall be computed as follows:

AMOUNT OF ADJUSTED GROSS INCOME	PERCENT OF TAX LIABILITY ALLOWED AS LOW INCOME TAX CREDIT
not over $5,000	100%
over $ 5,000 but not over $10,000	50%
over $10,000 but not over $15,000	25%
over $15,000 but not over $20,000	15%
over $20,000 but not over $25,000	5%
over $25,000	-0-

Section 4. The provisions of this Act shall first apply to taxable years beginning after December 31, 1993.

The Committee on Agriculture and Small Business reported **HB 6,** with Committee Substitute No. 1 and Committee Substitute No. 2 attached thereto, with the expression of opinion that the same should pass. Ordered referred to the Committee on Rules as a Consent Bill.

The Committee Substitute No. 2 to **HB 6** is as follows:

HB 6, AN ACT relating to timber.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 364.130 is amended to read as follows:

(1) ***Except as provided in subsection (2) of this section,*** any person who [~~unlawfully enters upon and~~] cuts or saws down, or causes to be cut or sawed down ***with intent to convert to his own use***[~~,~~] timber growing upon the land of another ***without legal right or*** [~~and~~] without color of title in himself to the timber[~~,~~] or to the land upon which the timber was growing[~~,~~] shall ***pay to the rightful owner of the timber three (3) times the stumpage value of the timber and shall pay*** [~~be liable~~] to the rightful owner of the ***property three (3) times the cost of any*** [~~timber in punitive~~] damages ***to the property as well as any legal costs incurred by the owner of the timber***.

(2) ***(a) If a defendant can certify that prior to cutting:***

- ***1. A signed statement was obtained from the person whom the defendant believed to be the owner of all trees scheduled to be cut that:***
  - ***a. All of the trees to be cut were on his property and that none were on the property of another; and***
  - ***b. He has given his permission, in writing, for the trees on his property to be cut; and***
- ***2. Either:***
  - ***a. A written agreement was made with owners of the land adjacent to the cut that the trees to be cut were not on their property; or***
  - ***b. Owners of the land adjacent to the cut were notified in writing, delivered by certified mail, restricted delivery, and return receipt requested, of the pending cut and they raised no objection,***

the court may render a judgment for no more than the reasonable value of the timber, actual damages caused to the property, and any legal costs incurred by the owner of the timber.

(b) With respect to subsection (2)(a)2.b. of this section, if no written objection was received from the persons notified within seven (7) days from the date of signed receipt of mail, it shall be presumed, for the purposes of setting penalties only, that the notified owner had no objection to the proposed cut.

(3) This section shall not be construed as repealing any of the provisions of Section 514.030 of the Kentucky Revised Statutes and any penalties provided by this chapter shall be considered as additional thereto.

The Committee on Agriculture and Small Business reported **HB 218,** with Committee Amendment attached thereto, **HB 294, HB 347,** and **HB 348** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 218, AN ACT relating to the Kentucky Nature and Wildlife Fund.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 141.455 is amended to read as follows:

Each taxpayer required to file a return pursuant to KRS 141.180 who is entitled to an income tax refund and who desires to contribute to the nongame species protection and ***natural areas*** ~~[habitat]~~ acquisition programs of the Commonwealth may designate as provided in this section an amount, not to exceed the amount of the refund, to be paid to such programs. In the case of a joint return, each spouse may also designate that a portion of the refund shall be paid to said programs. Such designation shall not increase or decrease the income tax liability of any taxpayer, but it shall reduce the income tax refund of such taxpayer or spouse by the amount or amounts designated.

Section 2. KRS 141.460 is amended to read as follows:

(1) The Revenue Cabinet shall print on the face of the Kentucky individual income tax form a space for a taxpayer to designate that a contribution be made to the ***Kentucky Nature and Wildlife Fund*** ~~[Nongame Species Protection and Habitat Acquisition Programs]~~ from that taxpayer's income tax refund. The space for designating the contribution shall be in substantially the following form:

KENTUCKY ***NATURE AND WILDLIFE FUND*** ~~[NONGAME SPECIES PROTECTION AND HABITAT ACQUISITION PROGRAMS]~~. I wish to contribute

$2~~[$1]~~---- $5---- $10---- $----

of my TAX REFUND TO THE ***KENTUCKY NATURE AND WILDLIFE FUND*** ~~[NONGAME SPECIES PROTECTION AND HABITAT ACQUISITION PROGRAMS]~~.

(2) The Revenue Cabinet shall print in the instructions accompanying the individual income tax form a description of the purposes for which the Nongame Species and Habitat Acquisition Programs were established and the use of moneys from the income tax check-off.

Section 3. KRS 141.465 is amended to read as follows:

The secretary of the Revenue Cabinet shall transfer fifty percent (50%) of the funds designated in KRS 141.460 to the nongame fish and wildlife fund created by KRS 150.165 and fifty percent (50%) to the Kentucky nature preserves fund created by KRS 146.520 and shall reduce the amount of the income tax refund by the amount designated. ***Moneys in each fund shall be placed in an interest bearing account.***

The Committee Amendment No. 1 to **HB 218** is as follows:

On page 1, line 24, after the words "which the" insert "***Kentucky Nature and Wildlife Fund was***"; and

On page 1, lines 24 through 25, after the words "which the" by placing brackets and striking through"~~[Nongame Species and Habitat Acquisition Programs were]~~".

HB 294, AN ACT relating to soil and water conservation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 262.530 is amended to read as follows:

At any time after five (5) years from the organization of a district, ~~[any]~~ twenty-five ***percent (25%) of the*** ~~[(25)]~~ owners of land lying within the boundaries of the district may file a petition with the commission praying that the existence of the district be discontinued. The commission may conduct such public meetings and public hearings upon the petition for discontinuance as may be necessary to assist it in the consideration of it.

Section 2. KRS 64.012 is amended to read as follows:

The county clerk shall receive for the following services the following fees:

Recording deed of trust or assignment for the benefit of creditors, provided the entire thereof does not exceed three (3) pages	$ 5.00
Exceeding three (3) pages, for each page	1.50
Copy and certification of same when ordered	3.50
Each bond required to be taken or prepared by the clerk	2.00
Copy of any bond when ordered	1.50
Recording a bond, each bond	5.00
Receiving the acknowledgment or proof of any deed, mortgage or agreement, power of attorney, or other written instrument required by law to be done and certifying same	1.25
Taking the acknowledgment or proof of a deed of real estate, certifying	

and recording the same and recording his own certificate, provided the entire record thereof does not exceed three (3) pages	7.00
Exceeding three (3) pages, for each page	1.50
Certified copy of deed	3.50
Recording a mortgage of real estate, certificates, and all services connected with the same, provided the entire record thereof does not exceed three (3) page	7.00
Exceeding three (3) pages, for each page	1.50
Certified copy of real estate mortgage	3.50
Recording deed of assignment of real estate mortgage	5.00
Noting release of any lien, mortgage or redemption other than a deed of release	2.50
Receiving the acknowledgment, recording and certifying each deed of release of a mortgage or lien under KRS 382.360	5.00
Each additional marginal notation relating to same instrument	2.50
Making a record for the establishment of a city, recording the plan or plat thereof, and all other services incident	10.00
Recording survey of a city, or any part thereof, or any addition to or extensions of the boundary of a city	10.00
Every order concerning the establishment, changing, closing or discontinuing of roads, to be paid out of the county levy when the road is established, changed, closed or discontinued, and by the applicant when it is not	1.00
Administering an oath and certificate thereof	1.00
Issuing license for which no other fee is fixed by law	1.50
Marriage license, bond, certificate and recording	14.00
For filing and indexing an original or continuation financing statement, and noting the security interest on the required receipt for one motor vehicle	6.00
For filing and indexing an assignment of a financing statement	6.00
For filing and noting a statement of release of collateral under a financing statement	1.00
Issuance of a certification as provided in KRS 355.9-407	3.50
Certified copy of financing statement or statement of assignment as provided in KRS 355.9-407	3.50
Recording real estate options, provided the entire record thereof does not exceed three (3) pages	5.00
Exceeding three (3) pages, for each page	1.50
Recording power of attorney or revocation of power of attorney, provided the entire record thereof does not exceed three (3) pages	5.00
Exceeding three (3) pages, for each page	1.50
Recording plats, maps and surveys, not exceeding 24 inches by 36 inches, per page	10.00
Recording all leases which are recordable by law, provided the entire record thereof does not exceed three (3) pages	5.00
Exceeding three (3) pages, for each page	1.50
Marginal notation to same instrument	2.50
Filing or recording of certification of intention to operate a	

business under an assumed name	5.00
Filing a lien on a delinquent motor vehicle or trailer bill	6.00
Releasing a lien on a delinquent motor vehicle or trailer bill	1.50
Filing or recording of mechanic's and artisan's liens under KRS Chapter 376	5.00
Filing or recording of notice of lien issued by the Internal Revenue Service	5.00
Filing or recording of notice of lien discharges issued by the Internal Revenue Service	5.00
Filing or recording of lis pendens notice concerning proceedings in bankruptcy and other lis pendens notices, provided the entire record thereof does not exceed three (3) pages	5.00
Exceeding three (3) pages, for each page	1.50
Filing or recording United States liens, provided the entire record per lien does not exceed three (3) pages	5.00
Exceeding three (3) pages, for each page	1.50
Filing or recording release of a United States lien, provided the entire record per lien does not exceed three (3) pages	5.00
Exceeding three (3) pages, for each page	1.50
Filing or recording state tax or other state liens, other than liens on delinquent motor vehicles or trailers	5.00
Filing release of a state tax or other state lien, other than a lien on a delinquent motor vehicle or trailer	5.00
Filing notification and declaration and petition of candidates for Commonwealth's attorney, District Court, and Circuit Court	200.00
Filing notification and declaration and petition of candidates for office in cities of the fifth or sixth class, ~~[and]~~ candidates for county and independent boards of education***, and candidates for boards of soil and water conservation districts***	20.00
Filing notification and declaration and petition of candidates for other offices	50.00
Recording wills or other probate documents under KRS 394.300	5.00
Issuance of fish and game licenses or tags costing more than $1.00 each	.75
Registration of licenses for professional persons required to register with the county clerk	5.00
Recording and issuing articles, statements, or reports of corporations pursuant to KRS Chapters 271B, 272 and 273, including articles of incorporation, amendment, restatement of incorporation, merger, consolidation, or dissolution and statements of establishment of a series of shares, cancellation of a series of shares, reduction of capital, intent to dissolve, revocation of voluntary dissolution, or any other statement or report of a foreign or domestic corporation, provided the entire record thereof does not exceed three (3) pages	5.00
Exceeding three (3) pages, for each page	1.50
Miscellaneous recordings for which no specific fee is set, provided the entire record thereof does not exceed three (3) pages (except military discharges)	5.00
Exceeding three (3) pages, each additional page	1.50
Filing miscellaneous documents for which no specific fee is set,	

provided the entire record thereof does not exceed three (3) pages	5.00
Exceeding three (3) pages, each additional page	1.50
Filing certification required by KRS 65.070(1)(a)	2.00
Certification of franchise tax assessment	2.50

HB 347, AN ACT relating to corn.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 247.6003 is amended to read as follows:

As used in KRS 247.6005 to 247.6035, unless the context otherwise requires:

(1) "Commissioner" means the Commissioner of Agriculture;

(2) "Board" means the State Board of Agriculture;

(3) "Corn" means all kinds and varieties of corn, ***including popcorn,*** except sweet corn and ornamental corns;

(4) "Bushel" means fifty-six (56) pounds of corn by weight or as otherwise defined by the United States Department of Agriculture (USDA);

(5) "Producer" means every person who produces and markets corn;

(6) "New producer" means a producer who was not engaged in the business of producing corn at the time a referendum was conducted in accordance with the provisions of KRS 247.6001 to 247.6035;

(7) "Person" means any individual, corporation, partnership, association, cooperative, or other business entity;

(8) "Marketing year" means from September 1 to August 31 of the following year;

(9) "Purchaser" means any person, public or private corporation, Federal Commodity Credit Corporation, association or partnership buying, accepting for shipment, or otherwise acquiring the property in or to corn from a producer, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the producer, when the actual or constructive possession of the corn is taken as part payment or in satisfaction of a mortgage, pledge, lien, or claim; and

(10) "Marketed" means any quantities that are sold, bartered, or for which other items of value are exchanged.

Section 2. KRS 247.6009 is amended to read as follows:

(1) ~~[Any existing association which is fairly representative of the corn producers of Kentucky, such as]~~ The Kentucky Corn Growers Association, may at any time after July 13, 1990, make application to the State Board of Agriculture on forms prescribed by the board for certification and approval for the purpose of conducting a referendum among the producers of corn upon the question of levying an assessment under the provisions of KRS 247.6001 to 247.6035 and collecting and utilizing the assessment for the purpose stated in the referendum. The application forms shall include, but not be limited to, the following:

  (a) Applicant's name;

  (b) Applicant's address;

  (c) Date;

  (d) Program to be undertaken for producers;

  (e) Brief statement of how the program is to be implemented;

  (f) Referendum to be conducted on a statewide basis;

  (g) Proposed effective date of the program; and

  (h) Signature of the applicant.

(2) Upon receipt of the application, the Commissioner shall publish the application through the medium of the public press in the state within ten (10) days of receipt.

Section 3. KRS 247.6011 is amended to read as follows:

Upon being certified by the Commissioner of Agriculture, the ***Kentucky Corn Growers*** Association shall be fully authorized and empowered to hold and conduct on the part of the producers of corn a referendum on the question of whether the producers shall levy upon themselves an assessment under, and subject to, and for the purpose stated in KRS 247.6001 to 247.6035. The referendum shall be conducted on a statewide basis.

Section 4. KRS 247.6015 is amended to read as follows:

The manner, conduct, and management of any referendum held under the provisions of KRS 247.6001 to 247.6035 shall be under the supervision and direction of the Commissioner of Agriculture, and any and all expenses in connection therewith shall be borne by the ***Kentucky Corn Growers*** Association ~~[conducting the referendum]~~.

Section 5. KRS 247.6017 is amended to read as follows:

With respect to any referendum conducted under the provisions of KRS 247.6001 to 247.6035, the Commissioner of Agriculture shall, before calling and announcing the referendum, fix, determine, and publicly announce at least thirty (30) days before the date determined for the referendum, the date, hours, and polling places for voting in the referendum, the effective date of the assessment, if adopted, the amount and basis of the assessment proposed to be collected, the means by which the assessment shall be collected if authorized by the producers, and the general purposes to which the amount collected shall be applied. No annual assessment levied under the provisions of any referendum shall exceed one fourth of one percent (0.25%) of the ***net*** [~~gross~~] marketed price per bushel on the corn marketed in the state during a marketing year by any producer included in the group to which the referendum was submitted or by any person subsequently becoming a new producer.

Section 6. KRS 247.6019 is amended to read as follows:

The hours, voting places, rules, and regulations for the referendum shall be established and determined by the Commissioner of Agriculture and shall be published by the Commissioner through the medium of the public press in the Commonwealth of Kentucky at least thirty (30) days before the holding of the referendum, and direct written notice thereof shall likewise be given to each county or area agent in any county covered by the referendum. The notice shall likewise contain a statement of the amount of the assessment proposed to be levied, which assessment in any event shall not exceed one fourth of one percent (0.25%) of the ***net*** [~~gross~~] marketed price per bushel, and shall likewise state the method by which the assessment shall be collected and how the proceeds shall be administered and the purposes to which the proceeds shall be applied, which purposes shall be in keeping with the provisions of KRS 247.6001 to 247.6035.

Section 7. KRS 247.6023 is amended to read as follows:

If, in the referendum called under the provisions of KRS 247.6001 to 247.6035, a majority of the eligible producers, who vote therein, shall vote in the affirmative and in favor of the levying and collection of the assessment proposed in the referendum, the assessment shall be collected in the manner determined and announced by the ***Kentucky Corn Growers*** Association [~~conducting the referendum~~].

Section 8. KRS 247.6025 is amended to read as follows:

If a majority of the eligible producers in the referendum who vote therein shall vote in favor of the assessment, the Commissioner shall notify, by certified mail, all persons engaged in the business of purchasing corn in this state, that on and after the date specified in the letter, the specified assessment shall be deducted from the producer's payment by the purchaser, or his agent or representative, from the ***net*** [~~gross~~] marketed price of the corn. The assessment so deducted shall, on or before the fifteenth day of the month following the end of the month in which the corn is sold to the purchaser, be remitted by the purchaser to the ***Kentucky Corn Growers Association*** [~~duly certified association~~] which conducted the referendum. The books and records of all the purchasers of corn shall at all times be open for inspection by the Commissioner of Agriculture***, Kentucky Corn Growers Association,*** or ***their*** [~~his~~] duly authorized agents during regular business hours.

Section 9. KRS 247.6027 is amended to read as follows:

There is hereby established a ***Kentucky Corn Promotion Council*** [~~Fund Utilization Committee~~] composed of four (4) members appointed by the ***Kentucky Corn Growers Association*** [~~certified organization~~]; two (2) members appointed by the association representing the largest number of corn farmers in the state; and one (1) member appointed by the Commissioner. These appointments shall be for terms of two (2) calendar years and each appointing body shall promptly file with the Commissioner the names of its respective appointees.

Section 10. KRS 247.6029 is amended to read as follows:

The funds, including donations from individuals, concerns, corporations, and grants from the state or governmental agencies, shall be used for the purpose of promoting and stimulating, by research, market development and education, the increased use and sale, domestic and foreign, of corn and corn products; and for the prevention, modification, or elimination of trade barriers which obstruct the free flow of corn and corn products to market. None of these funds shall be used to lobby as defined in KRS 6.611. The ***Kentucky Corn Growers Association*** [~~duly certified association~~] receiving the assessment funds shall, upon the advice and consent of the ***Kentucky Corn Promotion Council*** [~~Fund Utilization Committee~~], use and disburse the same as follows:

(1) The ***Kentucky Corn Growers*** Association may first refund to itself therefrom the costs and expenses incurred in the conduct of the referendum;

(2) The ***Kentucky Corn Growers*** Association may spend or disburse the necessary funds therefrom for administrative costs and expenses, but no more than fifteen percent (15%) of the funds collected in any marketing year shall be so utilized; and

(3) The balance remaining shall be used for the purposes provided in this section, as determined by the ***Kentucky Corn Promotion Council*** [~~Fund Utilization Committee~~].

Section 11. KRS 247.6031 is amended to read as follows:

If the referendum is carried in the affirmative and the assessment is levied and collected as provided, any producer upon and against whom the assessment shall have been levied and collected under the provisions of KRS 247.6001 to 247.6035, if dissatisfied with the assessment and the result thereof, may demand of and receive from the ***Kentucky Corn Growers Association*** [~~treasurer of the certified association~~] a refund of the assessment collected from the producer; if the demand for refund is made in writing within thirty (30) days ***after*** [~~from~~] the date on which the assessment is collected from the producer.

Section 12. KRS 247.6033 is amended to read as follows:

(1) ***The question of the levy of the assessment on corn may be referred to a vote of the corn producers of the state by filing petitions with the Kentucky Corn Growers Association containing signatures of Kentucky corn producers equal in number to ten percent (10%) of all corn producers in the state as recorded in the latest United States Census of Agriculture. If after the petitions are filed and at the referendum election a majority of Kentucky corn producers voting on the question vote against the levy on corn, the assessment shall be terminated at the end of the marketing year in which the referendum was conducted; otherwise, the assessment program shall continue*** [~~The board shall review the assessment program annually. If, at the end of each year after the first year of the assessment program, the board determines that the producers in the referendum representing ten percent (10%) of the production of corn have indicated their dissatisfaction with the program by demanding a refund of the assessment collected from them, the Commissioner shall conduct a referendum among the producers. If, upon the referendum, a majority of the eligible producers, who vote therein, reject the program, it shall be terminated at the end of the marketing year in which the referendum was conducted; otherwise, the assessment program shall continue in force and effect~~].

(2) [~~The Commissioner shall conduct a referendum five (5) years after the date of the first referendum and each subsequent five (5) year period thereafter to determine if the assessment should be continued or terminated.~~

~~(3)~~] If the ***Kentucky Corn Growers Association*** [~~duly certified association of corn producers~~] expresses in writing its desire to the Commissioner to discontinue the assessment program and terminate the program, the Commissioner shall within fifteen (15) days following receipt of the request convene the board to review and act on the request. The board, after reviewing the request and conducting whatever proceedings are deemed appropriate and necessary in connection with the request, may terminate the program effective at the end of the marketing year in which the board action is taken; and, in this event, the Commissioner shall notify, by certified mail, the purchasers of corn affected thereby of the termination of the program.

Section 13. KRS 247.6035 is amended to read as follows:

When in the judgment of the board or the ***Kentucky Corn Growers Association*** [~~duly certified association~~], a purchaser has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of KRS 247.6001 to 247.6035, the board or the ***Kentucky Corn Growers Association*** [~~duly certified association~~] may make application to the Franklin Circuit Court for an order enjoining the act or acts or practices, and obtain a restraining order and preliminary injunction against the purchaser.

HB 348, AN ACT relating to small grains.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 247.5069 is amended to read as follows:

(1) [~~Any existing association which is fairly representative of the small grains producers of Kentucky, such as~~] The Kentucky Small Grain Growers Association, may at any time after July 13, 1990, make application to the State Board of Agriculture on forms prescribed by the board for certification and approval for the purpose of conducting a referendum among the producers of small grains upon the question of levying an assessment under the provisions of KRS 247.5061 to 247.5095 and collecting and utilizing the assessment for the purpose stated in the referendum. The application forms shall include, but not be limited to, the following:

  (a) Applicant's name;
  (b) Applicant's address;
  (c) Date;
  (d) Program to be undertaken for producers;
  (e) Brief statement of how the program is to be implemented;
  (f) Referendum to be conducted on a statewide basis;
  (g) Proposed effective date of the program; and
  (h) Signature of the applicant.

(2) Upon receipt of the application, the Commissioner shall publish the application through the medium of the public press in the state within ten (10) days of receipt.

Section 2. KRS 247.5071 is amended to read as follows:

Upon being certified by the Commissioner of Agriculture, the ***Kentucky Small Grain Growers*** Association shall be fully authorized and empowered to hold and conduct on the part of the producers of small grains a referendum on the question of whether the producers shall levy upon themselves an assessment under, and subject to, and for the purpose stated in KRS 247.5061 to 247.5095. The referendum shall be conducted on a statewide basis.

Section 3. KRS 247.5075 is amended to read as follows:

The manner, conduct, and management of any referendum held under the provisions of KRS 247.5061 to 247.5095 shall be under the supervision and direction of the Commissioner of Agriculture, and any and all expenses in connection therewith shall be borne by the ***Kentucky Small Grain Growers*** Association [~~conducting the referendum~~].

Section 4. KRS 247.5077 is amended to read as follows:

With respect to any referendum conducted under the provisions of KRS 247.5061 to 247.5095, the Commissioner of Agriculture shall, before calling and announcing the referendum, fix, determine, and publicly announce at least thirty (30) days before the date determined for the referendum, the date, hours, and polling places for voting in the referendum, the effective date of the assessment, if adopted, the amount and basis of the assessment proposed to be collected, the means by which the assessment shall be collected if authorized by the producers, and the general purposes to which the amount collected shall be applied. No assessment levied under the provisions of any referendum shall exceed one fourth of one percent (0.25%) of the ***net*** [~~gross~~] marketed price per bushel on the small grains marketed in the state during a marketing year by any producer included in the group to which the referendum was submitted or by any person subsequently becoming a new producer.

Section 5. KRS 247.5079 is amended to read as follows:

The hours, voting places, rules, and regulations for the referendum shall be established and determined by the Commissioner of Agriculture and shall be published by the Commissioner through the medium of the public press in the Commonwealth of Kentucky at least thirty (30) days before the holding of the referendum, and direct written notice thereof shall likewise be given to each county or area agent in any county covered by the referendum. The notice shall likewise contain a statement of the amount of the assessment proposed to be levied, which assessment in any event shall not exceed one fourth of one percent (0.25%) of the ***net*** [~~gross~~] marketed price per bushel, and shall likewise state the method by which the assessment shall be collected and how the proceeds shall be administered and the purposes to which the proceeds shall be applied, which purposes shall be in keeping with the provisions of KRS 247.5061 to 247.5095.

Section 6. KRS 247.5083 is amended to read as follows:

If, in the referendum called under the provisions of KRS 247.5061 to 247.5095, a majority of the eligible producers, who vote therein, shall vote in the affirmative and in favor of the levying and collection of the assessment proposed in the referendum, the assessment shall be collected in the manner determined and announced by the ***Kentucky Small Grain Growers*** Association conducting the referendum.

Section 7. KRS 247.5085 is amended to read as follows:

If a majority of the eligible producers in the referendum who vote therein shall vote in favor of the assessment, the Commissioner shall notify, by certified mail, all persons engaged in the business of purchasing small grains in this state, that on and after the date specified in the letter, the specified assessment shall be deducted from the producer's payment by the purchaser, or his agent or representative, from the ***net*** [~~gross~~] marketed price of the small grains. The assessment so deducted shall, on or before the fifteenth day of the month following the end of the month in which the small grains are sold to the purchaser, be remitted by the purchaser to the ***Kentucky Small Grain Growers Association*** [~~duly certified association~~] which conducted the referendum. The books and records of all the purchasers of small grains shall at all times be open for inspection by the Commissioner of Agriculture***, the Kentucky Small Grain Growers Association,*** or ***their*** [~~this~~] duly authorized agents during regular business hours.

Section 8. KRS 247.5087 is amended to read as follows:

There is hereby established a ***Kentucky Small Grain Promotion Council*** [~~Fund Utilization Committee~~] composed of four (4) members appointed by the ***Kentucky Small Grain Growers Association*** [~~certified organization~~]; two (2) members appointed by the association representing the largest number of small grains farmers in the state; and one (1) member appointed by the Commissioner. These appointments shall be for terms of two (2) calendar years and each appointing body shall promptly file with the Commissioner the names of its respective appointees.

Section 9. KRS 247.5089 is amended to read as follows:

The funds, including donations from individuals, concerns, corporations, and grants from the state or governmental agencies, shall be used for the purpose of promoting and stimulating, by research, market development and education, the increased use and sale, domestic and foreign, of small grains and small grains products; and for the prevention, modification, or elimination of trade barriers which obstruct the free flow of small grains and small grains products to market. None of these funds shall be used to lobby as defined in KRS 6.611. The ***Kentucky Small Grain Growers Association*** [~~duly certified association~~] receiving the assessment funds shall, upon the advice and consent of the ***Kentucky Small Grain Promotion Council*** [~~Fund Utilization Committee~~], use and disburse the same as follows:

(1) The ***Kentucky Small Grain Growers*** Association may first refund to itself therefrom the costs and expenses incurred in the conduct of the referendum;

(2) The ***Kentucky Small Grain Growers*** Association may spend or disburse the necessary funds therefrom for administrative costs and expenses, but no more than fifteen percent (15%) of the funds collected in any marketing year shall be so utilized; and

(3) The balance remaining shall be used for the purposes provided in this section, as determined by the ***Kentucky Small Grain Promotion Council*** [~~Fund Utilization Committee~~].

Section 10. KRS 247.5091 is amended to read as follows:

If the referendum is carried in the affirmative and the assessment is levied and collected as provided, any producer upon and against whom the assessment shall have been levied and collected under the provisions of KRS 247.5061 to 247.5095, if dissatisfied with the assessment and the result thereof, may demand of and receive from the ***Kentucky Small Grain Growers Association*** [~~treasurer of the certified association~~] a refund of the assessment collected from the producer; if the demand for refund is made in writing within thirty (30) days ***after*** [~~from~~] the date on which the assessment is collected from the producer.

Section 11. KRS 247.5093 is amended to read as follows:

(1) ***The question of the levy of the assessment on small grains may be referred to a vote of the small grains producers of the state by filing petitions with the Kentucky Small Grains Growers Association containing signatures of Kentucky small grains producers equal in number to ten percent (10%) of all small grains producers in the state as recorded in the latest United States Census of Agriculture. If after the petitions are filed and at the referendum election a majority of Kentucky small grains producers voting on the question vote against the levy on small grains, the assessment shall be terminated at the end of the marketing year in which the referendum was conducted; otherwise, the assessment program shall continue*** [~~The board shall review the assessment program annually. If, at the end of each year after the first year of the assessment program, the board determines that the producers in the referendum representing ten percent (10%) of the production of small grains have indicated their dissatisfaction with the program by demanding a refund of the assessment collected from them, the Commissioner shall conduct a referendum among the producers. If, upon the referendum, a majority of the eligible producers, who vote therein, reject the program, it shall be terminated at the end of the marketing year in which the referendum was conducted; otherwise, the assessment program shall continue in force and effect~~].

(2) [~~The Commissioner shall conduct a referendum five (5) years after the date of the first referendum and each subsequent five (5) year period thereafter to determine if the assessment should be continued or terminated.~~

~~(3)~~] If the ***Kentucky Small Grains Growers Association*** [~~duly certified association~~] of small grains producers expresses in writing its desire to the Commissioner to discontinue the assessment program and terminate the program, the Commissioner shall within fifteen (15) days following receipt of the request convene the board to review and act on the request. The board, after reviewing the request and conducting whatever proceedings are deemed appropriate and necessary in connection with the request, may terminate the program effective at the end of the marketing year in which the board action is taken; and, in this event, the Commissioner shall notify, by certified mail, the purchasers of small grains affected thereby of the termination of the program.

Section 12. KRS 247.5095 is amended to read as follows:

When in the judgment of the board or the ***Kentucky Small Grain Growers Association*** [~~duly certified association~~], a purchaser has engaged in any acts or practices that constitute a violation of any of the provisions of KRS 247.5061 to 247.5095, the board or the ***Kentucky Small Grain Growers Association*** [~~duly certified association~~] may make application to the Circuit Court of the county wherein the said acts or practices are alleged to have occurred for an order enjoining the act or acts or practices, and obtain a restraining order and preliminary injunction against the purchaser.

The Committee on Banking and Insurance reported **HB 335**, with Committee Substitute attached thereto, and **HB 351** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 335, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBTITLE 99 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Any deputy commissioner or any examiner who has knowledge of the insolvency or unsafe condition of an authorized insurer, or that it is inexpedient to permit the authorized insurer to continue business, and who fails to immediately present a signed report of the facts to the commissioner, or who violates any of the provisions of this chapter, shall forfeit his or her office and shall be fined not less than one hundred dollars ($100) nor more than two thousand dollars ($2000) for each offense.

(2) Any commissioner who has knowledge of the insolvency or unsafe condition of an authorized insurer, or that it is inexpedient to permit the authorized insurer to continue business, and who willfully fails to take the action prescribed by this chapter, or who violates any of the provisions of this chapter, shall forfeit his or her office and shall be fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5000) for each offense.

The Committee Substitute to **HB 335** is as follows:

HB 335, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBTITLE 99 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Any deputy commissioner or any examiner who has knowledge of the statutory insolvency, or hazardous financial condition as defined by administrative regulation, of an authorized insurer, or that it is inexpedient to permit the authorized insurer to continue business, and who fails to immediately present a signed report of the facts to the commissioner, or who violates any of the provisions of this chapter, shall forfeit his or her office or employment contract and shall be fined not less than one hundred dollars ($100) nor more than two thousand dollars ($2000) for each offense.

(2) Any commissioner who has knowledge of the statutory insolvency, or hazardous financial condition as defined by administrative regulation, of an authorized insurer, or that it is inexpedient to permit the authorized insurer to continue business, and who willfully fails to take the action prescribed by this chapter, or who violates any of the provisions of this chapter, shall forfeit his or her office and shall be fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5000) for each offense.

HB 351, AN ACT relating to the Kentucky Public Employees Deferred Compensation System.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 18A.245 is amended to read as follows:

(1) The system shall be administered by a board of trustees composed of five (5) members, who shall be as follows:

- (a) ***Secretary, Cabinet for Public Protection and Regulation*** [~~Commissioner of insurance~~], ex officio;
- (b) Secretary, Finance and Administration Cabinet, ex officio;
- (c) Commissioner of personnel, ex officio;
- (d) Two (2) members appointed by the Governor of the Commonwealth. Of these two (2) members, it is recommended that one (1) be the general manager of Kentucky retirement systems.

(2) The members of the board appointed by the Governor shall serve for a period of four (4) years and the ex officio members of the board shall serve only for the period of their term of office.

(3) Any vacancy which may occur shall be filled in the same manner provided for the selection of the particular member for a full term. Vacancies shall be filled for the unexpired term only.

(4) Membership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists, and no member shall be subject to removal from office, except upon conviction of a felony[~~,~~] or of a misdemeanor involving moral turpitude.

(5) Board members who do not otherwise receive a salary or compensation from the State Treasury shall receive a per diem of forty-five dollars ($45) for each day they are in session or on official duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards applicable to state employees.

(6) The board shall meet at least once in each quarter of the year, and may meet in special session upon the call of the chairman. It shall elect a chairman and a vice chairman. A majority of the members shall constitute a quorum, and all actions taken by the board shall be by affirmative vote of a majority of the members present.

(7) The Department of Personnel shall perform the administrative functions of the board, which shall be attached to the department for purposes of administration. The board may, but is not limited to the following actions:

- (a) Appoint [~~such~~] employees [~~as~~] it deems necessary and fix the compensation for all employees of the board, subject to the approval of the commissioner;
- (b) Require [~~such~~] employees [~~as~~] it thinks proper to execute bonds for the faithful performance of their duties;
- (c) Establish a system of accounting;
- (d) Contract for [~~such~~] services [~~as may be~~] necessary for the operation or administration of deferred compensation plans authorized in KRS 18A.230 to 18A.275, including annual audits;
- (e) Do all things, take all actions***,*** and ***promulgate*** [~~make all rules and~~] administrative regulations[~~,~~] not inconsistent with the provisions of KRS 18A.230 to 18A.275.

(8) All employees of ***the*** [~~said~~] board shall serve during its will and pleasure.

(9) The Attorney General, or an assistant designated by him, may act as legal adviser and attorney for the board. The board may also appoint legal counsel in accordance with KRS Chapter 12.

(10) The board shall prepare an annual financial report showing all receipts, disbursements, assets***,*** and liabilities and shall submit a copy to the Governor and the Legislative Research Commission. All board meetings and records shall be open for inspection by the public.

The Committee on Business Organizations and Professions reported **HB 222** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 222, AN ACT relating to commerce and trade.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 365.690 is amended to read as follows:

(1) The ***Attorney General or*** county attorney may enforce the provisions of KRS 365.650 to 365.695 by civil action for injunctive relief in the Circuit Court of his county. In ***the*** ~~[such]~~ action to obtain ***the*** ~~[said]~~ injunction***,*** it shall be sufficient to allege and prove that a violation of KRS 365.650 to 365.695 has occurred or is about to occur, and it shall not be necessary to allege or prove that any person has been damaged or sustained any loss as a result of any violation of KRS 365.650 to 365.695.

(2) When the provisions of KRS 365.650 to 365.695 are enforced ~~[by the county attorney]~~ through civil action, ***the Attorney General or county attorney*** ~~[he]~~ may ask for and the court may assess a civil penalty for the benefit of the Commonwealth, not to exceed the sum of two thousand dollars ($2,000)***. The*** ~~[, said]~~ penalty ***shall*** ~~[to]~~ be in lieu of all penalties set forth in KRS 365.990(9).

(3) Nothing in KRS 365.650 to 365.695 shall be construed to limit or restrict the exercise of powers or the performance of duties the Attorney General is authorized to exercise or perform under any provision of law.

The Committee on Counties and Special Districts reported **HB 165,** with Committee Amendment attached thereto, and **HB 287** and with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 165, AN ACT relating to deputy sheriff merit systems.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 70.263 is amended to read as follows:

(1) Each person serving as a deputy sheriff on the effective date of an ordinance that creates a deputy sheriff merit board for the county in which he serves shall, within one (1) year following the effective date of that ordinance, successfully complete at least four hundred (400) hours of training approved by the Kentucky Law Enforcement Council.

(2) Each person appointed as a deputy sheriff in a county that has adopted a deputy sheriff merit board before the date of his appointment shall, within one (1) year following the appointment, successfully complete at least four hundred (400) hours of training approved by the Kentucky Law Enforcement Council.

(3) ***The training requirements of this section shall be waived if:***

(a) A deputy completed four hundred (400) hours of training approved by the Kentucky Law Enforcement Council within five (5) years before creation of the board, or within five (5) years before appointment, as the case may be; or

(b) A deputy completed four hundred (400) hours of approved training more than five (5) years before creation of the board or appointment, but completed forty (40) or more hours of in-service training approved by the Kentucky Law Enforcement Council within five (5) years before creation of the board or appointment or completes the required in-service training within one (1) year after creation of the board or appointment, as the case may be.

(4) A person failing to meet the requirements of this section shall forfeit his position as deputy sheriff immediately upon the expiration of the applicable one (1) year time limit.

Section 2. KRS 70.030 is amended to read as follows:

(1) The sheriff may appoint his own deputies, and may revoke the appointment at his pleasure except where that revocation is prohibited by the provisions of KRS 70.260 to 70.273. Before any deputy executes the duties of his office, he shall take the oath required to be taken by the sheriff.

(2) The sheriff may appoint nonsworn clerical, technical, professional, and support personnel to assist him in the performance of the duties of his office. All nonsworn personnel shall serve at the pleasure of the sheriff.

(3) ***If a county appoints a deputy sheriff merit board pursuant to KRS 70.260, the sheriff shall not appoint a member of his immediate family as a sworn deputy. If a sheriff appointed a member of his immediate family as a sworn deputy before the appointment of a deputy sheriff merit board, that deputy may continue in office subject to the same conditions as other sworn deputies. The sheriff may appoint members of his immediate family to nonsworn clerical, technical, professional, and support positions*** ~~[No sheriff whose county has adopted a deputy sheriff merit board under KRS 70.260 shall appoint a deputy who is a member of the immediate family of the sheriff]~~. The term "member of the immediate family" has the meaning given in KRS 70.260.

Section 3. KRS 70.260 is amended to read as follows:

(1) The primary legislative body of each county may enact an ordinance creating a deputy sheriff merit board, which shall be

charged with the duty of holding hearings, public and executive, in disciplinary matters concerning deputy sheriffs. For the purpose of KRS 70.260 to 70.273, the primary legislative body of each county that does not have an urban-county or charter county government shall be the fiscal court.

(2) The reasonable and necessary expenses of the board, including the funds necessary to retain an attorney to advise the board on legal matters, shall be paid out of the fees and commissions collected by the sheriff. If the fees and commissions are not sufficient to pay the expenses of the board and the other expenses authorized by statute to be paid from these fees and commissions, the sheriff may negotiate with the primary legislative body to determine a method of paying all or part of the expenses of the board.

(3) The board shall consist of five (5) members, two (2) members appointed by the county judge/executive or the chief executive officer of an urban-county government with approval by the primary legislative body, two (2) members appointed by the county sheriff, and one (1) member elected by the deputy sheriffs of the county. Each board appointee shall be at least thirty (30) years of age and a resident of the county. No person shall serve on the board who is a deputy sheriff or who holds any elected public office. No person shall be appointed to the board who is a member of the immediate family of the sheriff of the county served by the board. The members of the board shall not receive a salary but shall receive reimbursement for necessary expenses.

(4) All appointments shall be for two (2) years, and any vacancies shall be filled by the sheriff or county judge/executive, or the chief executive officer of an urban-county government responsible for the appointment of the departing board member.

(5) The board shall elect a chairman from its membership and keep an accurate record of its proceedings.

(6) The board shall meet when a disciplinary matter concerning a deputy sheriff is brought to its attention or at other times at the discretion of the board, upon notification of its members.

(7) Three (3) members shall constitute a quorum in all matters which may come before the board.

(8) For the purpose of this section ***and KRS 70.030***, "member of the immediate family" means a person's father, mother, brother, sister, spouse, son, daughter, aunt, uncle, son-in-law, or daughter-in-law.

The Committee Amendment No. 1 to **HB 165** is as follows:

On page 2, line 20, by inserting after "enact" the words:

"***or repeal***".

HB 287, AN ACT relating to manufactured homes.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 100.111 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Administrative official" means any department, employee, or advisory, elected or appointed body which is authorized to administer any provision of the zoning regulation, subdivision regulations, and if delegated, any provision of any housing or building regulation or any other land use control regulation;

(2) "Agricultural use" means the use of a tract of at least five (5) contiguous acres for the production of agricultural or horticultural crops, including but not limited to livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetables, flowers or ornamental plants, including provision for dwellings for persons and their families who are engaged in the above agricultural use on the tract, but not including residential building development for sale or lease to the public;

(3) "Board" means the board of adjustment unless the context indicates otherwise;

(4) "Citizen member" means any member of the planning commission or board of adjustment who is not an elected or appointed official or employee of the city or county;

(5) "Commission" means planning commission;

(6) "Conditional use" means a use which is essential to or would promote the public health, safety, or welfare in one (1) or more zones, but which would impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent, and character of performance are imposed in addition to those imposed in the zoning regulation;

(7) "Conditional use permit" means legal authorization to undertake a conditional use, issued by the administrative official pursuant to authorization by the board of adjustment, consisting of two (2) parts:

  (a) A statement of the factual determination by the board of adjustment which justifies the issuance of the permit; and

  (b) A statement of the specific conditions which must be met in order for the use to be permitted;

(8) "Development plan" means written and graphic material for the provision of a development, including any or all of the following: location and bulk of buildings and other structures, intensity of use, density of development, streets, ways, parking facilities, signs, drainage of surface water, access points, a plan for screening or buffering, utilities, existing manmade and natural conditions, and all other conditions agreed to by the applicant;

(9) "Fiscal court" means the chief body of the county with legislative power, whether it is the fiscal court, county commissioners, or otherwise;

(10) "Housing or building regulation" means the Kentucky Building Code, the Kentucky Plumbing Code and any other building or structural code promulgated by the Commonwealth or by its political subdivisions;

(11) "Legislative body" means the chief body of the city with legislative power, whether it is the board of aldermen, the general council, the common council, the city council, the board of commissioners, or otherwise; at times it also implies the county's fiscal court;

(12) "Mayor" means the chief elected official of the city whether the official designation of his office is mayor or otherwise;

(13) "Nonconforming use or structure" means an activity or a building, sign, structure or a portion thereof which lawfully existed before the adoption or amendment of the zoning regulation, but which does not conform to all of the regulations contained in the zoning regulation which pertain to the zone in which it is located;

(14) "Planning operations" means the formulating of plans for the physical development and social and economic well-being of a planning unit, and the formulating of proposals for means of implementing the plans;

(15) "Planning unit" means any city or county, or any combination of cities, counties, or parts of counties engaged in planning operations;

(16) "Plat" means the map of a subdivision;

(17) "Political subdivision" means any city or county;

(18) "Several" means two (2) or more;

(19) "Public facility" means any use of land whether publicly or privately owned for transportation, utilities, or communications, or for the benefit of the general public, including, but not limited to, libraries, streets, schools, fire or police stations, county buildings, municipal buildings, recreational centers including parks, and cemeteries;

(20) "Street" means any vehicular way;

(21) "Structure" means anything constructed or made, the use of which requires permanent location in or on the ground or attachment to something having a permanent location in or on the ground, including buildings and signs;

(22) "Subdivision" means the division of a parcel of land into three (3) or more lots or parcels except in a county containing a city of the first, second or third class or in an urban-county government where a subdivision means the division of a parcel of land into two (2) or more lots or parcels; for the purpose, whether immediate or future, of sale, lease, or building development, or if a new street is involved, any division of a parcel of land; provided that a division of land for agricultural use and not involving a new street shall not be deemed a subdivision. The term includes resubdivision and when appropriate to the context, shall relate to the process of subdivision or to the land subdivided; any division or redivision of land into parcels of less than one (1) acre occurring within twelve (12) months following a division of the same land shall be deemed a subdivision within the meaning of this section;

(23) "Unit" means planning unit; and

(24) "Variance" means a departure from dimensional terms of the zoning regulation pertaining to the height, width, or location of structures, and the size of yards and open spaces where such departure meets the requirements of KRS 100.241 to 100.247.

(25) "Manufactured Home" means a dwelling unit placed on a foundation and meeting the anchoring requirements set forth in KRS 227.570, designed and built in a factory which bears a seal certifying that it was built in compliance with the Federal Manufactured Housing Construction and Safety Standards Law of 1974 (42 USC 5401 et seq). A manufactured home shall not be constructed or equipped with a permanent hitch or other device allowing it to be moved, other than for the purpose of moving to a permanent site, and shall not have permanently attached to its body or frame any wheels or axles.

Section 2. KRS 100.203 is amended to read as follows:

Cities and counties may enact zoning regulations which shall contain:

(1) A text, which shall list the types of zones which may be used, and the regulations which may be imposed in each zone, which must be uniform throughout the zone. In addition, the text shall make provisions for the granting of variances, conditional use permits, and for nonconforming use of land and structures, and any other provisions which are necessary to implement the zoning regulation. The city or county may regulate:

  (a) The activity on the land, including filling or excavation of land, and the removal of natural resources, and the use of watercourses, and other bodies of water, as well as land subject to flooding;

  (b) The size, width, height, bulk, location of structures, buildings and signs;

(c) Minimum or maximum areas or percentages of areas, courts, yards, or other open spaces or bodies of water which are to be left unoccupied, and minimum distance requirements between buildings or other structures;

(d) Intensity of use and density of population floor area to ground area ratios, or other means;

(e) Districts of special interest to the proper development of the community, including, but not limited to, exclusive use districts, historical districts, planned business districts, planned industrial districts, renewal, rehabilitation, and conservation districts; planned neighborhood and group housing districts;

(f) Fringe areas of each district, by imposing requirements which will make it compatible with neighboring districts; and

(g) The activities and structures on the land at or near major thoroughfares, their intersections, and interchanges, and transportation arteries, natural or artificial bodies of water, public buildings and public grounds, aircraft, helicopter, rocket and spacecraft facilities, places having unique interest or value, flood plain areas, and other places having a special character or use affecting or affected by their surroundings;

(2) The text may provide that the planning commission, as a condition to the granting of any zoning change, may require the submission of a development plan, which shall be limited to the provisions of the definition contained in KRS 100.111(8). Where agreed upon, this development plan shall be followed. As a further condition to the granting of a zoning change, the planning commission may require that substantial construction be initiated within a certain period of time of not less than one (1) year; provided that such zoning change shall not revert to its original designation unless there has been a public hearing;

(3) A map, which shall show the boundaries of the area which is to be zoned, and the boundaries of each zone;

(4) Text provisions to the effect that land which is used for agricultural purposes shall have no regulations except that:

(a) Setback lines may be required for the protection of existing and proposed streets and highways;

(b) All buildings or structures in a designated floodway or flood plain or which tend to increase flood heights or obstruct the flow of flood waters may be fully regulated; and

(c) Mobile homes and other dwellings may be permitted but shall have regulations imposed which are applicable, such as zoning, building, and certificates of occupancy;

(5) The text may empower the planning commission to hear and finally decide applications for variances or conditional use permits when a proposed development requires a map amendment and one (1) or more variances or conditional use permits;

(6) In any regulation adopted pursuant to subsection (5) of this section:

(a) The text shall provide that the planning commission shall assume all powers and duties otherwise exercised by the board of adjustments pursuant to KRS 100.231, 100.233, 100.237, 100.241, 100.243, 100.247, and 100.251, in a circumstance provided for by subsection (5) of this section; and

(b) The text shall provide that the applicant for the map amendment, at the time of the filing of the application for the map amendment, may elect to have any variances or conditional use permits for the same development to be heard and finally decided by the planning commission at the same public hearing set for the map amendment, or by the board of adjustments as otherwise provided for in this chapter;

(7) Any judicial proceeding to appeal the planning commission action authorized by subsection (5) of this section in granting or denying any variance or conditional use permit shall be taken pursuant to KRS 100.347(2);

(8) In urban-county governments, in addition to any other powers permitted or required to be exercised by this chapter, the text of the zoning regulations may provide, as a condition to granting a map amendment, that the planning unit may:

(a) Restrict the use of the property affected to a particular use, or a particular class of use, or a specified density within those permitted in a given zoning category;

(b) Impose architectural or other visual requirements or restrictions upon development in areas zoned historic; and

(c) Impose screening and buffering restrictions upon the subject property;

The text shall provide the method whereby such restrictions or conditions may be imposed, modified, removed, amended and enforced.

(9) The text shall permit the placement and use of manufactured homes, 1993 model year and later, in zones permitting agricultural or residential uses, subject to compliance with the same regulations applicable to other homes in the same zone. In nonagricultural zones, aesthetic standards may be adopted limiting roofing or siding material permitted. Nothing in this subsection shall be construed to affect, modify, or abolish restrictions contained in recorded deeds, covenants, or deeds of restriction.

The Committee on Counties and Special Districts reported **HB 243** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 243, AN ACT relating to local governments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 107.020 is amended to read as follows:

(1) The term "governing body," as used in this chapter, means and includes the legislative body of any city, whether the same be designated by applicable statutes as a general council, a common council, a city council, a board of commissioners, or otherwise. ***The term "governing body," as used in KRS 107.010 to 107.220 shall include the legislative body of any county unless the context requires otherwise. The terms "municipality" and "city" as used in KRS 107.010 to 107.220 shall include county within their meaning unless the context requires otherwise.***

(2) The term "ordinance" means and includes any ordinance enacted in accordance with the general laws applicable to ordinances of the class of city in question, and the form of government thereof, and in accordance with the provisions of this chapter.

(3) The term "public way" means and includes streets, boulevards, avenues, roads, lanes, alleys, parkways, courts, terraces, and other courses of travel open to the general public by whatsoever name designated.

(4) The terms "improvement" and "project" mean and include:

(a) The construction of public ways or the substantial reconstruction or widening thereof;

(b) The construction, installation or substantial reconstruction of sanitary, storm, or combined sewers and appurtenances;

(c) The construction, enlargement or substantial reconstruction of sewage treatment plants for rendering sewage less hazardous to public health, safety and general welfare;

(d) The construction, installation or substantial replacement of fire hydrants in cities of the third through sixth classes, necessary water mains and appurtenances in a city in a county containing a city of the first or second class; or

(e) Any combination of the same. Bonds for improvements defined in paragraphs (b), (c) and (d) of this subsection may be caused to mature as to principal in term or serial maturities not to exceed thirty (30) years from date of issue.

(5) The term "costs" as applied to any project undertaken under this chapter includes the cost of labor, materials, and equipment necessary to complete the project in a satisfactory manner, cost of land acquired, and every expense connected with the project, including preliminary and other surveys, inspections of the work, engineers' fees and costs, attorneys' fees, preparation of plans and specifications, publication of ordinances and notices, interest which will accrue on the bonds until the due date of the first annual improvement assessment levied in connection therewith, a sum equal to any discount in the sale of the bonds (if discount bids are authorized and permitted by the governing body), a reasonable allowance for unforeseen contingencies, the printing of bonds, and other costs of financing which may include the payment of a fee to a fiscal agent for advice and assistance in the preparation and marketing of the bonds. As applied to wastewater collection projects undertaken by metropolitan sewer districts "costs" also include:

(a) The cost of inspections of work as construction progresses;

(b) Interest which will accrue on the bonds until the due date of the first annual improvement assessment if a lump sum is not paid;

(c) Capitalized interest on the bonds for a period not to exceed three (3) years;

(d) All or any portion of the debt service reserve requirement, if determination is made to finance same from bond proceeds;

(e) Payment of attorneys' fees, underwriting and fiscal agency fees, trustees' fees, rating service fees if approved by the fiscal court; and

(f) Other costs of issuance of bonds.

(6) The term "assessed value basis" means the plan for the levying of annual improvement benefit assessments on the basis of the assessed values of the benefited properties, as authorized by this chapter. As applied to wastewater collection projects undertaken by metropolitan sewer districts, "assessed value basis" means the plan for the levying of annual improvement benefit assessments upon benefited property for the benefits conferred by the construction of projects on the basis of the ad valorem assessed values (land only) of the benefited property, whether the owners pay such levies in full or on an annual basis to amortize bonds. Identical annual improvement benefit assessments upon classified zones of benefited property may also be included in this plan where determination is made by order of a metropolitan sewer district, as provided in KRS 107.030, that benefits conferred by construction of a project are substantially equal and that the assessed value (land only) of all benefited property or designated zones thereof shall therefore be deemed equal in respect of a given wastewater collection project.

(7) The term "front-foot basis" refers to the plan for financing improvements by apportioning the cost among benefited properties upon the basis of the number of linear feet thereof abutting upon the improvement project, as otherwise provided by law.

(8) The terms "property to be benefited," "properties to be benefited," "benefited property" and "benefited properties" all mean and refer to the property or properties defined in KRS 107.140. As applied to wastewater collection projects undertaken by metropolitan sewer districts, "benefited property" and "property to be benefited" mean the property (land only) proposed to be benefited by construction of a wastewater collection project instituted by a metropolitan sewer district and against which lump-sum or annual improvement benefit assessments are to be levied.

(9) "Construction" means the following services and facilities provided by a metropolitan sewer district:

(a) Preliminary planning to determine the economic and engineering feasibility of construction of wastewater collection projects, and any engineering, architectural, legal, fiscal, and economic investigations and studies necessary. Also included are all necessary surveys, designs, plans, working drawings, specifications, procedures, and other required actions incident to the construction of wastewater collection projects;

(b) The building, acquisition, installation, erection, alteration, remodeling, improvement, expansion, or extension of wastewater collection projects and any other physical devices reasonably associated with such projects;

(c) The provision of sewer collection services and facilities to benefited property although not directly financed by the issuance of bonds; and

(d) Inspection and supervision incident to the acquisition, construction, and installation of wastewater collection projects.

(10) "Debt service reserve requirement" means with respect to any particular issue of bonds for a wastewater collection project of a metropolitan sewer district, the maximum annual requirements for payment of principal of and interest on such bond issue funded either in whole or in part by application of bond proceeds or accrued by the levying of improvement benefit assessments as provided in KRS Chapters 76 and 107.

(11) "Metropolitan sewer district" means a joint metropolitan sewer district which has been duly created under KRS 76.005 to 76.210.

(12) "Order" means a formal and binding enactment of the board of a metropolitan sewer district entered in connection with the financing by such district of a wastewater collection project.

(13) "Wastewater" means any water or liquid substance containing sewage, industrial waste, or other pollutants or contaminants.

(14) "Wastewater collection project" means treatment plants and all or part of any facilities and systems of a metropolitan sewer district used in the collection, holding, or transmission of wastewater from a benefited property to wastewater treatment plants or other similar facilities for final disposition. These terms shall include, without being limited to, sanitary sewage collection lines, intercepting sewers, outfall sewers, sewer laterals, power stations and pumping stations, and other equipment and their appurtenances necessary to enable the project to fulfill its function, including land acquisition, if required, whether such project facilities are provided by funds derived from issuance of bonds or otherwise provided by a district in any manner.

(15) "Classified zone" means any portion of any construction phase of a wastewater collection project designated by a metropolitan sewer district after a determination that all property located in such zone is benefited substantially equal by such construction.

The Committee on Health and Welfare reported **HB 96,** with Committee Substitute attached thereto, **HB 127,** with Committee Substitute attached thereto, and **HB 215,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 96, AN ACT relating to sexual offenders.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 439.265 is amended to read as follows:

(1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any Circuit Court may, upon motion of the defendant made not earlier than thirty (30) days nor later than one hundred eighty (180) days after the defendant has been incarcerated in a county jail following his conviction and sentencing pending delivery to the institution to which he has been sentenced, or delivered to the keeper of the institution to which he has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon terms the court determines. Time spent on any form of release following conviction shall not count toward time required under this section.

(2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he may file, or have filed for him, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.

(3) (a) During the period in which the defendant may file a motion pursuant to this statute, the sentencing judge, within his or her discretion, may order that the defendant be held in a local detention facility that is not at or above

maximum capacity until such time as the court rules on said motion. During this period of detention, and prior to the court's ruling on said motion, the court may require the defendant to participate in any approved community work program or other forms of work release. Persons held in the county jail pursuant to this subsection shall not be subject to transfer to a state correctional facility until the decision is made not to place the petitioner on shock probation.

(b) The provisions concerning community work programs or other forms of work release shall apply only to persons convicted of Class C or Class D felonies, and may be granted only after a hearing at which the Commonwealth's attorney has the opportunity to present arguments in favor or opposition thereto.

(4) ***If the defendant has been convicted of an offense under KRS 510.040, KRS 510.050, KRS 510.070, KRS 510.080, KRS 530.020, KRS 530.064, or KRS 531.310, or criminal attempt to commit any of these offenses under KRS 506.010, the sentence shall not be suspended, in accordance with KRS 532.045.***

(5) If the defendant has been convicted of an offense under KRS 510.060, KRS 510.090, or KRS 510.110, prior to considering the motion to suspend a sentence, the court shall order an evaluation of the defendant to be conducted by the sex offender treatment program operated by the Department of Corrections. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and places the defendant on probation, the provisions of subsections (3) to (7) of Section 3 of this Act shall apply.

(6) The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he is unable to act and it appears that his inability to act should continue beyond the expiration of the term of the court. In such case, the judge who imposed sentence shall assign a judge to dispose of a motion filed under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.

(7)[~~(5)~~] The provisions of this section shall not apply where a sentence of death has been imposed.

Section 2. KRS 439.267 is amended to read as follows:

(1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any District Court, or any Circuit Court with respect to a defendant convicted in Circuit Court of a misdemeanor, may, upon motion of the defendant made not earlier than thirty (30) days after the defendant has been delivered to the keeper of the institution to which he has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon [~~such~~] terms as the court determines.

(2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he may file, or have filed for him, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.

(3) The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he is unable to act and it appears that his inability to act should continue beyond the expiration of the term of the court. In ***this*** [~~such~~] case, the judge who imposed sentence shall assign a judge to dispose of a motion filed under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.

(4) If the defendant has been convicted of a misdemeanor offense under KRS Chapter 510, or criminal attempt to commit any of these offenses under KRS 506.010, prior to considering the motion to suspend the sentence, the court shall order an evaluation of the defendant to be conducted by the sex offender treatment program operated by the Department of Corrections. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and places the defendant on probation, the provisions of subsections (3) to (7) of Section 3 of this Act shall apply.

Section 3. KRS 532.045 is amended to read as follows:

(1) ***As used in this section:***

(a) "Position of authority" means, but is not limited to, the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff or volunteer who is an adult, adult athletic manager, adult coach, teacher, counselor, staff or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health care provider, or employer;

(b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and

(c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or by any foreign object; oral copulation; or masturbation of either the minor or the offender.

(2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for ***a*** [~~any of the following persons:~~

~~(a) A~~] person convicted of violating KRS 510.040***, 510.050, 510.070, 510.080***[~~to 510.150~~], 529.030 to 529.050, 529.070, 530.020, 531.310, 531.320, 531.370, ***or criminal attempt to commit any of these offenses under KRS 506.010, and, who meets one (1) or more of the following criteria:***[~~or the criminal offense of unlawful transaction with a minor when the minor is induced, assisted or caused to engage in illegal sexual activity,~~]

(a) A person who commits any of the offenses enumerated in this subsection [~~when the act is committed~~] against a minor by the use of force, violence, duress, menace***,*** or threat of bodily harm;

(b) A person who, in committing any of the offenses enumerated in [~~paragraph (a) of~~] this subsection***,*** caused bodily injury to the minor;

(c) A person convicted of any of the offenses enumerated in [~~paragraph (a) of~~] this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in [~~paragraph (a) of~~] this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;

(d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in [~~paragraph (a) of~~] this subsection;

(e) A person convicted of any of the offenses enumerated in [~~paragraph (a) of~~] this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in [~~paragraph (a) of~~] this subsection;

(f) A person convicted of kidnapping a minor in violation of the Kentucky penal code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in [~~paragraph (a) of~~] this subsection;

(g) A person who is convicted of committing any of the offenses enumerated in [~~paragraph (a) of~~] this subsection on more than one (1) minor at the same time or in the same course of conduct;

(h) A person who in committing any of the offenses enumerated in [~~paragraph (a) of~~] this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or

(i) A person who occupies a position of special trust and commits an act of substantial sexual conduct. [~~"Position of special trust" means that position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor. Position of authority includes, but is not limited to, the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational director who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, or employer.~~

~~(2) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or by any foreign object, oral copulation, or masturbation of either the minor or the offender.~~]

(3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of an evaluation of the offender performed by the sex offender treatment program operated by the Department of Corrections or another agency authorized by the Department of Corrections to perform the evaluations. The court shall use the evaluation in determining the appropriateness of probation or conditional discharge.

(4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community based sexual offender treatment program operated or approved by the Department of Corrections.

(5) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.

(6) All communications relative to the evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440.

(7) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

Section 4. KRS 532.050 is amended to read as follows:

(1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody and is ineligible for probation or conditional discharge.

(2) The report shall be prepared and presented by a probation officer and shall include an analysis of the defendant's history

of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, personal habits, and any other matters that the court directs to be included.

(3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.

(4) ***If the defendant has been convicted of any felony offense under KRS Chapter 510, KRS 530.020, KRS 530.064, KRS 531.310, any sexual offense under KRS 506.010 or KRS 506.030, or any other felony offense committed in conjunction with a misdemeanor under KRS Chapter 510, the court shall, prior to determining the sentence, order an evaluation of the defendant to be conducted by the sexual offender treatment program operated by the Department of Corrections or another program approved by the Department of Corrections. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining the appropriate sentence. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of subsection (3) to (7) of Section 3 of this Act shall apply. All communications relative to the evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440.***

(5) Before imposing sentence, the court shall advise the defendant or his counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

SECTION 5. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Human Resources shall operate a program for the treatment of juvenile sexual offenders, hereinafter referred to as the "program."

(2) The general purpose of the program shall be to provide early intervention and treatment of the juvenile sexual offender in an effort to affect the progression to adult criminal activity. Recognizing the significance of these offenses, the program shall endeavor to deter repeat offenses through mandatory follow-up and serve to protect potential victims in the community.

SECTION 6. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

As used in this chapter, unless the context otherwise requires:

(1) The "treatment program" means a continuum of services provided in community and institutional settings designed to provide early intervention and treatment services for juvenile sexual offenders.

(2) A "juvenile sexual offender" as used in this chapter means an individual under the age of eighteen (18) years who has been adjudicated guilty of:

- ***(a) An offense under KRS Chapter 510;***
- ***(b) Any other felony committed in conjunction with a misdemeanor described in KRS Chapter 510;***
- ***(c) Any offense under KRS 506.010 when the crime attempted is a felony or misdemeanor described in KRS Chapter 510;***
- ***(d) An offense under KRS 530.020;***
- ***(e) An offense under KRS 530.064; or***
- ***(f) An offense under KRS 531.310.***

SECTION 7. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

(1) A child may be declared a juvenile sexual offender if:

- ***(a) Prior to an adjudicatory hearing, there is reasonable cause to believe the child has committed an offense enumerated in Section 6 of this Act; or***
- ***(b) The court determines the alleged offender used physical force or threat of force, express or implied, in the commission of the act, or has a documented case history of a long-term pattern of sexual offenses.***

(2) Upon final adjudication by the juvenile court, the juvenile court judge or other authority designated by the juvenile court judge shall order a mental health assessment to be conducted on the child by the program or by a qualified mental health professional as defined in KRS 600.020(38) and approved by the program which shall recommend the appropriate course of treatment. Upon receipt of the findings of the assessment, the juvenile court judge or other authority designated by the juvenile court judge shall initiate a referral to the program for evaluation and treatment as indicated.

SECTION 8. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

(1) If the juvenile court declares the child to be a juvenile sexual offender, the individual shall be committed to the custody of the Cabinet for Human Resources and shall receive treatment in a juvenile sexual offender treatment

program for a minimum of two (2) years but not more than three (3) years, except that the juvenile sexual offender shall not remain in the care of the Cabinet for Human Resources after the age of nineteen (19) years.

(2) Based on the assessment and evaluation of the juvenile sexual offender and his family, the Cabinet for Human Resources shall utilize the treatment setting which provides the least restrictive alternative as defined in KRS 600.020(31).

(3) The program shall develop a written treatment agreement detailing the responsibilities of the juvenile sexual offender, his family, and the program to include but not be limited to: attendance; participation in education; participation in planning and completion of treatment goals; curfew; visit of appropriate staff to the home; participation in parenting groups and family counseling; continued contact with the program, schools, and courts; insurance of legal rights; and discharge criteria.

(4) The written treatment agreement shall be presented to the court and the court shall include the agreement as part of the order except for good cause shown.

(5) The program shall be responsible for sending written reports every sixty (60) days to the juvenile court judge concerning the participation of the juvenile sexual offender and family in the treatment program. The written report shall include information about the treatment received by the juvenile sexual offender and family, an assessment of the offender's current condition, and recommendations by the program staff.

(6) The case may be called for review upon the recommendation of the program staff or by the juvenile court judge at any time during the course of treatment. The review may be called to consider documentation of noncompliance, absenteeism, or unwillingness to acknowledge responsibility for sexually inappropriate behavior.

(7) A discharge review shall be requested by the program sixty (60) days prior to the recommended release date. The juvenile court judge shall schedule a hearing to formally consider the recommendation of release from the program.

SECTION 9. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Human Resources shall have the sole authority and responsibility for establishing the design of the juvenile sexual offender treatment program, but shall consult with the Administrative Office of the Courts and the Department of Corrections.

(2) The Cabinet for Human Resources may enter into agreements with public or private agencies in order to implement and operate the juvenile sexual offender treatment program.

SECTION 10. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall maintain complete and comprehensive data on each juvenile sexual offender participating in the program and shall compile an annual statistical report on the program.

SECTION 11. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

(1) A Juvenile Sexual Offender Treatment Board shall be created as an advisory body to the Cabinet for Human Resources and the Council for Social Services, established by KRS 194.090, solely for the purpose of monitoring the program and coordinating appropriate resources. The board shall serve as an advisory body to the Cabinet for Human Resources for all juvenile sexual offender treatment programs provided or contracted by the Cabinet for Human Resources.

(2) The board shall be composed of the following members:

- *(a) Two (2) employees of the Cabinet for Human Resources who deal with the problems of children, or sexual or domestic violence;*
- *(b) Two (2) employees of the Department of Corrections, one (1) of whom shall be a specialist dealing with sexual offenders;*
- *(c) A Commonwealth's attorney;*
- *(d) A county attorney;*
- *(e) A district judge;*
- *(f) A local law enforcement officer dealing with juvenile offenders or sexual offenders;*
- *(g) The juvenile justice supervisor of the Justice Cabinet; and*
- *(h) Three (3) citizens at large, at least one (1) of whom shall be a specialist dealing with juvenile sexual offenders.*

(3) Additional members of the board who shall serve as voting ex officio members include:

- *(a) The commissioner of State Police or his designee; and*
- *(b) The Attorney General or his designee.*

(4) Members of the board shall be appointed by the Governor to serve until June 30, 1995.

(5) A chairperson and vice-chairperson of the board shall be elected annually by a majority of the voting members of

the board. The chairperson shall appoint chairpersons of committees established by the board.

(6) ***Board members shall serve without compensation, but may be reimbursed for actual expenses consistent with administrative regulations.***

SECTION 12. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

The board shall carry out its duties and responsibilities until June 30, 1995, at which time the Council for Social Services, established by KRS 194.090, shall establish a permanent committee to assume the duties and responsibilities of the board.

SECTION 13. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

(1) ***The board shall meet not less than four (4) times annually and at the call of the chairperson or a majority of the board.***

(2) ***The board shall issue an annual report which shall be transmitted to the Governor, Legislative Research Commission, and Supreme Court. The annual report shall include the following:***

  (a) ***A review of the operation of the juvenile sexual offender program, including statistical data concerning participation in the program and post-program follow-up data;***

  (b) ***Recommendation for the coordination and exchange of information on the establishment and maintenance of the program;***

  (c) ***Proposals for statewide educational training and public informational seminars on the issue of treatment of the juvenile sexual offender;***

  (d) ***Establishment of a procedure for an annual internal evaluation of the functions, responsibilities, and performance of the program; and***

  (e) ***Recommendations for changes in state programs, statutes, regulations, policies, budgets, and treatment and service standards which may reduce the problem of juvenile sexual offenders, improve communication and coordination among state agencies, and improve the opportunity for juvenile sexual offenders and their families to receive treatment. Recommendations shall include a statewide treatment philosophy and standards of practice for juvenile sexual offender cases; recommended sentencing guidelines for sexual offender cases involving youthful offenders; and the credentialing process for mental health professionals who accept referrals from the court to provide assessment or treatment services for juvenile sexual offenders.***

SECTION 14. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

(1) ***The Cabinet for Human Resources shall maintain on file the names and identities of program participants for a period of fifteen (15) years following their participation in the program. The names and identities shall not be disclosed except for the purposes allowed in this section.***

(2) ***On a biennial basis, beginning in the 1995-96 biennium, the Cabinet for Human Resources shall request from the Administrative Office of the Courts, the Kentucky State Police, and the Department of Corrections information concerning whether any of the individuals who participated in the program have been arrested, tried, convicted, or incarcerated for any offense under KRS Chapter 510, KRS 530.020, KRS 530.064, KRS 531.310, or any other criminal offense.***

(3) ***On or before January 1, 1996, and for each two (2) years thereafter, the Cabinet for Human Resources shall compile the information obtained and present it to the Governor, Legislative Research Commission, and the Supreme Court. The report shall not contain the names of any of the individual participants, but shall contain identifying information which may assist in the evaluation of the program and in determination of whether participants have engaged in further criminal behavior as juveniles or adults.***

Section 15. KRS 640.030 is amended to read as follows:

A youthful offender, if he is convicted of, or pleads guilty to, a felony offense in Circuit Court, shall be subject to the same type of sentencing procedures and duration of sentence, including probation and conditional discharge, as an adult convicted of a felony offense, except that:

(1) The presentence investigation required by KRS 532.050 shall be prepared by the Cabinet for Human Resources or by its designated representative;

(2) Any sentence imposed upon the youthful offender shall be served in a facility or program operated by the Cabinet for Human Resources until the expiration of the sentence, the youthful offender is paroled, the youthful offender is probated, or the youthful offender reaches the age of eighteen (18), whichever first occurs. If an individual sentenced as a youthful offender attains the age of eighteen (18) prior to the expiration of his sentence, and has not been probated or released on parole, that individual shall be returned to the sentencing court. At that time, the sentencing court shall make one (1) of the following determinations:

  (a) Whether the youthful offender shall be placed on probation or conditional discharge;

  (b) Whether the youthful offender shall be returned to the Cabinet for Human Resources to complete a treatment program, which treatment program shall not exceed a period in excess of six (6) months. At the conclusion of the treatment program or at the expiration of six (6) months, whichever first occurs, the individual shall be finally discharged; or

(c) Whether the youthful offender shall be incarcerated in an institution operated by the Department of Corrections;

(3) If a child has attained the age of eighteen (18) prior to sentencing, he shall be returned to the sentencing court at the end of a six (6) month period if he has been sentenced to a period of placement or treatment in a Cabinet for Human Resources facility or program. The court shall have the same dispositional options as currently provided in subsection (2) of this section, except that youthful offenders shall not remain in the care of the Cabinet for Human Resources after the age of nineteen (19); and

(4) A youthful offender who is a sexual offender as defined by KRS 197.410(1) shall be provided a sexual offender treatment program as mandated by KRS 439.340(10) by the Cabinet for Human Resources pursuant to ***Section 5 of this Act*** ~~[KRS 208.800]~~ if the youthful offender has not been transferred to the Department of Corrections pursuant to KRS 640.070.

Section 16. The following KRS sections are repealed:

208.800 Pilot program for treatment of juvenile sexual offenders.

208.805 Definitions.

208.810 Referral of juvenile to program for at least two years -- Reports -- Review -- Discharge review.

208.815 Cabinet for Human Resources to design program.

208.820 Agreements with public and private agencies.

208.825 Data-Report.

208.830 Juvenile Sex Offender Treatment Board.

208.835 Members of board.

208.840 Council for social services to assume board duties

in 1992.

208.845 Duties of board.

208.850 File of offenders to be maintained -- Information, biannual report on whether juvenile participants later committed sex-related offenses.

The Committee Substitute to **HB 96** is as follows:

HB 96, AN ACT relating to sexual offenders.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 439.265 is amended to read as follows:

(1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any Circuit Court may, upon motion of the defendant made not earlier than thirty (30) days nor later than one hundred eighty (180) days after the defendant has been incarcerated in a county jail following his conviction and sentencing pending delivery to the institution to which he has been sentenced, or delivered to the keeper of the institution to which he has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon terms the court determines. Time spent on any form of release following conviction shall not count toward time required under this section.

(2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he may file, or have filed for him, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.

(3) (a) During the period in which the defendant may file a motion pursuant to this statute, the sentencing judge, within his or her discretion, may order that the defendant be held in a local detention facility that is not at or above maximum capacity until such time as the court rules on said motion. During this period of detention, and prior to the court's ruling on said motion, the court may require the defendant to participate in any approved community work program or other forms of work release. Persons held in the county jail pursuant to this subsection shall not be subject to transfer to a state correctional facility until the decision is made not to place the petitioner on shock probation.

(b) The provisions concerning community work programs or other forms of work release shall apply only to persons convicted of Class C or Class D felonies, and may be granted only after a hearing at which the Commonwealth's attorney has the opportunity to present arguments in favor or opposition thereto.

(4) ***If the defendant has been convicted of an offense under KRS 510.040, KRS 510.050, KRS 510.070, KRS 510.080, KRS 530.020, KRS 530.064, or KRS 531.310, or criminal attempt to commit any of these offenses under KRS***

506.010, the sentence shall not be suspended, in accordance with KRS 532.045.

(5) If the defendant has been convicted of an offense under KRS 510.060, KRS 510.090, or KRS 510.110, prior to considering the motion to suspend a sentence, the court shall order an evaluation of the defendant to be conducted by the sex offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and places the defendant on probation, the provisions of subsections (3) to (7) of Section 3 of this Act shall apply.

(6) The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he is unable to act and it appears that his inability to act should continue beyond the expiration of the term of the court. In such case, the judge who imposed sentence shall assign a judge to dispose of a motion filed under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.

(7)[~~(5)~~] The provisions of this section shall not apply where a sentence of death has been imposed.

Section 2. KRS 439.267 is amended to read as follows:

(1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any District Court, or any Circuit Court with respect to a defendant convicted in Circuit Court of a misdemeanor, may, upon motion of the defendant made not earlier than thirty (30) days after the defendant has been delivered to the keeper of the institution to which he has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon [~~such~~] terms as the court determines.

(2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he may file, or have filed for him, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.

(3) The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he is unable to act and it appears that his inability to act should continue beyond the expiration of the term of the court. In ***this*** [~~such~~] case, the judge who imposed sentence shall assign a judge to dispose of a motion filed under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.

(4) If the defendant has been convicted of a misdemeanor offense under KRS Chapter 510, or criminal attempt to commit any of these offenses under KRS 506.010, prior to considering the motion to suspend the sentence, the court shall order an evaluation of the defendant to be conducted by the sex offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and places the defendant on probation, the provisions of subsections (3) to (7) of Section 3 of this Act shall apply.

Section 3. KRS 532.045 is amended to read as follows:

(1) ***As used in this section:***

(a) "Position of authority" means, but is not limited to, the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff or volunteer who is an adult, adult athletic manager, adult coach, teacher, counselor, staff or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health care provider, or employer;

(b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and

(c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or by any foreign object; oral copulation; or masturbation of either the minor or the offender.

(2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for ***a*** [~~any of the following persons:~~

~~(a) A~~] person convicted of violating KRS 510.040***, 510.050, 510.070, 510.080***[~~to 510.150~~], 529.030 to 529.050, 529.070, 530.020, 531.310, 531.320, 531.370, ***or criminal attempt to commit any of these offenses under KRS 506.010, and, who meets one (1) or more of the following criteria:***[~~or the criminal offense of unlawful transaction with a minor when the minor is induced, assisted or caused to engage in illegal sexual activity,~~]

(a) A person who commits any of the offenses enumerated in this subsection [~~when the act is committed~~] against a minor by the use of force, violence, duress, menace***,*** or threat of bodily harm;

(b) A person who, in committing any of the offenses enumerated in [~~paragraph (a) of~~] this subsection***,*** caused bodily injury to the minor;

(c) A person convicted of any of the offenses enumerated in [~~paragraph (a) of~~] this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in [~~paragraph (a) of~~] this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;

(d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in [~~paragraph (a) of~~] this subsection;

(e) A person convicted of any of the offenses enumerated in [~~paragraph (a) of~~] this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in [~~paragraph (a) of~~] this subsection;

(f) A person convicted of kidnapping a minor in violation of the Kentucky penal code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in [~~paragraph (a) of~~] this subsection;

(g) A person who is convicted of committing any of the offenses enumerated in [~~paragraph (a) of~~] this subsection on more than one (1) minor at the same time or in the same course of conduct;

(h) A person who in committing any of the offenses enumerated in [~~paragraph (a) of~~] this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or

(i) A person who occupies a position of special trust and commits an act of substantial sexual conduct. [~~"Position of special trust" means that position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor. Position of authority includes, but is not limited to, the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational director who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, or employer.~~

~~(2) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or by any foreign object, oral copulation, or masturbation of either the minor or the offender.~~]

(3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of an evaluation of the offender performed by the sex offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The court shall use the evaluation in determining the appropriateness of probation or conditional discharge.

(4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community based sexual offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services.

(5) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.

(6) All communications relative to the evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings.

(7) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any evaluation performed pursuant to this section and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the evaluation. It shall not be necessary to disclose the sources of confidential information.

(8) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

Section 4. KRS 532.050 is amended to read as follows:

(1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody and is ineligible for probation or conditional discharge.

(2) The report shall be prepared and presented by a probation officer and shall include an analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, personal habits, and any other matters that the court directs to be included.

(3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any

available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.

(4) *If the defendant has been convicted of any felony offense under KRS Chapter 510, KRS 530.020, KRS 530.064, KRS 531.310, any sexual offense under KRS 506.010 or KRS 506.030, or any other felony offense committed in conjunction with a misdemeanor under KRS Chapter 510, the court shall, prior to determining the sentence, order an evaluation of the defendant to be conducted by the sexual offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining the appropriate sentence. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of subsection (3) to (7) of Section 3 of this Act shall apply. All communications relative to the evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings.*

(5) Before imposing sentence, the court shall advise the defendant or his counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

SECTION 5. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Human Resources shall operate a program for the treatment of juvenile sexual offenders, hereinafter referred to as the "program."

(2) The general purpose of the program shall be to provide early intervention and treatment of the juvenile sexual offender in an effort to affect the progression to adult criminal activity. Recognizing the significance of these offenses, the program shall endeavor to deter repeat offenses through mandatory follow-up and serve to protect potential victims in the community.

SECTION 6. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

As used in this chapter, unless the context otherwise requires:

(1) The "treatment program" means a continuum of services provided in community and institutional settings designed to provide early intervention and treatment services for juvenile sexual offenders.

(2) A "juvenile sexual offender" as used in this chapter means an individual under the age of eighteen (18) years who is not actively psychotic or mentally retarded and who has been adjudicated guilty of:

(a) An offense under KRS Chapter 510;

(b) Any other felony committed in conjunction with a misdemeanor described in KRS Chapter 510;

(c) Any offense under KRS 506.010 when the crime attempted is a felony or misdemeanor described in KRS Chapter 510;

(d) An offense under KRS 530.020;

(e) An offense under KRS 530.064; or

(f) An offense under KRS 531.310.

SECTION 7. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

(1) A child may be declared a juvenile sexual offender if:

(a) Prior to an adjudicatory hearing, there is reasonable cause to believe the child has committed an offense enumerated in Section 6 of this Act; or

(b) The court determines the alleged offender used physical force or threat of force, express or implied, in the commission of the act, or has a documented case history of a long-term pattern of sexual offenses.

(2) Upon final adjudication by the juvenile court, the juvenile court judge or other authority designated by the juvenile court judge shall order a mental health assessment to be conducted on the child by the program or by a qualified mental health professional as defined in KRS 600.020(38) and approved by the program which shall recommend the appropriate course of treatment. Upon receipt of the findings of the assessment, the juvenile court judge or other authority designated by the juvenile court judge shall initiate a referral to the program for evaluation and treatment as indicated.

SECTION 8. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

(1) If the juvenile court declares the child to be a juvenile sexual offender, the individual shall be committed to the custody of the Cabinet for Human Resources and shall receive treatment in a juvenile sexual offender treatment program for a minimum of two (2) years but not more than three (3) years, except that the juvenile sexual offender shall not remain in the care of the Cabinet for Human Resources after the age of nineteen (19) years. If an individual in the care of the cabinet as a juvenile sexual offender reaches the age of nineteen (19) years prior to the

expiration of the minimum of two (2) years of treatment, that individual shall be returned to the sentencing court. At that time, the sentencing court may order the individual to complete the prescribed treatment.

(2) Based on the assessment and evaluation of the juvenile sexual offender and his family, the Cabinet for Human Resources shall utilize the treatment setting which provides the least restrictive alternative as defined in KRS 600.020(31).

(3) The program shall develop a written treatment agreement detailing the responsibilities of the juvenile sexual offender, his family, and the program to include but not be limited to: attendance; participation in education; participation in planning and completion of treatment goals; curfew; visit of appropriate staff to the home; participation in parenting groups and family counseling; continued contact with the program, schools, and courts; insurance of legal rights; and discharge criteria.

(4) The written treatment agreement shall be presented to the court and the court shall include the agreement as part of the order except for good cause shown.

(5) The program shall be responsible for sending written reports every sixty (60) days to the juvenile court judge concerning the participation of the juvenile sexual offender and family in the treatment program. The written report shall include information about the treatment received by the juvenile sexual offender and family, an assessment of the offender's current condition, and recommendations by the program staff.

(6) The case may be called for review upon the recommendation of the program staff or by the juvenile court judge at any time during the course of treatment. The review may be called to consider documentation of noncompliance, absenteeism, or unwillingness to acknowledge responsibility for sexually inappropriate behavior.

(7) A discharge review shall be requested by the program sixty (60) days prior to the recommended release date. The juvenile court judge shall schedule a hearing to formally consider the recommendation of release from the program.

SECTION 9. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Human Resources shall have the sole authority and responsibility for establishing the design of the juvenile sexual offender treatment program, but shall consult with the Administrative Office of the Courts and the Department of Corrections.

(2) The Cabinet for Human Resources may enter into agreements with public or private agencies in order to implement and operate the juvenile sexual offender treatment program.

SECTION 10. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall maintain complete and comprehensive data on each juvenile sexual offender participating in the program and shall compile an annual statistical report on the program.

SECTION 11. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

(1) A Juvenile Sexual Offender Treatment Board shall be created as an advisory body to the Cabinet for Human Resources and the Council for Social Services, established by KRS 194.090, solely for the purpose of monitoring the program and coordinating appropriate resources. The board shall serve as an advisory body to the Cabinet for Human Resources for all juvenile sexual offender treatment programs provided or contracted by the Cabinet for Human Resources.

(2) The board shall be composed of the following members:

(a) Two (2) employees of the Cabinet for Human Resources who deal with the problems of children, or sexual or domestic violence;

(b) Two (2) employees of the Department of Corrections, one (1) of whom shall be a specialist dealing with sexual offenders;

(c) A Commonwealth's attorney;

(d) A county attorney;

(e) A district judge;

(f) A local law enforcement officer dealing with juvenile offenders or sexual offenders;

(g) The juvenile justice supervisor of the Justice Cabinet; and

(h) Three (3) citizens at large, at least one (1) of whom shall be a specialist dealing with juvenile sexual offenders.

(3) Additional members of the board who shall serve as voting ex officio members include:

(a) The commissioner of State Police or his designee; and

(b) The Attorney General or his designee.

(4) Members of the board shall be appointed by the Governor to serve until June 30, 1995.

(5) A chairperson and vice-chairperson of the board shall be elected annually by a majority of the voting members of

the board. The chairperson shall appoint chairpersons of committees established by the board.

(6) Board members shall serve without compensation, but may be reimbursed for actual expenses consistent with administrative regulations.

SECTION 12. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

The board shall carry out its duties and responsibilities until June 30, 1995, at which time the Council for Social Services, established by KRS 194.090, shall establish a permanent committee to assume the duties and responsibilities of the board.

SECTION 13. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

(1) The board shall meet not less than four (4) times annually and at the call of the chairperson or a majority of the board.

(2) The board shall issue an annual report which shall be transmitted to the Governor, Legislative Research Commission, and Supreme Court. The annual report shall include the following:

- ***(a) A review of the operation of the juvenile sexual offender program, including statistical data concerning participation in the program and post-program follow-up data;***
- ***(b) Recommendation for the coordination and exchange of information on the establishment and maintenance of the program;***
- ***(c) Proposals for statewide educational training and public informational seminars on the issue of treatment of the juvenile sexual offender;***
- ***(d) Establishment of a procedure for an annual internal evaluation of the functions, responsibilities, and performance of the program; and***
- ***(e) Recommendations for changes in state programs, statutes, regulations, policies, budgets, and treatment and service standards which may reduce the problem of juvenile sexual offenders, improve communication and coordination among state agencies, and improve the opportunity for juvenile sexual offenders and their families to receive treatment. Recommendations shall include a statewide treatment philosophy and standards of practice for juvenile sexual offender cases; recommended sentencing guidelines for sexual offender cases involving youthful offenders; and the credentialing process for mental health professionals who accept referrals from the court to provide assessment or treatment services for juvenile sexual offenders.***

SECTION 14. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Human Resources shall maintain on file the names and identities of program participants for a period of fifteen (15) years following their participation in the program. The names and identities shall not be disclosed except for the purposes allowed in this section.

(2) On a biennial basis, beginning in the 1995-96 biennium, the Cabinet for Human Resources shall request from the Administrative Office of the Courts, the Kentucky State Police, and the Department of Corrections information concerning whether any of the individuals who participated in the program have been arrested, tried, convicted, or incarcerated for any offense under KRS Chapter 510, KRS 530.020, KRS 530.064, KRS 531.310, or any other criminal offense.

(3) On or before January 1, 1996, and for each two (2) years thereafter, the Cabinet for Human Resources shall compile the information obtained and present it to the Governor, Legislative Research Commission, and the Supreme Court. The report shall not contain the names of any of the individual participants, but shall contain identifying information which may assist in the evaluation of the program and in determination of whether participants have engaged in further criminal behavior as juveniles or adults.

Section 15. KRS 640.030 is amended to read as follows:

A youthful offender, if he is convicted of, or pleads guilty to, a felony offense in Circuit Court, shall be subject to the same type of sentencing procedures and duration of sentence, including probation and conditional discharge, as an adult convicted of a felony offense, except that:

(1) The presentence investigation required by KRS 532.050 shall be prepared by the Cabinet for Human Resources or by its designated representative;

(2) Any sentence imposed upon the youthful offender shall be served in a facility or program operated by the Cabinet for Human Resources until the expiration of the sentence, the youthful offender is paroled, the youthful offender is probated, or the youthful offender reaches the age of eighteen (18), whichever first occurs. If an individual sentenced as a youthful offender attains the age of eighteen (18) prior to the expiration of his sentence, and has not been probated or released on parole, that individual shall be returned to the sentencing court. At that time, the sentencing court shall make one (1) of the following determinations:

- (a) Whether the youthful offender shall be placed on probation or conditional discharge;
- (b) Whether the youthful offender shall be returned to the Cabinet for Human Resources to complete a treatment program, which treatment program shall not exceed a period in excess of six (6) months. At the conclusion of the

treatment program or at the expiration of six (6) months, whichever first occurs, the individual shall be finally discharged; or

(c) Whether the youthful offender shall be incarcerated in an institution operated by the Department of Corrections;

(3) If a child has attained the age of eighteen (18) prior to sentencing, he shall be returned to the sentencing court at the end of a six (6) month period if he has been sentenced to a period of placement or treatment in a Cabinet for Human Resources facility or program. The court shall have the same dispositional options as currently provided in subsection (2) of this section, except that youthful offenders shall not remain in the care of the Cabinet for Human Resources after the age of nineteen (19); and

(4) A youthful offender who is a sexual offender as defined by KRS 197.410(1) shall be provided a sexual offender treatment program as mandated by KRS 439.340(10) by the Cabinet for Human Resources pursuant to ***Section 5 of this Act*** ~~[KRS 208.800]~~ if the youthful offender has not been transferred to the Department of Corrections pursuant to KRS 640.070.

Section 16. The following KRS sections are repealed:

208.800	Pilot program for treatment of juvenile sexual offenders.
208.805	Definitions.
208.810	Referral of juvenile to program for at least two years -- Reports -- Review -- Discharge review.
208.815	Cabinet for Human Resources to design program.
208.820	Agreements with public and private agencies.
208.825	Data-Report.
208.830	Juvenile Sex Offender Treatment Board.
208.835	Members of board.
208.840	Council for social services to assume board duties in 1992.
208.845	Duties of board.
208.850	File of offenders to be maintained -- Information, biannual report on whether juvenile participants later committed sex-related offenses.

HB 127, AN ACT relating to health care reform.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

As used in Section 2 of this Act:

(1) "Abuse" means health care provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in unnecessary cost of the Medical Assistance Program or other governmental assistance program provided under Section 2 of this Act or under KRS Chapter 205, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the Medical Assistance Program.

(2) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to the person or some other person. It includes any act that constitutes fraud under applicable federal or state law.

SECTION 2. A NEW SECTION OF KRS CHAPTER 194 IS CREATED TO READ AS FOLLOWS:

(1) Upon determination by a utilization review committee of the Department for Medicaid Services, to be created by the commissioner for medicaid services, that a medical assistance recipient has defrauded or abused the benefits of the Medical Assistance Program, the recipient shall immediately become ineligible for medical assistance benefits.

(2) A medical assistance recipient whose eligibility has been revoked due to fraud or abuse of the Medical Assistance Program shall not be eligible for future medical assistance services for a period of not less than one (1) year and until full restitution has been made to the Department for Medicaid Services.

(3) When a medical assistance recipient, whose eligibility has been revoked due to fraud or abuse of the Medical Assistance Program, reapplies for coverage during the period of suspension due to pregnancy, the utilization review committee for the Department for Medicaid Services may change the suspended status of the recipient to restricted status where it has been determined that it would be in the best interest of the unborn child for the mother to receive coverage for pregnancy related services. If this change in status is granted, the case shall be reconsidered by the utilization review committee within sixty (60) days after the birth of the child for further action.

(4) The provisions of this section shall not be effective if they are found by a court of competent jurisdiction to contravene federal laws or federal regulations applicable to the Medical Assistance Program.

Section 3. KRS 205.845 is amended to read as follows:

As used in KRS 205.850:

(1) "Application" or "claim" means any communication, whether oral, written, or electronic which is used to identify any goods, item or service that is reimbursable under the medical assistance program or to petition the department for payment;

(2) "Assistance program" means any program administered by the ***Cabinet for Human Resources*** [~~department~~];

(3) "Benefit" means receipt of money, or goods or anything of pecuniary value from an assistance program;

(4) "False statement or misrepresentation" means a statement or misrepresentation knowingly made by a person to be false;

(5) "Provider" means an individual, corporation, association, facility, or institution which is providing or has been approved to provide medical assistance to recipients under the Medical Assistance Program***;***

(6) "Knowing" and "knowingly" mean that a person with respect to information:

- ***(a) Has actual knowledge of the information; or***
- ***(b) Acts in deliberate ignorance of the truth or falsity of the information; or***
- ***(c) Acts in reckless disregard of the truth or falsity of the information and no proof of specific intent to defraud is required***.

Section 4. KRS 205.850 is amended to read as follows:

(1) Except as otherwise provided in KRS 205.510 to 205.630, no person shall knowingly solicit, [~~or~~] receive***, or offer*** any remuneration (including any kickback, bribe, or rebate) for furnishing medical assistance benefits or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made pursuant to Title XIX of the Social Security Act***.***[~~;~~]

(2) No person shall unlawfully make, offer or receive payment, rebate of a fee, or charge for referring an individual to another person for furnishing of benefits; ***nor shall any provider refer a patient to, or recommend the services of, any other provider of services or goods, pharmacy, hospital, institution, or facility, which may seek reimbursement under any assistance program provided under this chapter in which the referring provider has any direct financial investment or economic interest.***

(3) No person shall ***devise a scheme or plan a scheme or artifice, or*** enter into an agreement, combination, or conspiracy ***to obtain or aid another in obtaining payments from any assistance program under this chapter by means of any*** [~~with the intent to defraud the department by obtaining or aiding another to obtain the payment or allowance of a~~] fictitious, false, or fraudulent claim ***or statement submitted to the Cabinet for Human Resources, or intentionally engage in conduct which advances the scheme or artifice.***[~~;~~]

(4) No person shall make, present, or cause to be made or presented to an employee or officer of the ***Cabinet for Human Resources*** [~~department~~] any false, fictitious or fraudulent statement, representation or entry in any application, claim, report or document used in determining rights to any benefit or payment or the extent of such entitlement to any benefit or payment, knowing such application, claim, report or document to contain any false, fictitious or fraudulent information***.***[~~;~~]

(5) No person shall, with intent to defraud, knowingly make, or induce, or seek to induce the making of a false statement or false representation of a material fact with respect to the conditions or operations of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, as a hospital, skilled nursing facility, intermediate care facility, home health agency or other provider of services to the Medical Assistance Program.

(6) Subsections (1) and (2) of this section shall not apply to:

- (a) A discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter; and
- (b) Any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(7) ***Any person, including but not limited to, a physician, law enforcement officer, nurse, social worker, Cabinet for Human Resources personnel, provider licensed or recognized under the laws of the Commonwealth, health care facility employee, or caretaker, having reasonable cause to suspect that a violation of this chapter has been or is being committed by any person, corporation, or entity, shall report or cause to be reported to the Office of the Attorney General the suspected violation in accordance with the provisions of this chapter.***

(8) An oral or written report shall be made immediately to the Office of the Attorney General upon knowledge of suspected fraud, abuse, or misappropriation of any benefit provided in this chapter. Any person making the report shall provide the following information, if known:

- ***(a) The name and address of the offender;***

(b) The offender's place of employment;

(c) The nature and extent of the violation;

(d) The identity of the complainant; and

(e) Any other information that the person believes might be helpful in investigation of the alleged fraud, abuse, or misappropriation.

(9) Any person making a report under this section shall not be liable in any civil or criminal action based on the report if it was made in good faith.

(10) No employer shall, without just cause, discharge or in any manner discriminate or retaliate against any person who in good faith makes a report required or permitted by this chapter, or testifies, or is about to testify, in any proceeding with regard to the reports ~~[The Attorney General on behalf of the Commonwealth of Kentucky may commence proceedings to enforce this section; and the Attorney General shall in undertaking such actions exercise all powers and perform all duties which the prosecuting attorney would otherwise perform or exercise]~~.

Section 5. KRS 205.855 is amended to read as follows:

In any prosecution for the violation of KRS 205.850*,* it shall be a defense if the person relied on the *written* advice of an employee or agent of the *Cabinet for Human Resources and the advice constitutes a defense under any of the provisions of KRS 501.070* ~~[department]~~.

SECTION 6. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

No person shall, in any matter within the jurisdiction of the Cabinet for Human Resources, knowingly falsify, conceal, or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry.

SECTION 7. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) Any person who receives payment for furnishing treatment, services, or goods under an assistance program provided under this chapter, which payment the person was not entitled to receive by reason of a violation of this chapter, shall, in addition to any other penalties or amounts provided by law, be liable for:

(a) Payment of interest on the amount of the excess payments at the maximum legal rate in effect on the date the payment was made, for the period from the date payment was made to the date of repayment to the Commonwealth;

(b) A civil penalty in an amount of up to three (3) times the amount of excess payments;

(c) Payment of a civil penalty of five hundred dollars ($500) for each false or fraudulent claim submitted for providing treatment, services, or goods; and

(d) Payment of legal fees and costs of investigation and enforcement of civil penalties.

(2) Penalties, interest, costs of investigation, and enforcement of the civil remedies recovered on behalf of the Commonwealth under this section shall be remitted to the State Treasurer for deposit in the general fund.

(3) A criminal action need not be brought against a person as a condition precedent to enforcement of civil liability under this section.

(4) The remedies under this section are separate from and cumulative to any other administrative, civil, or criminal remedies available under federal or state law or regulation.

(5) The Department for Medicaid Services, in consultation with the Office of the Attorney General, may promulgate administrative regulations, pursuant to KRS Chapter 13A, for the administration of the civil penalties contained in this section.

(6) No action under this section shall be brought after the expiration of five (5) years from the date the action accrues.

SECTION 8. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) The Attorney General on behalf of the Commonwealth may commence proceedings to enforce this chapter and all other criminal offenses that are not defined in Sections 3 to 7 of this Act, but that involve or are directly related to the use of any assistance program funds or services provided through assistance programs under this chapter.

(2) In enforcing this chapter, the Attorney General may subpoena witnesses or documents to the grand jury, District Court, or Circuit Court of the county or counties where venue lies, and subpoena witnesses or documents to the Office of the Attorney General to secure testimony for use in civil or criminal trials, investigations, or hearings affecting the Cabinet for Human Resources.

Section 9. KRS 205.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 205.170 or subsections (1) to (3) of KRS 205.175 *or Section 7 of this Act* shall be guilty of a Class A misdemeanor.

(2) Any person who violates subsection (4) of KRS 205.175 shall be guilty of a Class D felony.

(3) Any person who willfully violates any of the provisions of KRS 205.310, or any rule or regulation thereunder, shall be guilty of a Class B misdemeanor. Each failure or violation shall constitute a separate offense.

(4) Any person who violates the provisions of subsections (1) ***and*** [~~,~~] (2) [~~and (3)~~] of KRS 205.850 shall be guilty of a Class D felony.

(5) ***Any person who violates subsection (3) of KRS 205.850 shall be guilty of a Class D felony, unless the purpose of the violation is to obtain ten thousand dollars ($10,000) or more, in which case it shall be a Class C felony.***

(6) Any person who violates subsection (4) of KRS 205.850 shall be guilty of a Class A misdemeanor unless the sum total of benefits or payments claimed in any such application, claim, report, or document, or in any combination or aggregation thereof, is valued at one hundred dollars ($100) or more in which case it shall be a Class D felony.

(7)[~~(6)~~] Any person who violates the provisions of subsection (5) of KRS 205.850 shall be guilty of a Class C felony.

(8)[~~(7)~~] Any person who violates subsections (1) to (6) of KRS 205.850 shall, in addition to any other penalties provided by law, forfeit and pay a civil penalty of payment to the cabinet in the amount of all benefits and payments to which the person was not entitled.

(9)[~~(8)~~] Any provider who violates subsections (1) to (6) of KRS 205.850 shall, in addition to any other penalties provided by law, including the penalty set forth in subsection ***(8)***[~~(7)~~] of this section, forfeit and pay civil penalties of:

(a) Payment to the State Treasury's general revenue fund in an amount equal to three (3) times the amount of such benefits and payments to which the person was not entitled; and

(b) Payment ***to the Office of the Attorney General's cost recovery fund*** of all reasonable expenses which the court determines have been necessarily incurred by the state in the enforcement of this section.

(10)[~~(9)~~] ***Any person who violates the provisions of subsection (7), (8), or (11) of KRS 205.850 shall be guilty of a Class A misdemeanor. Each violation shall constitute a separate offense.***

(11) Any bank, savings and loan association, credit union, or other financial institution which fails to comply with the provisions of subsection (1) of KRS 205.835 or which submits fraudulent information to the cabinet shall be guilty of a Class A misdemeanor.

(12) Any professional, licensed and regulated by any agency of the Commonwealth of Kentucky, who is convicted of violating any of the provisions of this chapter shall, in addition to any other penalty provided by law, forfeit the license to practice his or her profession for a mandatory minimum period of five (5) years. The license to practice a profession shall be reinstated only after compliance with all administrative regulations of the licensing agency to obtain reinstatement. For purposes of this subsection, an individual or entity is considered to have been "convicted" of an offense:

(a) When a judgment of conviction has been entered against the individual or entity by a federal or state court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

(b) When there has been a finding of guilt against the individual or entity by a District or Circuit Court;

(c) When a plea of guilty by the individual or entity has been accepted by a District or Circuit Court; or

(d) When the individual or entity has entered into participation in a court imposed first offender, deferred adjudication, diversion, or other arrangement or program where judgment of conviction has been withheld.

SECTION 10. KRS CHAPTER 205A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in this chapter, unless the context otherwise requires:

(1) "Crime" means any violation of any section of KRS Chapter 205, or a conspiracy or any complicity to commit any offense defined in that chapter.

(2) "Instrumentality of a crime" means any property, other than real property, the use of which contributes directly and materially to the commission of a crime.

(3) "Person" means an individual, corporation, partnership, or other business entity, or an unincorporated or voluntary association.

(4) "Proceeds of a crime" means any property obtained through the commission of a crime, including any appreciation in the value of property.

(5) "Security interest" means any interest in real or personal property that secures payment or performance of an obligation.

(6) "Substituted proceeds of a crime" means any property obtained or any gain realized by the sale or exchange of proceeds of a crime.

SECTION 11. A NEW SECTION OF KRS CHAPTER 205A IS CREATED TO READ AS FOLLOWS:

(1) Except as otherwise provided in this section, the following property is subject to seizure by, and forfeiture to, this Commonwealth under this chapter:

(a) All personal property that is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(b) All real property that is the proceeds of a crime or the substituted proceeds of a crime, except real property that is the primary residence of a spouse or a dependent child of the owner, unless that spouse or dependent child had prior knowledge of, and consented to the commission of, the crime.

(2) Property is not subject to seizure or forfeiture if either of the following circumstances exists:

(a) The owner of the property did not have prior knowledge of, or consent to the commission of, the crime.

(b) The owner served written notice of a commission of the crime upon an appropriate law enforcement agency, and served a written notice to quit upon the person who committed the crime.

(3) The forfeiture of property encumbered by a security interest is subject to the interest of the holder of the security interest who did not have prior knowledge of, or consent to the commission of, the crime.

(4) The forfeiture of property encumbered by an unpaid balance on a land contract is subject to the interest of the land contract vendor, if the vendor did not have prior knowledge of, or consent to the commission of, the crime.

(5) The forfeiture of the substituted proceeds of a crime is limited to the value to the proceeds of the crime plus the amount by which any restitution or damages owed to the victim of the crime exceeds the value of the proceeds of the crime.

SECTION 12. A NEW SECTION OF KRS CHAPTER 205A IS CREATED TO READ AS FOLLOWS:

(1) Personal property subject to forfeiture under this chapter may be seized pursuant to an order of seizure issued by the court having jurisdiction over the property upon a showing of probable cause that the property is subject to forfeiture.

(2) Personal property subject to forfeiture under this chapter may be seized without process under any of the following circumstances:

(a) The property is the proceeds of a crime or an instrumentality of a crime and the seizure is incident to a lawful arrest.

(b) The seizure is pursuant to a valid search warrant.

(c) The seizure is pursuant to an inspection under a valid administrative inspection warrant.

(d) There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(e) Exigent circumstances exist that preclude the obtaining of a court order, and there is probable cause to believe that the property is the proceeds of a crime or an instrumentality of a crime.

(f) The property is the subject of a prior judgment in favor of this state in a forfeiture proceeding.

(3) The Attorney General, or the Commonwealth's attorney, or the county attorney for the local unit of government in which the property is located, may apply ex parte for an order authorizing the filing of a lien notice against real property subject to forfeiture under this chapter. The application shall be supported by a sworn affidavit setting forth probable cause for a forfeiture action pursuant to this chapter. An order authorizing the filing of a lien notice may be issued upon a showing of probable cause to believe that the property is the proceeds of a crime or the substituted proceeds of a crime.

(4) Property that belongs to the victim of a crime shall promptly be returned to the victim, except in the following circumstances:

(a) If the property is contraband;

(b) If the ownership of the property is disputed until the dispute is resolved; or

(c) If the property is required to be retained as evidence.

(5) Personal property seized under this chapter is not subject to any other action to recover personal property but is considered to be in the custody of the seizing agency subject only to subsection (4) of this section and Sections 13 to 15 of this Act, or to an order and judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the seizing agency may do either or both of the following:

(a) Place the property under seal.

(b) Remove the property to a place designated by the court.

SECTION 13. A NEW SECTION OF KRS CHAPTER 205A IS CREATED TO READ AS FOLLOWS:

(1) Within seven (7) days after personal property is seized or a lien notice is filed against real property under Section 12 of this Act, the seizing agency or, if the property is real property, the Attorney General, or the Commonwealth's attorney, shall give notice of the seizure of the property and the intent to forfeit and dispose of the property

according to this chapter to each of the following persons:

- *(a) If charges have been filed against a person for a crime, the person charged;*
- *(b) Each person with a known ownership interest in the property;*
- *(c) Each mortgagee, person holding a security interest, or person having a lien that appears on the certificate of title or is on file with the secretary of state or appropriate register of deeds, if the property is real property, a mobile home, motor vehicle, watercraft, or other personal property;*
- *(d) Each person whose security interest is recorded with the appropriate public office pursuant to the Federal Aviation Act of 1958, Public Law 85-726, 27 Stat. 731, if the property is an aircraft, aircraft engine, or aircraft propeller, or a part of an aircraft, aircraft engine, or aircraft propeller;*
- *(e) Each person with a known security interest in the property; and*
- *(f) Each victim of the crime.*

(2) The notice required under subsection (1) of this section shall be a written notice delivered to the person or sent to the person by certified mail. If the name and address of a person are not reasonably ascertainable or delivery of the notice cannot reasonably be accomplished, the notice shall be published in a newspaper of general circulation in the county in which the personal property was seized or the real property is located for ten (10) successive publishing days. Proof of written notice or publication shall be filed with the court having jurisdiction over the seizure or forfeiture.

(3) If personal property was seized, the seizing agency shall immediately notify the Commonwealth's attorney for the county in which the property was seized or, if the Attorney General is actively handling a case involving or relating to the property, the Attorney General of the seizure of the property and the intent to forfeit and dispose of the property according to this chapter.

SECTION 14. A NEW SECTION OF KRS CHAPTER 205A IS CREATED TO READ AS FOLLOWS:

(1) A person who did not have prior knowledge of, or consent to the commission of, the crime may move the court having jurisdiction to return the property or discharge the lien on the grounds that the property was illegally seized, that the property is not subject to forfeiture under this chapter, or that the person has an ownership or security interest in the property and did not have prior knowledge of, or consent to the commission of, the crime. The court shall hear the motion within thirty (30) days after the motion is filed.

(2) At the hearing on the motion filed under subsection (1) of this section, the Attorney General, or the Commonwealth's attorney shall establish the following:

- *(a) Probable cause to believe that the property is subject to forfeiture under this chapter and that the person filing the motion had prior knowledge of, or consented to the commission of, the crime; and*
- *(b) If the person filing the motion claims the property was illegally seized, that the property was properly seized.*

(3) If the Attorney General, or Commonwealth's attorney, fails to sustain the burden of proof under subsection (2) of this section, the court shall order the return of the property or the discharge of the lien.

(4) If a motor vehicle is seized under Section 12 of this Act, the owner of the vehicle may move the court having jurisdiction over the forfeiture proceedings to require the seizing agency to file a lien against the vehicle and to return the vehicle to the owner. The court shall hear the motion within seven (7) days after the motion is filed. If the owner of the vehicle established at the hearing that the owner holds the legal title of the vehicle and that it is necessary for the owner or the owner's family to use the vehicle pending the outcome of the forfeiture action, the court may order the seizing agency to return the vehicle to the owner. If the court orders the return of the vehicle to the owner, the court shall order the seizing agency to file a lien against the vehicle.

(5) The testimony of a person at a hearing held under this section is not admissible against that person in any criminal proceeding except in a criminal prosecution for perjury. The testimony of a person at a hearing held under this section does not waive the person's constitutional right against self-incrimination.

SECTION 15. A NEW SECTION OF KRS CHAPTER 205A IS CREATED TO READ AS FOLLOWS:

Except as otherwise provided by law, personal property seized pursuant to Section 12 of this Act shall be returned to the owner, or a lien filed against real property under Section 12 of this Act or against a motor vehicle under Section 14 of this Act shall be discharged, within seven (7) days after the occurrence of any of the following:

(1) A warrant is not issued against a person for the commission of a crime within seven (7) days after the property is seized or, if the property is real property, within seven (7) days after the lien is filed;

(2) All charges against the consenting legal owner relating to the commission of a crime are dismissed;

(3) The consenting legal owner charged with committing a crime is acquitted of the crime;

(4) In the case of multiple defendants, all persons charged with committing a crime are acquitted of the crime; or

(5) Entry of a court order pursuant to this chapter for the return of the property or the discharge of the lien.

SECTION 16. A NEW SECTION OF KRS CHAPTER 205A IS CREATED TO READ AS FOLLOWS:

(1) Within seven (7) days after personal property is returned to the owner, or a lien filed against real property or a motor vehicle is discharged pursuant to Section 15 of this Act, the seizing agency, or if the property is real property, the Attorney General, or the Commonwealth's attorney, who gave notice of the seizure of the property and the intent to forfeit and dispose of the property pursuant to Section 13 of this Act shall give notice to the persons who receive notice pursuant to Section 13 of this Act that the property has been returned to the owner or that the lien has been discharged pursuant to Section 15 of this Act.

(2) The notice required under subsection (1) of this section shall be a written notice delivered to the person or sent to the person by certified mail. If the name and address of the person are not reasonably ascertainable or delivery of the notice cannot reasonably be accomplished, the notice shall be published in a newspaper of general circulation in the county in which the personal property was seized or the real property is located for ten (10) successive publishing days.

SECTION 17. A NEW SECTION OF KRS CHAPTER 205A IS CREATED TO READ AS FOLLOWS:

(1) If property subject to forfeiture under this chapter has a total value of less than $100,000, within seven (7) days after the conviction of a person of a crime, the Commonwealth shall give notice of the seizure of the property or, if a lien has been filed, the filing of the lien, and the intent to begin proceedings to forfeit and dispose of the property according to this chapter to each of the persons to whom notice is required to be given under Section 13 of this Act. Notice shall be given in the same manner as required under Section 13 of this Act.

(2) Within twenty-one (21) days after receipt of the notice or of the date of the first publication of the notice under subsection (1) of this section, a person claiming an interest in property subject to the notice may file a claim with the local unit of government or the Commonwealth expressing the person's interest in the property.

(3) If no claim is filed within the twenty-one (21) day period as described in subsection (2) of this section, the local unit of government or the Commonwealth shall declare the property forfeited and shall dispose of the property according to Section 18 of this Act.

(4) If a claim is filed within the twenty-one (21) day period as described in subsection (2) of this section, the local unit of government or the Commonwealth shall transmit the claim with a list and description of the property to the Attorney General or to the Commonwealth's attorney in the county in which the personal property was seized or the real property is located. The Attorney General, or the Commonwealth's attorney, shall institute a civil action for forfeiture within seven (7) days after the expiration of the twenty-one (21) day period.

(5) If property subject to forfeiture under this chapter has a total value of more than $100,000, the Attorney General, or the Commonwealth's attorney, in the county in which the personal property was seized or the real property is located, shall institute a civil action for forfeiture within seven (7) days after the conviction of a person of a crime.

(6) At the forfeiture proceeding, the plaintiff shall prove the following by a preponderance of the evidence:

- *(a) If the property is personal property, that the property is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime;*
- *(b) If the property is real property, that the property is the proceeds of a crime or the substituted proceeds of a crime; and*
- *(c) If a person, other than the person convicted of the crime, claims an ownership or security interest in the property, that the person claiming the interest in the property had prior knowledge of, or consented to the commission of, the crime.*

(7) If the plaintiff fails to meet the burden of proof under subsection (6) of this section, the property shall be returned to the owner within seven (7) days.

SECTION 18. A NEW SECTION OF KRS CHAPTER 205A IS CREATED TO READ AS FOLLOWS:

(1) When property is forfeited under this chapter, the unit of government that seized or filed a lien against the property may sell the property that is not required to be destroyed by law and that is not harmful to the public and may dispose of the proceeds and any money, negotiable instrument, security, or other thing of value that is forfeited pursuant to this chapter in the following order of priority:

- *(a) Pay any outstanding security interest of a secured party who did not have prior knowledge of, or consent to the commission of, the crime;*
- *(b) Satisfy any order of restitution in the prosecution for the crime;*
- *(c) Pay the claim of each person who shows that he or she is a victim of the crime to the extent that the claim is not covered by an order of restitution;*
- *(d) Pay any outstanding lien against the property that has been imposed by a governmental unit;*
- *(e) Pay the proper expenses of the proceedings for forfeiture and sale, including, but not limited to, expenses incurred during the seizure process and expenses for maintaining custody of the property, advertising, and*

court costs; and

(f) The balance remaining after the payment of restitution, the claims of victims, outstanding liens, and expenses shall be distributed by the court having jurisdiction over the forfeiture proceedings to the unit or units of government substantially involved in effecting the forfeiture.

(2) In the course of selling real property pursuant to subsection (1) of this section, the court that enters an order of forfeiture, on motion of the unit of government to whom the property is forfeited, may appoint a receiver to dispose of the real property forfeited. The receiver is entitled to reasonable compensation. The receiver has authority to do all of the following:

(a) List the forfeited real property for sale;

(b) Make whatever arrangements are necessary for the maintenance and preservation of the forfeited real property;

(c) Accept offers to purchase the forfeited real property; and

(d) Execute instruments transferring title to the forfeited real property.

SECTION 19. A NEW SECTION OF KRS CHAPTER 205A IS CREATED TO READ AS FOLLOWS:

The forfeiture action and related proceedings provided for in this chapter shall be brought in the Circuit Court of the county in which any crime was committed or in the county where real property is located or personal property seized.

SECTION 20. A NEW SECTION OF KRS CHAPTER 205A IS CREATED TO READ AS FOLLOWS:

The Circuit Court shall have equitable jurisdiction over forfeiture proceedings brought under this chapter. The Circuit Court may hear and determine a forfeiture action or a motion relating to a forfeiture action, and may issue and enforce any order or judgment relating to a forfeiture action, as provided in this chapter.

SECTION 21. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Human Resources shall establish, maintain, and publicize a twenty-four (24) hour toll-free telephone hotline for the purpose of receiving reports of alleged fraud and abuse by medical assistance program recipients and participating providers.

(2) The Cabinet for Human Resources shall immediately refer to the Office of the Attorney General all reports of alleged fraud and abuse by providers participating in the Medical Assistance Program.

(3) The secretary of the Cabinet for Human Resources, jointly with the Medicaid Fraud Control Unit of the Office of the Attorney General, shall annually submit a medicaid fraud and abuse report for that calendar year to the Legislative Research Commission, Interim Joint Committee on Appropriations and Revenue, and the Interim Joint Committee on Health and Welfare which identifies:

(a) The number and type of reports of alleged fraud and abuse by categorized recipient and provider groups received from the toll-free telephone hotline;

(b) The number and type of alleged provider fraud and abuse reports of which were referred to the Office of the Attorney General, medicaid fraud and abuse unit, the number and type, which were opened for investigation by the Office of the Attorney General, and the number and type which were prosecuted;

(c) The number and type of reports of alleged recipient fraud and abuse which were opened for investigation which resulted in administrative action as provided under Section 2 of this Act, which resulted in repayment of the cost of benefits received, or which resulted in other action allowed or required under federal or state law;

(d) The total amount of funds involved in the alleged fraud and abuse by recipient and provider groups and the total amount of funds recovered from the provider or recipient group including the method of recovery;

(e) The disposition and resolution of all reports of alleged fraud and abuse by categorized provider or recipient group, received on the hotline;

(f) The cost of administering the toll-free telephone hotline and the amount of any recoveries from fraud and abuse prevention, detection, and prosecution; and

(g) Recommendations for legislative action to prevent, detect, and prosecute medical assistance abuse and fraud in the Commonwealth.

SECTION 22. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

No staff of the Office of the Attorney General shall serve as legal counsel to or represent any professional licensure board for any provider, as defined in Section 3 of this Act, except as provided in this section. Designated staff of the Office of the Attorney General shall work in cooperation with the Cabinet for Human Resources in any initiation of disciplinary proceedings against a health care provider as defined in Section 3 of this Act.

SECTION 23. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

(1) Each health facility and health service as defined in KRS 216B.015, shall as a condition of licensure under this

chapter, file annually with the Cabinet for Human Resources the names and addresses of all owners of and direct financial investors in the health facility or health service. The list of names and addresses shall be made available by the cabinet for public inspection during regular business hours and shall be updated annually.

(2) Each owner of or direct financial investor in any health facility or health service which dispenses or supplies drugs, medicines, medical devices, or durable medical equipment to a patient shall annually file with the Cabinet for Human Resources the names and addresses of any relative within the third degree of consanguinity or affinity who is authorized under state law to prescribe drugs or medicines or medical devices or equipment.

The Committee Substitute to **HB 127** is as follows:

HB 127, AN ACT relating to health care reform.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

As used in Section 2 of this Act:

(1) "Abuse" means health care provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in unnecessary cost to the Medical Assistance Program or other governmental assistance program provided under Section 2 of this Act or under this chapter, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the Medical Assistance Program.

(2) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to the person or some other person. It includes any act that constitutes fraud under applicable federal or state law.

SECTION 2. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) To implement the provisions of this section and upon determination by a utilization review committee of the Department for Medicaid Services which shall be created by the commissioner for medicaid services no later than July 30, 1994, that a medical assistance recipient has defrauded the Medical Assistance Program, the recipient shall immediately become ineligible for medical assistance benefits.

(2) A medical assistance recipient whose eligibility has been revoked due to defrauding the Medical Assistance Program shall not be eligible for future medical assistance services for a period of not more than one (1) year or until full restitution has been made to the Department for Medicaid Services, whichever comes first.

(3) When a medical assistance recipient whose eligibility has been revoked due to defrauding of the Medical Assistance Program reapplies for coverage, during the period of revocation, due to pregnancy, a communicable disease or other condition that creates a risk to public health, or a condition which if not treated could result in immediate grave bodily harm, the utilization review committee for the Department for Medicaid Services may change the revoked status of the previously eligible recipient to restricted status if it has been determined that it would be in the best interest of the previously eligible medical assistance recipient to receive coverage for medical assistance services and the person is otherwise eligible. If this change in status is granted, the case shall be reconsidered by the utilization review committee within sixty (60) days after the restricted status takes effect.

(4) Upon determination by the utilization review committee of the Department for Medicaid Services that a medical assistance recipient has abused the benefits of the Medical Assistance program, the recipient shall immediately be assigned and restricted to a managed care provider. Except in the case of an emergency as defined by the utilization review committee, the restricted recipient shall be eligible to receive covered services only upon presenting to the participating provider, prior to the receipt of services, a dated written referral by the assigned managed care provider. Any participating provider who provides services to a medical assistance recipient in violation of the provisions of this subsection shall not be eligible for reimbursement for any services rendered.

(5) The Cabinet for Human Resources shall request any waivers of federal law that are necessary to implement the provisions of this section.

(6) The provisions of this section shall not take effect if they are found by a court of competent jurisdiction to contravene federal laws or federal regulations applicable to the Medical Assistance Program.

(7) Nothing is this section shall authorize the Cabinet for Human Resources to waive recipient or provider rights to prior notice and hearing as guaranteed by federal law.

SECTION 3. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) Any provider presented with a request for an emergency service, due to a nonlife-threatening condition, by a Medicaid recipient participating in a managed care program but not in a restricted Medicaid status shall not provide the service on an emergency basis unless the provider first makes a reasonable effort to contact the recipient's designated managed care provider for prior approval. Any provider presented with a request for an emergency

service, due to a life-threatening condition, by a medicaid recipient participating in a managed care program but not in a restricted medicaid status may provide the service without prior approval from the recipient's designated managed care provider.

(2) The utilization review committee of the Department for Medicaid services shall in administrative regulation promulgated pursuant to KRS Chapter 13A define an emergency service for implementation of the provisions of this section.

Section 4. KRS 205.845 is amended to read as follows:

As used in KRS 205.850:

(1) "Application" or "claim" means any communication, whether oral, written, or electronic which is used to identify any goods, item or service that is reimbursable under the medical assistance program or to petition the department for payment;

(2) "Assistance program" means any program administered by the ***Cabinet for Human Resources*** [~~department~~];

(3) "Benefit" means receipt of money, or goods or anything of pecuniary value from an assistance program;

(4) "False statement or misrepresentation" means a statement or misrepresentation knowingly made by a person to be false;

(5) "Provider" means an individual, corporation, association, facility, or institution which is providing or has been approved to provide medical assistance to recipients under the Medical Assistance Program***;***

(6) "Knowing" and "knowingly" mean that a person with respect to information:

- ***(a) Has actual knowledge of the information; or***
- ***(b) Acts in deliberate ignorance of the truth or falsity of the information; or***
- ***(c) Acts in reckless disregard of the truth or falsity of the information***.

Section 5. KRS 205.850 is amended to read as follows:

(1) Except as otherwise provided in KRS 205.510 to 205.630, no person shall knowingly solicit***,*** [~~or~~] receive***, or offer*** any remuneration (including any kickback, bribe***,*** or rebate) for furnishing medical assistance benefits or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service***,*** or item for which payment may be made pursuant to Title XIX of the Social Security Act***.***[~~;~~]

(2) ***(a)*** No person shall unlawfully make, offer or receive payment, rebate of a fee, or charge for referring an individual to another person for furnishing of benefits;

(b) No provider shall refer a patient to, or recommend the services of, any other provider of services or goods, pharmacy, hospital, institution, or facility, which may seek reimbursement under any assistance program provided under this chapter in which the referring provider has any direct financial investment, economic interest, or substantial contractual relationship which in any fiscal year, amounts to more than five percent (5%) of the provider's annual gross revenues.

(3) No person shall ***devise a scheme or plan a scheme or artifice, or*** enter into an agreement, combination***,*** or conspiracy ***to obtain or aid another in obtaining payments from any assistance program under this chapter by means of any*** [~~with the intent to defraud the department by obtaining or aiding another to obtain the payment or allowance of a~~] fictitious, false***,*** or fraudulent claim ***or statement submitted to the Cabinet for Human Resources, or intentionally engage in conduct which advances the scheme or artifice.***[~~;~~]

(4) No person shall make, present, or cause to be made or presented to an employee or officer of the ***Cabinet for Human Resources*** [~~department~~] any false, fictitious***,*** or fraudulent statement, representation or entry in any application, claim, report***,*** or document used in determining rights to any benefit or payment or the extent of such entitlement to any benefit or payment, knowing such application, claim, report or document to contain any false, fictitious or fraudulent information***.***[~~;~~]

(5) No person shall, with intent to defraud, knowingly make, or induce, or seek to induce the making of a false statement or false representation of a material fact with respect to the conditions or operations of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, as a hospital, skilled nursing facility, intermediate care facility, home health agency***,*** or other provider of services to the Medical Assistance Program.

(6) Subsections (1) and (2) of this section shall not apply to:

- (a) A discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter; and
- (b) Any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(7) ***Any person, including but not limited to, a physician, law enforcement officer, nurse, social worker, Cabinet for Human Resources personnel, provider licensed or recognized under the laws of the Commonwealth, health care***

facility employee, guardian, or caretaker, having reasonable cause to suspect that a violation of this chapter has been or is being committed by any person, corporation, or entity, shall report or cause to be reported to the state Medicaid Fraud Control Unit, created as provided under the federal Medicare-Medicaid Anti-Fraud and Abuse Amendments, in accordance with the provisions of this chapter. The state Medicaid Fraud Control Unit shall periodically publicize the provisions of this subsection.

(8) A written description of any report received under subsection (7) of this section shall be made immediately to the Office of the Attorney General and to the Office of the Inspector General of the Cabinet for Human Resources as to the suspected fraud, abuse, or misappropriation of any benefit provided in this chapter. Any person making the report under subsection (7) of this section shall provide the following information, if known:

- *(a) The name and address of the offender;*
- *(b) The offender's place of employment;*
- *(c) The nature and extent of the violation;*
- *(d) The identity of the complainant; and*
- *(e) Any other information that the reporting and receiving persons reasonably believe might be helpful in investigation of the alleged fraud, abuse, or misappropriation.*

(9) The identity of any person making a report under this chapter shall be considered confidential by the receiving party. Any person making a report under this chapter regarding the offenses of another shall not be liable in any civil or criminal action based on the report if it was made in good faith.

(10) No employer shall, without just cause, discharge or in any manner discriminate or retaliate against any person who in good faith makes a report required or permitted by this chapter, or testifies, or is about to testify, in any proceeding with regard to any report or investigation.

(11) No employee of the state Medicaid Fraud Control Unit, the Office of the Attorney General, the Office of the Inspector General, or the Cabinet for Human Resources shall notify the alleged offender of the identity of the person who in good faith makes a report required or permitted by this chapter nor shall the employee notify the alleged offender that a report has been made alleging a violation of this chapter until such time as civil or criminal proceedings have been initiated or a formal investigation has been initiated [~~The Attorney General on behalf of the Commonwealth of Kentucky may commence proceedings to enforce this section; and the Attorney General shall in undertaking such actions exercise all powers and perform all duties which the prosecuting attorney would otherwise perform or exercise~~].

Section 6. KRS 205.855 is amended to read as follows:

In any prosecution for the violation of KRS 205.850*,* it shall be a defense if the person relied on the *written* advice of an employee or agent of the *Cabinet for Human Resources and the advice constitutes a defense under any of the provisions of KRS 501.070* [~~department~~].

SECTION 7. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

No person shall, in any matter within the jurisdiction of the Cabinet for Human Resources under this chapter, knowingly falsify, conceal, or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry.

SECTION 8. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) Any person who has been found by clear and convincing evidence at an administrative hearing to have knowingly submitted or caused claims to be submitted for payment for furnishing treatment, services, or goods under an assistance program provided under this chapter, which payment the person was not entitled to receive by reason of a violation of this chapter, shall, in addition to any other penalties or amounts provided by law, be liable for:

- *(a) Payment of interest on the amount of the excess payments at the maximum legal rate in effect on the date the payment was made, for the period from the date payment was made to the date of repayment to the Commonwealth;*
- *(b) A civil penalty in an amount of up to three (3) times the amount of excess payments;*
- *(c) Payment of a civil penalty of five hundred dollars ($500) for each false or fraudulent claim submitted for providing treatment, services, or goods; and*
- *(d) Payment of legal fees and costs of investigation and enforcement of civil penalties.*

(2) Penalties, interest, costs of investigation, and enforcement of the civil remedies recovered on behalf of the Commonwealth under this section shall be remitted to the State Treasurer for deposit in a Medicaid Trust Fund which is hereby created and shall not lapse. Funds deposited in the Medicaid Trust Fund shall not be spent until appropriated by the General Assembly for medical assistance services.

(3) A criminal action need not be brought against a person as a condition precedent to enforcement of civil liability

under this section.

(4) The remedies under this section are separate from and cumulative to any other administrative, civil, or criminal remedies available under federal or state law or regulation.

(5) The Cabinet for Human Resources, in consultation with the Office of the Attorney General, may promulgate administrative regulations, pursuant to KRS Chapter 13A, for the administration of the civil penalties contained in this section.

(6) No action under this section shall be brought after the expiration of five (5) years from the date the action accrues. An action accrues when the knowledge or information becomes known or reasonably should have been known.

SECTION 9. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) The Attorney General on behalf of the Commonwealth may commence proceedings to enforce this chapter and all other criminal offenses that are not defined in Sections 4 to 5 and 7 to 8 of this Act but that involve or are directly related to the use of any assistance program funds or services provided through assistance programs under this chapter.

(2) In enforcing this chapter, the Attorney General may subpoena witnesses or documents to the grand jury, District Court, or Circuit Court of the county or counties where venue lies, and subpoena witnesses or documents to the Office of the Attorney General to secure testimony for use in civil or criminal trials, investigations, or hearings affecting the Cabinet for Human Resources.

Section 10. KRS 205.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 205.170 or subsections (1) to (3) of KRS 205.175 ***or Section 7 or 8 of this Act*** shall be guilty of a Class A misdemeanor.

(2) Any person who violates subsection (4) of KRS 205.175 shall be guilty of a Class D felony.

(3) Any person who willfully violates any of the provisions of KRS 205.310, or any rule or regulation thereunder, shall be guilty of a Class B misdemeanor. Each failure or violation shall constitute a separate offense.

(4) Any person who violates the provisions of subsections (1) ***and*** [~~,~~] (2)***(a)*** [~~and (3)~~] of KRS 205.850 shall be guilty of a Class D felony.

(5) ***Any person who violates the provisions of subsection (2)(b) of Section 5 of this Act shall repay any payments due the Commonwealth. No person who has been referred a patient in violation of subsection (2)(b) of Section 5 of this Act shall bill or collect from the patient or any third-party payor for the service rendered.***

(6) Any person who violates subsection (3) of KRS 205.850 shall be guilty of a Class D felony, unless the purpose of the violation is to obtain ten thousand dollars ($10,000) or more, in which case it shall be a Class C felony.

(7) Any person who violates subsection (4) of KRS 205.850 shall be guilty of a Class A misdemeanor unless the sum total of benefits or payments claimed in any such application, claim, report, or document, or in any combination or aggregation thereof, is valued at one hundred dollars ($100) or more in which case it shall be a Class D felony.

(8)[~~(6)~~] Any person who violates the provisions of subsection (5) of KRS 205.850 shall be guilty of a Class C felony.

(9)[~~(7)~~] Any person who violates subsections (1) to (6) of KRS 205.850 shall, in addition to any other penalties provided by law, forfeit and pay a civil penalty of payment to the cabinet in the amount of all benefits and payments to which the person was not entitled.

(10)[~~(8)~~] Any provider who violates subsections (1) to (6) of KRS 205.850 shall, in addition to any other penalties provided by law, including the penalty set forth in subsection ***(8)***[~~(7)~~] of this section, forfeit and pay civil penalties of:

(a) Payment to the ***Medicaid Trust Fund created under Section 8 of this Act*** [~~State Treasury's general revenue fund~~] in an amount equal to three (3) times the amount of such benefits and payments to which the person was not entitled; and

(b) Payment ***to the Office of the Attorney General's cost recovery fund*** of all reasonable expenses which the court determines have been necessarily incurred by the state in the enforcement of this section.

(11)[~~(9)~~] ***Any person who violates the provisions of subsection (7), (8), (9), (10), or (11) of KRS 205.850 shall be guilty of a Class A misdemeanor. Each violation shall constitute a separate offense.***

(12) Any bank, savings and loan association, credit union, or other financial institution which fails to comply with the provisions of subsection (1) of KRS 205.835 or which submits fraudulent information to the cabinet shall be guilty of a Class A misdemeanor.

(13) Any professional, licensed or regulated by any agency of the Commonwealth of Kentucky, who is convicted of violating any of the criminal provisions of this chapter shall, in addition to any other penalty provided by law, forfeit the license to practice his or her profession for a mandatory minimum period of five (5) years. The license to practice a profession shall be reinstated only after compliance with all conditions contained an administrative regulations of the licensure or regulatory agency to obtain reinstatement. For purposes of this subsection, an

individual or entity is considered to have been "convicted" of an offense when:

(a) A judgment of conviction has been entered against the individual or entity by a federal or state court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

(b) There has been a finding of guilt against the individual or entity by a District or Circuit Court;

(c) A plea of guilty by the individual or entity has been accepted by a District or Circuit Court; or

(d) The individual or entity has entered into participation in a court imposed first offender, deferred adjudication, diversion, or other arrangement or program where judgment of conviction has been withheld.

SECTION 11. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) The Commonwealth shall have a lien on all property of any provider or recipient who after clear and convincing evidence by an administrative hearing was found to have defrauded the Medicaid program equal in amount to the sum defrauded. The lien shall attach after a finding of fraud by the Cabinet for Human Resources. The finding shall be based on clear and convincing evidence.

(2) The lien imposed by subsection (1) of this section shall not be defeated by gift, devise, sale, alienation or any other means and shall include all interest, penalties, fees, or other expenses associated with collection of the debt. The lien shall have priority over any other obligation or liability for which the property is liable and shall be superior to and satisfied before all other liens and encumbrances.

(3) The lien imposed by subsection (1) of this section shall not be valid as against any purchaser, judgment lien creditor, or holder of a security interest or mechanics lien until notice of the lien has been filed by the secretary of the Cabinet for Human Resources or his designee with the county clerk of the county or counties in which the provider's business or residence is located. The notice of lien shall be recorded in the same manner as the notice of lis pendens.

(4) The secretary for human resources may issue a partial release of any part of the property subject to lien upon payment by the debtor of that portion of the debt and any interest, penalty, or fees severed by the lien on that property.

SECTION 12. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) The secretary for human resources may enforce the lien created pursuant to Section 11 of this Act by filing a petition in the name of the Commonwealth in Franklin Circuit Court, if the ministerial acts necessary to enforce the lien by the sale of the liened property or any part of it are performed by the appropriate officers of the Circuit Court of the county in which the property is situated under the direction of and reporting to the Franklin Circuit Court. The manner of enforcement shall be the same as that provided for the enforcement of tax liens.

SECTION 13. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) The Office of the Inspector General in the Cabinet for Human Resources shall establish, maintain, and publicize a twenty-four (24) hour toll-free telephone hotline for the purpose of receiving reports of alleged fraud and abuse by medical assistance program recipients and participating providers.

(2) The Office of the Inspector General in the Cabinet for Human Resources shall prepare a written description of the reported information and immediately make a written referral to the:

(a) State Medicaid Fraud Control Unit and to the Office of the Attorney General of all reports of alleged fraud and abuse by providers participating in the Medical Assistance Program;

(b) State Medicaid Fraud Control Unit of all reports of alleged fraud and abuse by recipients participating in the Medical Assistance Program.

(3) The Office of the Inspector General in the Cabinet for Human Resources, jointly with the state Medicaid Fraud Control Unit and the Office of the Attorney General, shall annually, no later than July 1 of the respective year, submit a medicaid fraud and abuse report for the prior fiscal year to the Legislative Research Commission, the Interim Joint Committee on Appropriations and Revenue, and the Interim Joint Committee on Health and Welfare which identifies:

(a) The number and type of reports received in the Office of the Inspector General in the Cabinet for Human Resources, from the toll-free telephone hotline for the reporting of alleged medical assistance fraud and abuse by categorized recipient and provider groups;

(b) The number and type of alleged Medicaid provider fraud and abuse reports of which were received by or referred to the Office of the Attorney General, state Medicaid Fraud Control Unit, and the Office of the Inspector General; the number and type of reports which were opened for investigation by the Office of the Attorney General, the state Medicaid Fraud Control Unit, or the Office of the Inspector General; and the number and type of reports which were prosecuted and the outcome of the proceedings;

(c) The number and type of reports of alleged Medicaid recipient fraud and abuse which were opened for investigation and which resulted in:

1. Administrative action as provided under Section 2 of this Act;

2. Repayment of the cost of benefits received; or

3. Other action allowed or required under federal or state law;

(d) The total amount of state and federal funds involved in the alleged fraud and abuse by recipient and provider groups and the total amount of funds recovered from the categorized provider or recipient groups including the method of recovery;

(e) The disposition and resolution by the state Medicaid Fraud Control Unit, the Office of the Inspector General, and the Office of the Attorney General of all reports of telephone hotline reports received of fraud or abuse by categorized provider or recipient group, received on the hotline;

(f) The cost of administering the toll-free telephone hotline and the amount of any recoveries from fraud and abuse prevention, detection, and prosecution; and

(g) Recommendations for legislative action to prevent, detect, and prosecute medical assistance abuse and fraud in the Commonwealth.

SECTION 14. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

No staff of the Office of the Attorney General shall serve as legal counsel to or represent any professional licensure board for any provider, as defined in Section 4 of this Act, except as provided in this section. Designated staff of the Office of the Attorney General shall work in cooperation with the Cabinet for Human Resources in any initiation of disciplinary proceedings against a health care provider as defined in Section 4 of this Act.

SECTION 15. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

(1) Each health facility and health service, as defined in KRS 216B.015, shall as a condition of licensure under this chapter, file annually with the Cabinet for Human Resources the names and addresses of all owners of and direct financial investors in the health facility or health service and those organizations or entities with a substantial contractual relationship with the health facility or health service. A substantial contractual relationship is one which, in any fiscal year, amounts to more than five percent (5%) of the provider's annual gross revenue. The list of names and addresses shall be made available by the cabinet for public inspection during regular business hours and shall be updated annually.

(2) Each owner of or direct financial investor in any health facility or health service which dispenses or supplies drugs, medicines, medical devices, or durable medical equipment to a patient shall annually file with the Cabinet for Human Resources the names and addresses of any relative within the third degree of consanguinity or affinity who is authorized under state law to prescribe drugs or medicines or medical devices or equipment.

Section 16. KRS 205.624 is amended to read as follows:

(1) An applicant or recipient shall be deemed to have made to the cabinet an assignment of his rights to third party payments to the extent of medical assistance paid on behalf of the recipient under Title XIX of the Social Security Act. The applicant or recipient shall be informed in writing by the cabinet of such assignment.

(2) The cabinet shall have the right of recovery which a recipient may have for the cost of hospitalization, pharmaceutical services, physician services, nursing services, and other medical services not to exceed the amount of funds expended by the cabinet for such care and treatment of the recipient under the provisions of Title XIX of the Social Security Act.

(a) If a payment for medical assistance is made, the cabinet, to enforce its right, may:

1. Intervene or join in an action or proceeding brought by the injured, diseased, or disabled person, his guardian, personal representative, estate, dependents, or survivors against a third party who may be liable for the injury, disease, or disability, or against contractors, public or private, who may be liable to pay or provide medical care and services rendered to an injured, diseased, or disabled recipient, in state or federal court; or

2. Institute and prosecute legal proceedings against a third party who may be liable for the injury, disease, or disability, or against contractors, public or private, who may be liable to pay or provide medical care and services rendered to an injured, diseased, or disabled recipient, in state or federal court, either alone or in conjunction with the injured, diseased, or disabled person, his guardian, personal representative, estate, dependents, or survivors; or

3. Institute the proceedings in its own name or in the name of the injured, diseased, or disabled person, his guardian, personal representative, estate, dependents, or survivors.

(b) The injured, diseased, or disabled person may proceed in his own name, collecting costs without the necessity of joining the cabinet or the Commonwealth as a named party, provided the injured, diseased, or disabled person shall notify the cabinet of the action or proceeding entered into upon commencement of the action or proceeding. The injured, diseased, or disabled person must notify the cabinet of any settlement or judgment of his or her claim.

(c) In the case of an applicant for or recipient of medical assistance whose eligibility is based on deprivation of parental care or support due to absence of a parent from the home, the cabinet may:

1. Initiate a civil action or other legal proceedings to secure repayment of medical assistance expenditures for which the absent parent is liable; and
2. Provide for the payment of reasonable administrative costs incurred by such other state or county agency requested by the cabinet to assist in the enforcement of securing repayment from the absent parent.

(3) Each insurer issuing policies or contracts under Subtitle 17, 18, 32, or 38 of KRS Chapter 304 shall cooperate fully with the Cabinet for Human Resources or an authorized designee of the cabinet in order for the cabinet to comply with the provisions of subsection (1) of this section.

HB 215, AN ACT relating to safety.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.125 is amended to read as follows:

(1) ***Except as otherwise provided in this section, "motor vehicle" as used in this section means every vehicle designed to carry ten (10) or fewer passengers and used for the transportation of persons, but the term does not include:***

- ***(a) Motorcycles; or***
- ***(b) Motor driven cycles.***

(2) No person shall sell any new passenger vehicle in this state nor shall any person make application for registering a new passenger vehicle in this state unless the front or forward seat or seats have adequate anchors or attachments secured to the floor and/or sides to the rear of the seat or seats to which seat belts may be secured.

(3) [~~(2)~~] Any ***driver of a motor vehicle, when transporting a child of forty (40) inches in height or less in a motor vehicle*** [~~resident parent or legal guardian of a child, forty inches (40") in height or less, when transporting his child in a motor vehicle owned by that parent or guardian~~] operated on the roadways, streets and highways of this state, shall have ***the*** [~~such~~] child properly secured in a child restraint system of a type meeting federal motor vehicle safety standards.

(4)[~~(3)~~] As used in this section, "child restraint system" means any device manufactured to transport children in a motor vehicle which conforms to all applicable federal motor vehicle safety standards.

(5)[~~(4)~~] The term "motor vehicle" as used in subsection ***(3)***[~~(2)~~] of this section shall not apply to recreational vehicles or trucks having a tonnage rating of more than one (1) ton.

(6)[~~(5)~~] Failure to wear a child passenger restraint shall not be considered as contributory negligence, nor shall such failure to wear said passenger restraint system be admissible as evidence in the trial of any civil action.

(7)[~~(6)~~] ***No person shall operate a motor vehicle manufactured after 1965 on the public roadways of this state unless the driver and all passengers are wearing a properly adjusted and fastened seat belt, unless the passenger is a child who is secured as required in subsection (3) of this section. The provisions of this subsection shall not apply to:***

- ***(a) A person who possesses a written statement from a physician or licensed chiropractor that he is unable, for medical or physical reasons, to wear a seat belt; or***
- ***(b) A letter carrier of the United States postal service while engaged in the performance of his duties.***

(8) A peace officer shall not stop or seize a person nor issue a uniform citation for a violation of subsection (7) of this section if the officer has no other cause to stop or seize the person other than a violation of subsection (7) of this section. A passenger shall not be in violation of subsection (7) of this section for failure to wear a seat belt, if all the manufacturer installed seat belts are being used and an additional seat belt is not available.

(9) The provisions of subsections (7) and (8) of this section shall supersede any existing local ordinance involving the use of seat belts. No ordinance contrary to subsections (7) and (8) of this section may be enacted by any unit of local government. The terms of subsection ***(3)***[~~(2)~~] of this section shall not apply if all seat positions in the pickup truck are occupied by persons other than a child of forty (40) inches in height or less.

Section 2. KRS 189.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and 189.960, shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars ($60) nor more than five hundred dollars ($500).

(b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or 189.490, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, such person shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100), and upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name such vehicle used in the transportation of inflammable liquids or explosives is licensed, such person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(18) Any person who abandons a vehicle upon the right-of-way of a state highway for seven (7) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(19) Every person violating KRS 189.393 shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty-five dollars ($35) nor more than five hundred dollars ($500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars ($60) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment.

(20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of such a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(24) Any person who violates the provisions of KRS 189.125***(3)***[~~(2)~~] shall be fined fifty dollars ($50).

(25) ***Any person who violates the provisions of KRS 189.125(7) shall be fined an amount not to exceed twenty-five dollars ($25).***

(26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(27)[~~(26)~~] A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

The Committee Substitute to **HB 215** is as follows:

HB 215, AN ACT relating to safety.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.125 is amended to read as follows:

(1) ***Except as otherwise provided in this section, "motor vehicle" as used in this section means every vehicle designed to carry ten (10) or fewer passengers and used for the transportation of persons, but the term does not include:***

(a) Motorcycles; or

(b) Motor driven cycles.

(2) No person shall sell any new passenger vehicle in this state nor shall any person make application for registering a new passenger vehicle in this state unless the front or forward seat or seats have adequate anchors or attachments secured to the floor and/or sides to the rear of the seat or seats to which seat belts may be secured.

(3) [~~(2)~~] Any ***driver of a motor vehicle, when transporting a child of forty (40) inches in height or less in a motor vehicle*** [~~resident parent or legal guardian of a child, forty inches (40") in height or less, when transporting his child in a motor vehicle owned by that parent or guardian~~] operated on the roadways, streets and highways of this state, shall have ***the*** [~~such~~] child properly secured in a child restraint system of a type meeting federal motor vehicle safety standards.

(4)[~~(3)~~] As used in this section, "child restraint system" means any device manufactured to transport children in a motor vehicle which conforms to all applicable federal motor vehicle safety standards.

[~~(4) The term "motor vehicle" as used in subsection (2) of this section shall not apply to recreational vehicles or trucks having a tonnage rating of more than one (1) ton.~~]

(5) Failure to wear a child passenger restraint shall not be considered as contributory negligence, nor shall such failure to wear said passenger restraint system be admissible as evidence in the trial of any civil action. ***Failure of any person to wear a seat belt shall not constitute negligence per se.***

(6) ***No person shall operate a motor vehicle manufactured after 1965 on the public roadways of this state unless the driver and all passengers are wearing a properly adjusted and fastened seat belt, unless the passenger is a child who is secured as required in subsection (3) of this section. The provisions of this subsection shall not apply to:***

(a) A person who has in his possession at the time of the conduct in question a written statement from a physician or licensed chiropractor that he is unable, for medical or physical reasons, to wear a seat belt; or

(b) A letter carrier of the United States postal service while engaged in the performance of his duties.

(7) A peace officer shall not stop or seize a person nor issue a uniform citation for a violation of subsection (6) of this section if the officer has no other cause to stop or seize the person other than a violation of subsection (6) of this section.

(8) The provisions of subsections (6) and (7) of this section shall supersede any existing local ordinance involving the use of seat belts. No ordinance contrary to subsections (6) and (7) of this section may be enacted by any unit of local government. ~~[The terms of subsection (2) of this section shall not apply if all seat positions in the pickup truck are occupied by persons other than a child of forty (40) inches in height or less.]~~

Section 2. KRS 189.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and 189.960, shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars ($60) nor more than five hundred dollars ($500).

(b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or 189.490, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, such person shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points

shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100), and upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name such vehicle used in the transportation of inflammable liquids or explosives is licensed, such person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(18) Any person who abandons a vehicle upon the right-of-way of a state highway for seven (7) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(19) Every person violating KRS 189.393 shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty-five dollars ($35) nor more than five hundred dollars ($500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars ($60) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment.

(20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of such a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(24) Any person who violates the provisions of KRS 189.125***(3)***[~~(2)~~] shall be fined fifty dollars ($50).

(25) ***Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars ($25).***

(26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(27)[~~(26)~~] A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

Floor Amendments

Floor Amendment No. 1 to the Committee Substitute to **HB 309**, by Representative Scorsone:

on page 3, line 22, after the period "." by inserting the following new language:

"*Any fees received by the county attorney pursuant to this section shall be used only for the normal expenses incurred in the operation of the county attorney's office attributable to the collection and prosecution of certificates of delinquency or delinquent personal property tax bills*"

Calendar

HB 283 taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that it be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Orders of the Day

HB 176, with Committee Amendment and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rasche moved the adoption of Committee Amendment No. 1 to **HB 176**. Agreed.

Representative Rasche moved the adoption of Floor Amendment No. 2 to **HB 176**. Agreed.

Representative Rasche moved that **HB 176**, as amended, be passed.

Representative Riner moved the adoption of Floor Amendment No. 1 to **HB 176**.

On the roll call on Floor Amendment No. 1 to **HB 176** the vote was **Yeas 49**--Ackerson, Adams, Allen, Altman, Bruce, Bryant, Buis, Burch, Cave, L. Clark, P. Clark, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gee, Gray, Hampton, Hancock, Harper, Hatcher, Heleringer, Jensen, Johnson, Keith, Kerr, Lile, Lindsay, Lyne, Maggard, Mason, McElroy, Morris, Mullinix, Napier, Noland, Reinhardt, Richards, Riner, Sanders, Stumbo, Todd, Turner, Walton, Yates, Zimmerman. **Nays 46**--Adkins, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Callahan, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, Deskins, Geveden, Graham, Lear, Lee, LeMaster, Lewis, Little, Long, Maricle, Marzian, Moberly, Nesler, Northup, Nunn, Palumbo, Rapier, Rasche, Ridley, Riggs, Scorsone, Shacklette, Simpson, R. Smith, Stacy, Stengel, Trapp, Treesh, Wayne, Worthington.

Floor Amendment No. 1 to **HB 176** was adopted.

Representative Rasche moved that **HB 176**, as amended, be passed.

On the roll call the vote was: Yeas 98, Nays 0. (See February 1, 1994 roll call on **HB 176** - Appendix)

HB 176, as amended, was passed and the title agreed to.

Representative Rasche moved that the vote by which **HB 176**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Report On Enrolled Bills

The Committee on Enrollment reported that **SB 10** has been examined and found correctly enrolled. Said Bill was read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -2:25 p.m.)

Orders of the Day (Continued)

HB 128, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bentley moved that **HB 128** be passed.

Representative Lewis moved the adoption of Floor Amendment No. 1 to **HB 128**. Rejected.

Representative Bentley moved that **HB 128** be passed.

On the roll call the vote was: Yeas 49, Nays 43. (See February 1, 1994 roll call on **HB 128** - Appendix)

HB 128 was passed and the title agreed to.

Representative Bentley moved that the vote by which **HB 128** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 36, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 43** has been examined and found correctly enrolled. Said Bill was read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -2:45 p.m.)

HB 43 delivered to the Senate and signed by the President. Delivered to the Governor on February 1, 1994 at 3:07 p.m.

Orders of the Day (Continued)

Representative Morris moved the adoption of the Committee Substitute to **HB 36**. Agreed.

Representative Morris moved that **HB 36**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 95, Nays 0. (See February 1, 1994 roll call on **HB 36** - Appendix)

HB 36, by way of Committee Substitute, was passed and the title agreed to.

Representative Morris moved that the vote by which **HB 36**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 208 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Ridley moved that **HB 208** be passed.

On the roll call the vote was: Yeas 96, Nays 0. (See February 1 , 1994 roll call on **HB 208** - Appendix)

HB 208 was passed and the title agreed to.

Representative Ridley moved that the vote by which **HB 208** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 183 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative McElroy moved that **HB 183** be passed.

On the roll call the vote was: Yeas 86, Nays 10. (See February 1 , 1994 roll call on **HB 183** - Appendix)

HB 183 was passed and the title agreed to.

Representative McElroy moved that the vote by which **HB 183** was passed be reconsidered and said motion be placed on the table. Agreed.

Representative Bondurant abstained from voting on **HB 183** due to a possible conflict.

HB 173, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lindsay moved the adoption of the Committee Substitute to **HB 173**. Agreed.

Representative Lindsay moved that **HB 173**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 96, Nays 0. (See February 1, 1994 roll call on **HB 173** - Appendix)

HB 173, by way of Committee Substitute, was passed and the title agreed to.

Representative Lindsay moved that the vote by which **HB 173**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 113 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Noland moved that **HB 113** be passed.

On the roll call the vote was: Yeas 89, Nays 1. (See February 1 , 1994 roll call on **HB 113** - Appendix)

HB 113 was passed and the title agreed to.

Representative Noland moved that the vote by which **HB 113** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 7, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed by a majority of members elected.

Representative Donnermeyer moved that **HB 7**, by way of Committee Substitute as amended, be passed.

Representative Damron moved the adoption of Floor Amendment No. 2 to the Committee Substitute to **HB 7**. Rejected.

Representative Donnermeyer moved that **HB 7**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 56, Nays 41. (See February 1, 1994 roll call on **HB 7** - Appendix)

HB 7, by way of Committee Substitute as amended, was passed and the title agreed to.

Representative Donnermeyer moved that the vote by which **HB 7**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that **HB 368** be reassigned to the Committee on Natural Resources and Environment. Agreed.

Representative Stumbo moved that the rules be suspended for the Introduction of Bills and Resolutions and Committee Reports. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 401, by Representative LeMaster: AN ACT relating to safety officers in urban-county governments.

HB 402, by Representative Brown: AN ACT relating to petroleum storage tanks.

HB 403, by Representative Little: AN ACT relating to state employees.

HB 404, by Representative Wayne: AN ACT relating to leave of absence for a teacher or superintendent.

HB 405, by Representatives B. Smith, Adkins, Lyne, Altman, Farrow, Allen, Stengel, R. Smith, Brown, Geveden, Hancock, Nesler, Curd, Sanders, Turner and Arnold: AN ACT relating to teachers' retirement at regional universities.

HB 406, by Representatives B. Smith, Lee, Farrow and P. Clark: AN ACT relating to revenue and taxation.

HB 407, by Representative Lee: AN ACT relating to public health.

HB 408, by Representatives Burch, Farrow, Nesler and Mason: AN ACT relating to early intervention services for infants and toddlers with disabilities and their families.

HB 409, by Representative Zimmerman: AN ACT relating to telephone solicitations.

HB 410, by Representative Deskins: AN ACT relating to law enforcement training.

HB 411, by Representative Lewis: AN ACT relating to hazardous duty positions and declaring an emergency.

HB 412, by Representatives Simpson, French, Callahan, Donnermeyer, Reinhardt, Kerr and Harper: AN ACT relating to crimes and punishments.

HB 413, by Representative R. Smith: AN ACT relating to eluding law enforcement and traffic safety officers.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills and Resolutions have been posted for Committee consideration:

Transportation: **HB 184, HB 217, HB 341, HB 365**

State Government: **HR 15, HCR 19, HR 20, HB 180, HB 269, HB 295, HB 299, HB 315, HB 325, HB 334, SB 44, SB 46, HB 339**

Cities: **SB 4**

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 165**, by Representative Farrow:

On page 1, line 22, by deleting the period, and by substituting therefor "***; or***"; and
on page 1, line 22, by inserting thereafter:
(c) A deputy is a graduate of the Kentucky State Police Academy.".

Floor Amendment No. 2 to **HB 165**, by Representative Farrow:

On page 2, line 10, by deleting the word "***sworn***"; and
on page 2, line 11, by deleting the word "***sworn***"; and
on page 2, line 13, by deleting the word "***sworn***"; and the words "***The sheriff may***"; and
on page 2, by deleting line 14; and
on page 2, line 15, by deleting "***professional, and support positions***"; and
on page 2, line 17, by moving the closing bracket to include the period, and by striking through the period.

Representative Maggard moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Maggard moved that he be recorded as voting "yea" on **HB 128**. Agreed.

Representative Mullinix moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Mullinix moved that his vote be changed from "yea" to "nay" on **HB 7**. Agreed.

Representative Farrow moved the adoption of the following **Legislative Citation No. 37**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest condolences and expressions of sympathy to The Stephen Mooney Family on the passing of Stephen Mooney. The entire membership joins Representative Mark Farrow, the community of Stamping Ground, Georgetown and Scott County, Kentucky, in memory of Mayor Stephen Mooney. The time and energy he devoted to his projects for the growth and development of counties and cities statewide and the noble deeds he so unselfishly rendered to his community depicted outstanding leadership and humanitarian qualities.

Representative Farrow moved the adoption of the following **Legislative Citation No. 38**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby commends Assistant Chief Gran Spicer, Cynthiana, Kentucky Police Officer. Your expertise as a highly trained police officer and your swift response serves you well. The entire membership joins Representative Mark Farrow in commending Assistant Chief Spicer for keeping a potential fatal situation under control.

Representative Farrow moved the adoption of the following **Legislative Citation No. 39**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby commends Ptl. Larry Harney, Cynthiana, Kentucky Police Officer. The entire membership joins Representative Mark Farrow in commending Officer Harney for the calm and professional manner in which he aided Assistant Chief Gran Spicer in taking control of a potentially fatal situation.

The following members filed requests to have their names listed as co-sponsors to Bills: **HB 96**, Representative Donnermeyer; **HCS** to **HB 127**, **HB 368**, Representative Riggs; **HB 128**, Representative Maggard; **HB 133**, Representative Lile; **HB 196**, Representative Trapp; **HB 294**, Representative Farrow; **HB 204**, **HB 205**, **HB 224**, Representative Heleringer.

The following members filed requests to have their names withdrawn as co-sponsors of Bills: **HB 178**, Representative Trapp; **HB 361**, Representative Ridley.

Announcements

The Clerk announced the following meetings:

Majority Caucus, February 8, 1994

Cities, 8:30 a.m., February 2, 1994, Room 131

Budget Review Subcommittee on Education, upon adjournment today, Room 129

Committee on Rules, upon adjournment today

Elections and Constitutional Amendments, 10:00 a.m., February 2, 1994

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Wednesday, February 2, 1994.

On the roll call the vote was **Yeas 84**--Adams, Adkins, Allen, Altman, Arnold, Ballard, Bentley, Bondurant, Bowling, Brown, Bryant, Buis, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Johnson, Kerr, Lear, Lee, Lindsay, Little, Maggard, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riggs, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, R. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 3**--Heleringer, LeMaster, Lile.

The motion to adjourn was adopted.

WEDNESDAY, FEBRUARY 2, 1994

NINETEENTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Dr. John Callaway, First Presbyterian Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Burch, Deskins, Hancock, Keith, McElroy and Yates.

Representative P. Clark moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative P. Clark moved that the reading of the Journal of February 1, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 49, SB 51, SB 91, SB 93, SB 98, SB 99, HB 75, HB 80**. (Time: 2:05 p.m.)

Representative Arnold moved that the rules be suspended to introduce guests. Agreed.

Representative Wayne moved that the rules be suspended to allow floor privileges to special guests and to act upon Legislative Citations. Agreed.

Representative Wayne moved the adoption of the following **Legislative Citation No. 42**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds your effort and offers its sincerest congratulations to Male High School Field Hockey Team for your excellent season record of 14 wins and 2 losses. Your contributions have been outstanding, and you have brought a great deal of recognition to Male High School and your community. The House of Representatives joins with Representative Jim Wayne in honoring you on winning the 1993 state championship title and wishes you every success as you further your academic and athletic careers.

Representative Wayne moved the adoption of the following **Legislative Citation No. 43**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds your effort and offers its sincerest congratulations to Male High School Girls Soccer Team for your victorious season. Your contributions have been outstanding and you have brought a great deal of recognition to Male High School and your community. The House of Representatives joins Representative Jim Wayne in honoring you on winning the 1993 state championship title and wishes you every success as you further your academic and athletic careers.

Representative Wayne moved the adoption of the following **Legislative Citation No. 41**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds your effort and offers its sincerest congratulations to Male High School Football Team for your victorious season and winning record. Your contributions have been outstanding, and you have brought a great deal of recognition to Male High School and your community. The House of Representatives joins with Representative Jim Wayne in honoring you on winning the 1993 AAAA Football Championship and wishes you every success as you further your academic and athletic careers.

Introduction of Bills and Resolutions

HB 414, by Representatives Stengel and Butler: AN ACT relating to complaints against police officers.

HB 415, by Representative Lewis: AN ACT relating to retirement.

HB 416, by Representatives Palumbo, Marzian, Shacklette, Bryant, Bondurant and Lyne: AN ACT relating to the Kentucky Senior Games Program and making an appropriation therefor.

HB 417, by Representative Palumbo: AN ACT relating to persons with disabilities.

Representative Lewis moved that the rules be suspended to withdraw **HB 397**. Agreed.

Floor Amendments

Floor Amendment No. 1 to the Committee Substitute to **HB 215**, by Representative Lindsay:

On page 1, line 20, by removing the brackets and strike throughs from the material on lines 20 and 21

And on page 1, line 20, before "(4)" by inserting "***(5)***" and by placing brackets around and striking through "(4)"

And on page 1, line 22, before "(5)" by inserting "***(6)***" and by placing brackets around and striking through "(5)"

And on page 2, line 1, before "(6)" by inserting "***(7)***" and by placing brackets around and striking through "(6)"

And on page 2, lines 2 to 3, by deleting the words "***properly adjusted and***"

And on page 2, line 11, by deleting "***(7)***" and inserting in lieu thereof "***(8)***" and by deleting "***or seize***"

And on page 2, line 12, by deleting "***(6)***" and inserting in lieu thereof "***(7)***"

And on page 2, line 13, by deleting "***or seize***" and by deleting "***(6)***" and inserting in lieu thereof "***(7)***"

And on page 2, line 13, after "***section.***" by inserting "***A passenger shall not be in violation of subsection (7) of this section for failure to wear a seat belt, if all the manufacturer installed seat belts are being used and an additional seat belt is not available.***"

And on page 2, line 14, by deleting "***(8)***" and inserting in lieu thereof "***(9)***" and by deleting "***(6) and (7)***" and inserting in lieu thereof "***(7) and (8)***"

And on page 2, line 16, by deleting "***(6) and (7)***" and inserting in lieu thereof "***(7) and (8)***"

And on page 7, line 4, by deleting "***(6)***" and inserting in lieu thereof "***(7)***"

And on page 7, line 5, by deleting "***twenty-five dollars ($25)***" and inserting in lieu thereof "***ten dollars ($10)***"

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Agriculture and Small Business: **HB 395**

Appropriations and Revenue: **HB 400, HB 406, HB 398, HB 397, HB 411**

Cities: **HB 401**

Counties and Special Districts: **HB 410**

Education: **HB 404, HB 405**

Health and Welfare: **HB 407, HB 408**

Judiciary: **SB 29, SB 84, HB 392, HB 396, HB 412, HB 413**

Natural Resources and Environment: **HB 399, HB 402**

State Government: **HB 403**

Tourism Development and Energy: **HB 409**

Transportation: **HB 393, HB 394**

Report of Committees

The Committee on Rules reported the following Consent Bill has been posted for passage in the Regular Orders of the Day, February 3, 1994: **HB 6**

The Committee on Rules reported that **HR 16** has been posted for passage in the Orders of the Day for February 3, 1994.

The Committee on Rules reported that the following Bill has been recommitted:

Appropriations and Revenue: **HB 283**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Agriculture and Small Business: **HB 370**

State Government: **HB 277**

Report of Committees (Continued)

The Committee on Cities reported **HB 34, HB 73,** with Committee Substitute attached thereto, **HB 220** and **HB 239**, with Committee Substitute attached thereto with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 34, AN ACT relating to enforcement of the Kentucky Building Code.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 198B.010 is amended to read as follows:

As used in this chapter, unless otherwise provided:

(1) "Assembly occupancy" means the occupancy or use of a building or structure or any portion thereof by a gathering of persons for civic, political, travel, religious, social or recreational purposes, including among others:

  (a) Armories;
  (b) Assembly halls;
  (c) Auditoriums;
  (d) Bowling alleys;
  (e) Broadcasting studios;
  (f) Chapels;
  (g) Churches;
  (h) Clubrooms;
  (i) Community buildings;
  (j) Courthouses;
  (k) Dance halls;
  (l) Exhibition rooms;
  (m) Gymnasiums;
  (n) Hotels;
  (o) Lecture rooms;
  (p) Lodge rooms;
  (q) Motels;
  (r) Motion picture theaters;
  (s) Museums;
  (t) Night clubs;
  (u) Opera houses;
  (v) Passenger stations;
  (w) Pool rooms;
  (x) Recreation areas;
  (y) Restaurants;
  (z) Skating rinks;
  (aa) Television studios;
  (bb) Theaters.

(2) "Attic" means the space between the ceiling beams of the top habitable story and the roof rafters.

(3) "Basement" means that portion of a building the average height of which is at least half below grade, which is ordinarily used for purposes such as storage, laundry facilities, household tool shops, and installation and operation of heating, cooling and ventilating facilities, but which is not ordinarily used for purposes of general household habitation.

(4) "Building" means any combination of materials, whether portable or fixed, which comprises a structure or nonmine

underground area affording facilities or shelter for any human occupancy, whether infrequent or regular. The word "building" shall be construed wherever used herein as if followed by the words "or part or parts thereof and all equipment therein" unless the context clearly requires a different meaning. "Building" shall also mean swimming pools constructed below grade on site, but not swimming pools assembled above grade on site. "Building" shall not mean a mobile home, or a farm dwelling or other farm buildings and structures incident to the operation and maintenance of the farm if such farm structures are located outside the boundary of a municipality and are not used in the business of retail trade or used as a place of regular employment for ten (10) or more people or structures used in the storage or processing of timber products. [~~This chapter shall not apply to any single family dwelling except those sold or constructed under a trade or brand name.~~

(5) Any city, county or urban-county government of the Commonwealth may extend, by ordinance, the application of this chapter to those single family dwellings exempted under subsection (4) of this section, but may not enforce any building code other than the Uniform State Building Code on such dwellings.]

(5)[~~(6)~~] Nothing in this chapter shall be construed to exempt single family dwellings from those provisions of the Uniform State Building Code that relate to the National Electric Code and the State Plumbing Code.

(6)[~~(7)~~] "Business occupancy" means the occupancy or use of a building or structure or any portion thereof for the transaction of business, the rendering or receiving of professional services, or the displaying, selling or buying of goods, wares, or merchandise, or the housing of vehicles of transportation, except where occupancy is of high hazard, including among others:

(a) Banks;

(b) Barber shops;

(c) Beauty parlors;

(d) Department stores;

(e) Garages;

(f) Markets;

(g) Service stations;

(h) Offices;

(i) Stores;

(j) Radio stations;

(k) Telephone exchanges;

(l) Television stations.

(7)[~~(8)~~] "Certified building inspector" means a person who has been certified by the department as having successfully completed the test requirements provided by KRS 198B.090 to practice as a city, county, or state building inspector within the Commonwealth.

(8)[~~(9)~~] "Certified plans and specifications inspector" means a person who has been certified by the department as having successfully completed the test requirements provided by KRS 198B.090 to practice as a city, county, or state plans and specifications inspector within the Commonwealth.

(9)[~~(10)~~] "Certified plumbing inspector" means a person who has been certified by the department as having successfully completed the test requirements provided by KRS 198B.090 and 318.140, or 318.090 to practice as a city, county, or state plumbing inspector within the Commonwealth.

(10)[~~(11)~~] "Commissioner" means the commissioner of housing, buildings and construction.

(11)[~~(12)~~] "Construction" means the erection, fabrication, reconstruction, substantial alteration or conversion of a building, or the installation of equipment therein, but shall not include the ordinary repair of a building or structure.

(12)[~~(13)~~] "Department" means the Department of Housing, Buildings and Construction.

(13)[~~(14)~~] "Educational occupancy" means the occupancy or use of a building or structure or any portion thereof by persons assembled for the purpose of learning or of receiving educational instruction, including among others:

(a) Academies;

(b) Care centers;

(c) Colleges;

(d) Kindergartens;

(e) Libraries;

(f) Pre-schools;

(g) Relocatable classroom units;

(h) Schools;

(i) Seminaries;
(j) Universities.

(14)[~~(15)~~] "Equipment" means facilities or installations, including but not limited to, heating, electrical, ventilating, air conditioning, and refrigerating facilities or installations.

(15)[~~(16)~~] "High hazard occupancy" means the occupancy or use of a building or structure or any portion thereof that involves highly combustible, highly flammable or explosive materials or which has inherent characteristics that constitute a special fire hazard, including among others:

(a) Aluminum powder factories;
(b) Charging or filling stations;
(c) Distilleries;
(d) Dry cleaning plants;
(e) Dry dyeing plants;
(f) Explosive-manufacture, sale or storage;
(g) Flour and feed mills;
(h) Gasoline bulk plants;
(i) Grain elevators;
(j) Lacquer factories;
(k) Liquefied petroleum gas;
(l) Mattress factories;
(m) Paint factories;
(n) Pyroxylin-factories, or warehouses;
(o) Rubber factories.

(16)[~~(17)~~] "Industrial occupancy" means the occupancy or use of a building structure or any portion thereof for assembling, fabricating, finishing, manufacturing, packaging or processing operations, except for occupancies of high hazard, including among others:

(a) Assembly plants;
(b) Creameries;
(c) Electrical substations;
(d) Factories;
(e) Ice plants;
(f) Laboratories;
(g) Laundries;
(h) Manufacturing plants;
(i) Mills;
(j) Power plants;
(k) Processing plants;
(l) Pumping stations;
(m) Repair garages;
(n) Smokehouses;
(o) Workshops.

(17)[~~(18)~~] "Industrialized building system" means any structure or component thereof which is wholly or in substantial part fabricated in an off-site manufacturing facility for installation or assembly on a permanent foundation at the building site.

(18)[~~(19)~~] "Institutional occupancy" means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable or other care or treatment, or by persons involuntarily detained, including among others:

(a) Asylums;
(b) Homes for the aged;
(c) Hospitals;
(d) Houses of correction;
(e) Infirmaries;

(f) Jails;

(g) Nursing homes;

(h) Orphanages;

(i) Penal institutions;

(j) Reformatories;

(k) Sanitariums;

(l) Nurseries.

(19)[~~(20)~~] "Mobile home" means mobile home as defined in KRS 227.550(9).

(20)[~~(21)~~] "Ordinary repair" means any nonstructural reconstruction or renewal of any part of an existing building for the purpose of its maintenance, or decoration, and shall include, but not be limited to, the replacement or installation of nonstructural components of the building such as roofing, siding, windows, storm windows, insulation, drywall or lath and plaster, or any other replacement, in kind, that does not alter the structural integrity, alter the occupancy or use of the building, or affect, by rearrangement, exitways and means of egress; but shall not include additions to, or alteration of, or relocation of any standpipe, water supply, sewer, drainage, gas, soil, waste, vent or similar piping, electric wiring or mechanical equipment including furnaces and hot water heaters or other work affecting public health or safety.

(21)[~~(22)~~] "Story" means that part of a building comprised between a floor and the floor or roof next above which is not a basement or an attic.

(22)[~~(23)~~] "Physically handicapped person" means a person confined to a wheelchair; a person who uses braces or crutches; a person who because of the loss of a foot or leg or because of an arthritic, spastic, pulmonary or cardiac condition, walks with difficulty or insecurity; a person who suffers from a faulty coordination or palsy; a person who is blind or whose sight is so impaired that, functioning in a public area, he is insecure or exposed to danger; a person whose hearing is so impaired that he is unable to hear warning signals; and a person whose mobility, flexibility, coordination and perceptiveness are significantly reduced by aging.

(23)[~~(24)~~] "Facility for physically handicapped persons" means any convenience or device which facilitates the health, safety or comfort of a handicapped person, including, but not limited to, ramps, handrails, elevators, and doors.

Section 2. KRS 67.380 is amended to read as follows:

The fiscal court of any county shall have authority, by order or resolution, to adopt, and to enforce, regulations governing construction as defined by KRS ***198B.010(11)*** [~~198B.010(12)~~] pursuant to the provisions of KRS 198B.060.

Section 3. This Act shall become effective January 1, 1995.

HB 73, AN ACT relating to housing.

WHEREAS, decent housing is a fundamental need of all people and is essential to remove discriminatory, social, physical, and economic barriers that inhibit the self-sufficiency of all Kentuckians.

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 198 IS CREATED TO READ AS FOLLOWS:

The General Assembly hereby finds and declares it to be in the public interest to establish a state policy on housing. The objectives of a Kentucky housing policy shall be to:

(1) Encourage the availability of decent and affordable housing for all Kentucky residents;

(2) Identify the basic housing needs of all Kentuckians, and particularly for the elderly, persons of low and very low income, the disabled, the homeless, and single parent households;

(3) Coordinate housing activities and services among state departments and agencies to blend and maximize state resources to ensure program flexibility and comprehensive housing production;

(4) Coordinate the removal of administrative, regulatory, or other barriers prohibiting the development of affordable housing for all Kentuckians;

(5) Coordinate the utilization of state-owned land and buildings for both public and private housing development;

(6) Promote public and private housing partnerships to finance, construct, and manage diverse housing alternatives;

(7) Encourage collaborative planning with social service providers;

(8) Strengthen partnerships among all levels of government and the public and private sectors, including for-profit and nonprofit organizations, in the production of housing;

(9) Coordinate the supply of housing for persons with special needs;

(10) Provide direction to the public and private sectors in their attempt to meet the housing needs of Kentucky residents;

(11) Reevaluate housing and housing-related programs and policies in order to ensure proper coordination of those programs and policies to meet the housing needs of Kentucky residents;

(12) Coordinate housing into comprehensive community and economic development strategies at the state and local levels;

(13) Coordinate efforts to include a mandatory housing element of the five (5) year comprehensive state housing assistance strategy plan with provisions to address the need and availability of affordable housing within individual planning units; and

(14) Coordinate housing activities with the Kentucky Board of Housing, Buildings and Construction and Kentucky Housing Corporation to continue production, maintenance, and rehabilitation for the purpose of assuring the availability of safe, adequate housing in a healthful environment for all Kentucky citizens.

(15) Encourage the distribution of affordable housing opportunities throughout the metropolitan statistical areas of the state and discourage the concentration of affordable housing in only limited sections of these same metropolitan statistical areas. Metropolitan statistical areas shall be those as defined by the U.S. Bureau of the Census.

SECTION 2. A NEW SECTION OF KRS CHAPTER 198 IS CREATED TO READ AS FOLLOWS:

The General Assembly hereby finds and declares that critical housing needs exist in the Commonwealth, and in order to meet the needs of its people, all state departments and agencies shall coordinate efforts to maximize all available resources of the Commonwealth to ensure the availability of decent housing to all of its residents. The efforts of all state agencies and departments in regards to housing shall be guided by the Kentucky housing policy objectives as stated in Section 1 of this Act.

SECTION 3. A NEW SECTION OF KRS CHAPTER 198 IS CREATED TO READ AS FOLLOWS:

(1) In order to create a statewide forum relating to housing and housing issues, there is hereby created an Advisory Commission on Housing. The commission shall be comprised of twenty-one (21) members consisting of nine (9) public members from state government and twelve (12) at-large members.

(a) State government members shall be appointed as follows: nine (9) members, or their duly appointed designees, who shall be the secretary of the Education Cabinet; commissioner of the Department of Local Government; commissioner of the Department of Housing, Buildings and Construction; secretary of the Economic Development Cabinet; secretary of the Cabinet for Human Resources; secretary of the Natural Resources and Environmental Protection Cabinet; executive director of the Human Rights Commission; state historic preservation officer; and executive director of the Kentucky Housing Corporation.

(b) At-large members shall be appointed by the Governor. There shall be one (1) at-large representative for each of the following:

1. County government;
2. Mortgage banking industry;
3. Manufactured housing industry;
4. Realtors;
5. Homebuilders;
6. City government;
7. Nonprofit housing organizations;
8. Advocates for the homeless;
9. Area development districts;
10. Rental property providers;
11. The physically disabled; and
12. The mentally disabled.

(2) State government members shall serve on the commission during the term of their elected or appointed state government positions. At-large members shall be appointed for four-year terms, except that initially four (4) shall be appointed for two-year terms, four (4) shall be appointed for three-year terms, and four (4) shall be appointed for four-year terms.

(3) The commission shall meet at least quarterly and hold additional meetings as necessary. A majority of the commission shall constitute a quorum for the purposes of conducting business and exercising its powers for all purposes. The commission may adopt its own rules of procedure.

(4) The Governor shall annually appoint a chairman. The commission shall annually elect one of its members as vice chairman, whose only duties shall be to preside over meetings in the absence of the chairman.

(5) Any vacancy in the position of the chairman shall result in the selection of a new chairman by the Governor. For all

other vacancies, a position shall be filled pursuant to the requirement and procedures for the initial appointment and only for the remainder of the term of the initial appointment.

(6) The Governor may remove any at-large member which he has appointed by declaring that position vacant and then filling the vacancy as provided in this section.

(7) The commission may authorize studies as it deems necessary and utilize any available funds to provide housing needs data.

(8) The commission shall prepare and submit an annual report to the General Assembly and Governor by October 31 of each year detailing its findings and make specific programmatic, legislative, funding, or any other recommendations it deems appropriate to meet the state's housing needs.

(9) The Kentucky Housing Corporation shall provide the initial start-up staff and funding for the Advisory Commission on Housing. The Kentucky Housing Corporation shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of the commission for the 1994-95 biennium.

Section 4. The initial at-large appointments to the Advisory Commission on Housing shall be made by the Governor no later than September 1, 1994.

Section 5. This Act may be cited as the Commonwealth of Kentucky Housing Policy Act of 1994.

The Committee Substitute to **HB 73** is as follows:

HB 73, AN ACT relating to housing.

WHEREAS, decent housing is a fundamental need of all people and is essential to remove discriminatory, social, physical, and economic barriers that inhibit the self-sufficiency of all Kentuckians.

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 198A IS CREATED TO READ AS FOLLOWS:

The General Assembly hereby finds and declares it to be in the public interest to establish a state policy on housing. The objectives of a Kentucky housing policy shall be to:

(1) Encourage the availability of decent and affordable housing for all Kentucky residents;

(2) Identify the basic housing needs of all Kentuckians, and particularly for the elderly, persons of low and very low income, the disabled, the homeless, and single parent households;

(3) Coordinate housing activities and services among state departments and agencies to blend and maximize state resources to ensure program flexibility and comprehensive housing production;

(4) Coordinate the removal of administrative, regulatory, or other barriers prohibiting the development of affordable housing for all Kentuckians;

(5) Coordinate the utilization of state-owned land and buildings for both public and private housing development;

(6) Promote public and private housing partnerships to finance, construct, and manage diverse housing alternatives;

(7) Encourage collaborative planning with social service providers;

(8) Strengthen partnerships among all levels of government and the public and private sectors, including for-profit and nonprofit organizations, in the production of housing;

(9) Coordinate the supply of housing for persons with special needs;

(10) Provide direction to the public and private sectors in their attempt to meet the housing needs of Kentucky residents;

(11) Reevaluate housing and housing-related programs and policies in order to ensure proper coordination of those programs and policies to meet the housing needs of Kentucky residents;

(12) Coordinate housing into comprehensive community and economic development strategies at the state and local levels;

(13) Coordinate efforts to include a mandatory housing element of the five (5) year comprehensive state housing assistance strategy plan with provisions to address the need and availability of affordable housing within individual planning units; and

(14) Coordinate housing activities with the Kentucky Board of Housing, Buildings and Construction and Kentucky Housing Corporation to continue production, maintenance, and rehabilitation for the purpose of assuring the availability of safe, adequate housing in a healthful environment for all Kentucky citizens.

(15) Encourage the distribution of affordable housing opportunities throughout the metropolitan statistical areas of the state and discourage the concentration of affordable housing in only limited sections of these same metropolitan statistical areas. Metropolitan statistical areas shall be those as defined by the U.S. Bureau of the Census.

SECTION 2. A NEW SECTION OF KRS CHAPTER 198A IS CREATED TO READ AS FOLLOWS:

The General Assembly hereby finds and declares that critical housing needs exist in the Commonwealth, and in order to meet the needs of its people, all state departments and agencies shall coordinate efforts to maximize all available resources of the Commonwealth to ensure the availability of decent housing to all of its residents. The efforts of all state agencies and departments in regards to housing shall be guided by the Kentucky housing policy objectives as stated in Section 1 of this Act.

SECTION 3. A NEW SECTION OF KRS CHAPTER 198A IS CREATED TO READ AS FOLLOWS:

(1) The administering agency for the Kentucky housing policy shall be the Kentucky Housing Corporation. The corporation shall create an advisory committee on housing policy consisting of the following:

(a) The following ten (10) state government members, or their duly appointed designees: the secretary of the Education Cabinet; commissioner of the Department of Local Government; commissioner of the Department of Housing Buildings and Construction; secretary of the Economic Development Cabinet; secretary of the Cabinet for Human Resources; secretary of the Natural Resources and Environmental Protection Cabinet; executive director of the Human Rights Commission; state historic preservation officer; secretary of the Transportation Cabinet; and executive director of the Kentucky Housing Corporation.

(b) Two (2) members appointed by the chairman of the board of directors of the Kentucky Housing Corporation from among representatives of each of the following categories of organizations:

1. The Home Builders Association of Kentucky, the Kentucky Manufactured Housing Institute, the Apartment Association, the Kentucky Association of Realtors, the Kentucky State Building Trades Council, the Mortgage Bankers Association of Kentucky, and the Kentucky Bankers Association;

2. Advocates for the homeless, nonprofit housing organizations, support service providers, homeless persons, persons with disabilities, and low-income persons; and

3. The Kentucky Association of Counties, the Kentucky League of Cities, Kentucky Planning Association, public housing authorities, and area development districts.

(c) One (1) member of the Senate and one (1) member of the House of Representatives.

(2) State government members and General Assembly members shall serve on the advisory committee during the term of their elected or appointed state government positions. Members appointed pursuant to subsection (1)(b) of this section shall be appointed for four (4) year terms, except that initially two (2) shall be appointed for two (2) year terms, two (2) shall be appointed for three (3) year terms, and two (2) shall be appointed for four (4) year terms.

(3) The advisory committee shall meet at least quarterly and hold additional meetings as necessary. A majority of the committee shall constitute a quorum for the purposes of conducting business and exercising its powers for all purposes.

(4) Any vacancy shall be filled pursuant to the requirements and procedures for the initial appointment and only for the remainder of the term of the initial appointment.

(5) The chairman of the corporation may remove any member appointed pursuant to subsection (1)(b) of this section whom he has appointed by declaring that position vacant and then filling the vacancy as provided in this section.

(6) The advisory committee shall consult with and advise the officers and directors of the corporation concerning matters relating to the Kentucky housing policy.

(7) The advisory committee shall elect a presiding officer from among its members and may establish its own rules of procedure which shall not be inconsistent with the provisions of this chapter.

(8) Members of the advisory committee shall serve without compensation. Members who are not employees of the Commonwealth shall be entitled to reimbursement for actual expenses incurred in carrying out their duties on the committee.

(9) The Kentucky Housing Corporation shall provide the staff and funding for the administrative activities of the advisory committee. The Kentucky Housing Corporation shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of the advisory committee. The advisory committee may authorize studies as it deems necessary and utilize Kentucky Housing Corporation funds and other available funds from the public or private sector to provide housing needs data.

Section 4. The initial appointments to the advisory committee made pursuant to subsection (1)(b) of Section 1 of this Act shall be made by the chairman of the board of directors of the Kentucky Housing Corporation no later than September 1, 1994.

Section 5. This Act may be cited as the Commonwealth of Kentucky Housing Policy Act of 1994.

HB 220, AN ACT relating to railroads.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 277.190 is amended to read as follows:

(1) ***Except as provided in subsection (2) of this section,*** every railroad company shall provide each locomotive engine running over any of its lines with a bell of ordinary size and a whistle. The bell shall be rung or the whistle sounded at a distance of at least fifty (50) rods from the place where the track crosses upon the same level any highway or crossing at which a signboard is required to be maintained, and the bell shall be rung or the whistle sounded continuously or alternately until the engine has reached the highway or crossing. [~~No legislative body of any city or urban-county government shall prohibit the sounding of train whistles within the limits of its jurisdiction.~~]

(2) ***Every locomotive engine shall use a bell only between the hours of 11:00 P.M. and 7:00 A.M. within the jurisdictional limits of a city or urban-county government. No locomotive engine shall use a whistle between these hours within the jurisdictional limits of a city or urban-county government.***

HB 239, AN ACT relating to refunding bonds which finance floating debt of cities and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 66.210 is amended to read as follows:

No county, city, or taxing district shall issue and offer to sell any of its bonds or obligations until the issuance [~~thereof~~] has been approved as provided in KRS 66.310, where applicable to a county, or by a Circuit Court of competent jurisdiction, declaring the bonds or obligations are based upon and cover a valid indebtedness of the county, city, or taxing district within the constitutional limitation governing the creation of the indebtedness***, provided, that bonds or obligations may be issued by a city without approval to refund valid floating debt pursuant to KRS 66.170, if the floating debt was created pursuant to KRS 78.510 to 78.852***. Any bond sold, assigned, or transferred without being so approved in advance of its issuance is void, and shall not thereafter, directly or indirectly, be assumed or paid by the county, city, or taxing district.

Section 2. KRS 66.170 is amended to read as follows:

Subject to the provisions of KRS 66.210 and 66.220, any city may issue bonds to fund its valid floating debt or to refund its valid outstanding bonds. [~~Bonds so issued shall bear interest at not more than six percent (6%) per annum, and shall not be sold for less than par and accrued interest.~~] The city, at the time of issuing the bonds, shall provide for the collection of an annual tax sufficient to pay the interest on the bonds, and to create a sinking fund for their payment within not more than forty (40) years from the date of issuance. ***The provisions of KRS 58.190 shall apply to any bonds or obligations issued pursuant to this section.***

Section 3. Whereas the refunding of floating debt at current interest rates could result in great financial savings to cities, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor.

The Committee Substitute to **HB 239** is as follows:

HB 239, AN ACT relating to refunding bonds which finance floating debt of cities and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 66.210 is amended to read as follows:

No county, city, or taxing district shall issue and offer to sell any of its bonds or obligations until the issuance [~~thereof~~] has been approved as provided in KRS 66.310, where applicable to a county, or by a Circuit Court of competent jurisdiction, declaring the bonds or obligations are based upon and cover a valid indebtedness of the county, city, or taxing district within the constitutional limitation governing the creation of the indebtedness***, except that a city may issue bonds or obligations under KRS 66.170 without the approval required by this section to refund floating indebtedness created by the mandates of KRS 78.510 to 78.852. A city may only issue bonds or obligations to refund floating indebtedness if the issuance will result in a lower rate of interest per annum and will not extend the term of the original obligation***. Any bond sold, assigned, or transferred without being so approved in advance of its issuance is void, and shall not thereafter, directly or indirectly, be assumed or paid by the county, city, or taxing district.

Section 2. KRS 66.170 is amended to read as follows:

"Floating indebtedness" means the amount determined as of the last day of a fiscal year, by which general fund expenditures and obligations exceeded general fund revenues during a fiscal year in which a budget was adopted based on reasonable assumptions of expenses and revenues, less any general fund balance existing at the beginning of that fiscal year. Subject to the provisions of KRS 66.210 and 66.220, any city may issue bonds to fund its valid floating debt or to refund its valid outstanding bonds. [~~Bonds so issued shall bear interest at not more than six percent (6%) per annum, and shall not be sold for less than par and accrued interest.~~] The city, at the time of issuing the bonds, shall provide for the collection of an annual tax sufficient to pay the interest on the bonds, and to create a sinking fund for their payment within not more than forty (40) years from the date of issuance. ***The provisions of KRS 58.190 shall apply to any bonds or obligations issued pursuant to***

this section.

Section 3. Whereas the refunding of floating debt at current interest rates could result in great financial savings to cities, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor.

The Committee on Education reported **HB 154,** with Committee Amendment attached thereto, **HB 169,** with Committee Substitute attached thereto, and **HB 211,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 154, AN ACT relating to higher education.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 164.131 is amended to read as follows:

(1) The government of the University of Kentucky is vested in a board of trustees appointed for a term set by law pursuant to Section 23 of the Constitution of Kentucky. The board shall consist of sixteen (16) members appointed by the Governor, two (2) members of the faculty of the University of Kentucky, one (1) member of the teaching faculty of the community college system, ***one (1) member of the university nonteaching personnel,*** and one (1) member of the student body of the University of Kentucky. The voting members of the board shall select a chairperson annually.

(2) (a) The terms of the appointed members shall be for six (6) years and until their successors are appointed and qualified; except the initial appointments shall be as follows:

1. Two (2) members shall serve one (1) year terms;
2. Two (2) members shall serve two (2) year terms, one (1) of whom shall be a graduate of the university, selected from a list of three (3) names submitted by the alumni of the university according to rules established by the board of trustees;
3. Three (3) members shall serve three (3) year terms;
4. Three (3) members shall serve four (4) year terms, one (1) of whom shall be a graduate of the university, selected as under subparagraph 2. of this subsection;
5. Three (3) members shall serve five (5) year terms; and
6. Three (3) members shall serve six (6) year terms, one (1) of whom shall be a graduate of the university, selected as under subparagraph 2. of this subsection.

(b) Three (3) of the appointments shall be graduates of the university and may include one (1) graduate of the institution who resides outside the Commonwealth; three (3) shall be representative of agricultural interests; and ten (10) shall be other distinguished citizens representative of the learned professions.

(c) The Governor shall make the appointments so as to reflect proportional representation of the two (2) leading political parties of the Commonwealth based on the state's voter registration and to reflect no less than proportional representation of the minority racial composition of the Commonwealth.

(d) Appointments to fill vacancies shall be made for the unexpired term in the same manner as provided for the original appointments.

(3) (a) The two (2) University of Kentucky faculty members shall be of the rank of assistant professor or above. They shall be elected by secret ballot by all University of Kentucky faculty members of the rank of assistant professor or above. Faculty members shall serve for terms of three (3) years and until their successors are elected and qualified. Faculty members shall be eligible for reelection, but they shall be ineligible to continue to serve as members of the board of trustees if they cease to be members of the faculty of the university. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for original elections.

(b) The faculty member representing the community college system shall be a teaching or research member at one (1) of the community colleges. The community college faculty member shall be elected by secret ballot by members of the community college faculties. The community college faculty member shall serve for a three (3) year term and until a successor is elected and qualified. No community college shall have a faculty representative on the board of trustees for more than one (1) term in succession. The community college faculty member shall be ineligible to continue to serve as a member of the board of trustees if he ceases to be a member of the faculty at one (1) of the community colleges. Election to fill a vacancy shall be made for the unexpired term in the same manner as provided for original election.

(4) ***The nonteaching personnel member shall represent all nonteaching university employees including, but not limited to, building facilities and clerical personnel. He shall be elected by secret ballot by the nonteaching employees. The nonteaching personnel member shall serve a term of three (3) years and until his successor is elected and qualified. The nonteaching personnel member shall be eligible for reelection, but he shall not be eligible to continue to serve as a member of the board if he ceases being an employee of the university. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for the original election.***

(5) The student member shall be the president of the student body of the university during the appropriate academic year and may be an out-of-state resident if applicable. If the student member does not maintain his position as student body president or, his status as a full-time student at any time during that academic year, a special election shall be held to select a full-time student. The student member shall serve for a term of one (1) year beginning with the first meeting of the fiscal year which contains that academic year.

(6)[~~(5)~~] The number of student and employee trustees of the University of Kentucky elected to the board shall not exceed ***five (5)*** [~~four (4)~~].

(7)[~~(6)~~] No member of the administrative staff of the university shall be directly or indirectly interested in any contract with the university for the sale of property, materials, supplies, equipment, or services, with exception of compensation to the three (3) faculty members.

Section 2. KRS 164.321 is amended to read as follows:

(1) Eastern Kentucky University, Morehead State University, Murray State University, Western Kentucky University, Kentucky State University, and Northern Kentucky University shall each be governed by a board of regents appointed for a term set by law pursuant to Section 23 of the Constitution of Kentucky. Each board shall consist of eight (8) members appointed by the Governor, one (1) member of the teaching faculty, ***one (1) member of the university nonteaching personnel,*** and one (1) member of the student body of the respective university or college. The members of the board shall select a chairperson annually.

(2) The terms of appointed members shall be for six (6) years and until their successors are appointed and qualified, except the initial appointments shall be as follows:

(a) One (1) member shall serve a one (1) year term;

(b) One (1) member shall serve a two (2) year term;

(c) One (1) member shall serve a three (3) year term;

(d) One (1) member shall serve a four (4) year term;

(e) Two (2) members shall serve five (5) year terms; and

(f) Two (2) members shall serve six (6) year terms.

(3) The gubernatorial appointments may include one (1) graduate of the respective institution who resides outside the Commonwealth. Not more than two (2) appointed members of any board shall be residents of one (1) county. The appointments shall reflect the proportional representation of the two (2) leading political parties of the Commonwealth based on the state's voter registration. Membership on the board shall reflect no less than proportional representation of the minority racial composition of the Commonwealth. Membership on the board shall not be incompatible with any state office.

(4) Appointments to fill vacancies shall be made in the same manner and within the same time after the occurrence of the vacancy as regular appointments. The person appointed shall hold the position for the unexpired term only.

(5) Each member of the board shall serve for the term for which he is appointed and until his successor is appointed and qualified.

(6) The faculty member shall be a teaching or research member of the faculty of his respective university or college of the rank of assistant professor or above. He shall be elected by secret ballot by all faculty members of his university or college of the rank of assistant professor or above. The faculty member shall serve for a term of three (3) years and until his successor is elected and qualified. The faculty member shall be eligible for reelection, but he shall not be eligible to continue to serve as a member of the board if he ceases being a member of the teaching staff of the university or college. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for original election.

(7) ***The nonteaching personnel member shall represent all nonteaching university employees including, but not limited to, building facilities and clerical personnel. He shall be elected by secret ballot by the nonteaching employees. The nonteaching personnel member shall serve a term of three (3) years and until his successor is elected and qualified. The nonteaching personnel member shall be eligible for reelection, but he shall not be eligible to continue to serve as a member of the board if he ceases being an employee of the university. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for the original election.***

(8) The student member shall be the president of the student body of the university during the appropriate academic year and may be an out-of-state resident if applicable. If the student member does not maintain his position as student body president or his status as a full-time student at any time during that academic year, a special election shall be held to select a full-time student member. The student member shall serve for a term of one (1) year beginning with the first meeting of the fiscal year which contains that academic year.

The Committee Amendment No. 1 to **HB 154** is as follows:

On page 1, beginning at line 1 after "Section 1." delete the entire page;

Delete page 2 in its entirety;

On page 3, delete lines 1 through 26 in their entirety; and

On page 3, line 27 delete "Section 2.".

HB 169, AN ACT relating to school building design.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 162.060 is amended to read as follows:

(1) The chief state school officer shall be furnished a copy of all plans and specifications for new public school buildings contemplated by boards of education and for all additions to or alterations of old buildings. He shall examine or cause to be examined all such plans and specifications and shall approve or disapprove them in accordance with the rules and regulations of the State Board for Elementary and Secondary Education. Plan reviews for conformance with the Uniform State Building Code shall be conducted only by the Department of Housing, Buildings and Construction. No board of education may award a contract for the erection of a new building or contract for an addition to or alteration of an old building until the plan has been approved by the chief state school officer.

(2) By July 1995, the Department of Education shall have available a selection of model school building design plans designed by one (1) or more architects licensed in the Commonwealth of Kentucky which shall be used by local school districts in designing a new building, or an addition to, or alteration of, an old building. The Department of Education shall provide licensed architects to adjust the model plans to meet specific local requirements.

Section 2. KRS 162.065 is amended to read as follows:

The State Board of Education shall promulgate administrative regulations for use by local school boards when constructing school buildings using construction managers. A construction manager is an experienced and qualified construction contracting organization that is paid a fee for its professional management and supervision services. The regulations shall include, but not be limited to:

(1) A standard "Request for Proposal" form, including appropriate criteria for use by local school boards to ensure only qualified construction managers are considered:

  (a) A list of successfully completed projects or a demonstrated capability to perform projects of a similar type;

  (b) A descriptive detail of projects showing the experience and the ability to perform budget estimating, value engineering, and scheduling; and

  (c) A list of experienced and qualified personnel with a track record of achieved quality and the capability to provide bidder solicitation;

(2) Adequate public notice of the invitation for proposals shall be given a sufficient time prior to the date set for the opening of proposals;

(3) A requirement for bids, when requested by a construction manager, be submitted to the architect or owner and opened in public;

(4) A requirement that all bids for school construction projects be advertised in newspapers with the largest local circulation;

(5) A sample fee schedule for construction manager services shall be developed by recommendation of a diversified committee consisting of Department of Education personnel, architects, and construction managers for the guidance of local school boards;

(6) A requirement that established qualifications-based selection procedures be implemented by local boards when selecting firms to provide ~~[architectural and]~~ engineering services.

Section 3. KRS 162.160 is amended to read as follows:

(1) When any city desires to construct a school building, under the provisions of KRS 162.150, the governing body of the city shall, by ordinance, cause plans and specifications for the building to be duly made and filed in the office of the city clerk. The plans and specifications shall give a full description of the building to be constructed, the details thereof and the manner of construction. The plans and specifications shall be prepared ***pursuant to KRS 162.060*** ~~[by an architect selected by the city and approved by the board of education of the school district,]~~ and shall be submitted to the board of education of the school district and to the chief state school officer for approval.

(2) If the plans and specifications are approved, and if the board of education of the school district offers to lease the building under a lease of the kind provided in KRS 162.140, the city governing body shall cause the city clerk to advertise for bids, and thereafter the city governing body, through the mayor, may contract for the construction of the building.

The Committee Substitute to **HB 169** is as follows:

HB 169, AN ACT relating to school building design.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 162.060 is amended to read as follows:

(1) The chief state school officer shall be furnished a copy of all plans and specifications for new public school buildings contemplated by boards of education and for all additions to or alterations of old buildings. He shall examine or cause to be examined all such plans and specifications and shall approve or disapprove them in accordance with the rules and regulations of the State Board for Elementary and Secondary Education. Plan reviews for conformance with the Uniform State Building Code shall be conducted only by the Department of Housing, Buildings and Construction. No board of education may award a contract for the erection of a new building or contract for an addition to or alteration of an old building until the plan has been approved by the chief state school officer.

(2) (a) By July 1, 1995, the chief state school officer shall establish a school design replication program that encourages boards of education to replicate existing school designs for a reduction of design cost and construction cost. Participation in the program shall be optional, but a board shall consider the program before hiring a design professional. The State Board for Elementary and Secondary Education, upon the recommendation of the chief state school officer, shall promulgate administrative regulations that establish guidelines for the implementation of the program and the criteria for the selection of the most functional designs. The criteria shall include the following:

1. Designs shall be selected from those submitted by an architect submitted through a local school board. When a design is selected it shall be considered a public document;

2. A design selection review committee composed of representatives from organizations representing superintendents, principals, teachers, school board members, parents, school plant management personnel, and contractors shall evaluate and select the designs for the program; and

3. The initial selection shall include a minimum of twenty (20) designs varying in student capacity, grade range, and geographic location.

(b) The chief state school officer shall publish and supply a document to each board of education upon request that includes the selected designs, the benefits of the program, program criteria, and operational procedures.

(c) The chief state school officer shall review the program for necessary revisions at least every two (2) years. An evaluation report shall be submitted to the Legislative Research Commission by June 30 of each odd-numbered year.

HB 211, AN ACT relating to professional development for educators.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.017 is amended to read as follows:

Effective January 1, 1992, the commissioner of education shall establish regional service centers in the Commonwealth that primarily focus on the professional development of employees of school districts. The regional service centers shall be staffed by employees of the Department of Education employed by the commissioner in accordance with KRS 156.016. The regional service centers may include, but are not limited to, specially trained technical assistance teams and may facilitate the work of school district cooperatives [~~or consortia~~]. ***Each local school district shall forward twenty-five percent (25%) of its state allocation for professional development to its assigned regional service center. The center shall provide assistance with district professional development planning, identify quality providers of training, and coordinate training among districts.*** A school district cooperative [~~or consortia~~] formed under the Interlocal Cooperation Act, KRS 65.210 to 65.300, may contract with the Department of Education to serve the role and function of the regional service center for the area in which the cooperative is based. The department may contract directly with a school district cooperative [~~or consortia~~] for services or assistance to accomplish goals and duties of the commissioner of education and the department as established under the Kentucky Education Reform Act of 1990, 1990 Ky. Acts Ch. 476.

Section 2. KRS 160.345 is amended to read as follows:

(1) The term "teacher" for the purpose of this section means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.

(2) By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy shall also address and comply with the following:

(a) Each participating school shall form a school council which shall be composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. The parent representatives on the council shall not be employees of the district or employees' relatives, nor shall they be a local board member or his spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees. By July 1, 1993, the State Board for Elementary and Secondary Education shall submit recommendations to the Legislative Research Commission relating to policies and procedures to insure minority representation on school councils.

(b) The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent representatives shall be selected for one (1) year terms. The parent members shall be elected by the parent members of the parent teacher organization of the school or; if none exists, the largest organization of parents formed for this purpose. The principal or head teacher shall be the chair of the school council.

(c) The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.

(d) All certified staff at a school may be participants in the school-based decision making. The staff may divide into committees according to their areas of interest, such as, but not limited to, grouped grade levels, subject areas, and special programs. Each committee shall elect by a majority of the committee a chair, who shall serve for a term of one (1) year. The committee shall submit its recommendations to the school council for consideration.

(e) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.

(f) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.

(g) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.

(h) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council.

(i) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.

(j) The school council shall adopt a policy to be implemented by the principal in the following additional areas:

1. Determination of curriculum, including needs assessment and curriculum development;
2. Assignment of all instructional and noninstructional staff time;
3. Assignment of students to classes and programs within the school;
4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
5. Determination of use of school space during the school day;
6. Planning and resolution of issues regarding instructional practices;
7. Selection and implementation of discipline and classroom management techniques, including responsibilities of the student, parent, teacher, counselor, and principal;
8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision; and
9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal.

(3) The policy adopted by the local board to implement school-based decision making shall also address the following:

(a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;

(b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;

(c) School improvement plans, including the form and function of strategic planning and its relationship to district planning;

(d) Professional development plans developed pursuant to KRS 156.095[~~and 156.0951~~];

(e) Parent, citizen, and community participation including the relationship of the council with other groups;

(f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;

(g) Requirements for waiver of district policies;

(h) Requirements for record keeping by the school council; and

(i) A process for appealing a decision made by a school council.

(4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

(5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon a favorable vote of a majority of the faculty at the school, a school performing above its threshold level requirement as determined by the Department of Education pursuant to KRS 158.6455 may apply to the State Board for Elementary and Secondary Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

(6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making.

(7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the State Board for Elementary and Secondary Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.

(8) The State Board for Elementary and Secondary Education, upon recommendation of the chief state school officer, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. ***Included in the school council formula shall be an allocation for professional development that is at least one half (1/2) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development with the district's coordinator, the regional service center staff, and other school councils. Small schools are encouraged to work with other school councils to maximize professional development opportunities.***

(9) (a) No board member, superintendent of schools, or district employee shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (j) of subsection (2) of this section.

(b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the State Board for Elementary and Secondary Education.

(c) The State Board for Elementary and Secondary Education shall establish by administrative regulation a hearing process for complaints referred by the Office of Education Accountability.

(d) If the State Board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

Section 3. KRS 605.110 is amended to read as follows:

(1) Unless provided otherwise, when any child committed to the cabinet requires medical or surgical care or treatment, the cabinet may provide the same or arrange for the furnishing thereof by other public or private agencies, and may give consent to the medical or surgical treatment. For this purpose, the services and facilities of local health officers and departments shall be made available to the cabinet, and as far as practicable, any publicly-owned hospital shall provide hospitalization without charge for any such child who is a resident of the political subdivision by which the hospital is owned or operated. This section does not authorize nor shall permission be granted for abortion or sterilization.

(2) Any child placed in a foster home by an agency duly authorized in KRS Chapter 620 to place a child in a foster home shall receive a complete medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. Arrangements for a child placed in a foster home to receive such examinations shall be made within two (2) weeks of his placement in a foster home and not less than every twelve (12) months thereafter.

(3) Children maintained in any of the facilities and programs operated or contracted by the cabinet shall, so far as possible, receive a common school education.

(a) The Kentucky Educational Collaborative for State Agency Children shall be established to serve children in facilities and programs operated or contracted by the Cabinet for Human Resources Residential, Day Treatment, Clinical, and Group Home programs. All policies and procedures necessary to educate state agency children shall be approved by the State Board for Elementary and Secondary Education. All duties, responsibilities, rights, and privileges specifically imposed on or granted to the local education administration units shall be imposed on or granted to the Cabinet for Human Resources and contracted agencies with regard to educating agency children. Classrooms for the Kentucky Educational Collaborative for State Agency Children shall be within or near the facilities and programs operated or contracted by the cabinet. The Kentucky Department of Education and the Cabinet for Human Resources, Department for Social Services, Division of Children's Residential Services shall develop a biennial plan regarding the educational needs and provisions of educational programs, with emphasis on the coordination of all treatment services and funds available to provide for the education of state agency children.

(b) An advisory board composed of ten (10) members appointed by the Governor shall provide recommendations in policy development. The advisory board shall consist of one (1) member each from the Cabinet for Human Resources, the Kentucky Developmental Disabilities Council, the Kentucky Department of Education, the Justice Cabinet, the Administrative Office of the Courts, the District Court Judges Association, the Workforce Development Cabinet, a parent, a youth advocate, and a member of the business community.

(c) Teachers and other staff shall be hired on contract through a local school district or if the local school district is not willing to participate, teachers shall be hired by the Kentucky Educational Cooperative for State Agency Children. All certified educational staff of the Kentucky Educational Cooperative for State Agency Children shall be members of the Kentucky Teachers' Retirement System.

(d) Beginning July 1, 1993, the Kentucky Education Collaborative for State Agency Children shall be financed through:

1. The amount generated by state agency children under the Support Education Excellence in Kentucky program as provided in KRS 157.360 for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs;

2. A per pupil distribution of professional development funds with the collaborative serving as ***the professional development coordinator*** ~~[a consortium]~~ for state agency children pursuant to KRS ***156.095***~~[156.0951]~~;

3. A per pupil distribution of technology funds in accordance with the state education technology plan pursuant to KRS 156.670 and the formula for the distribution of funds to local school districts;

4. A per pupil distribution of textbook funds pursuant to KRS 157.100 and 157.190;

5. The funding for school services for state agency children authorized by KRS 158.135; and

6. Other grants and entitlements, including federal funds, identified in the implementation plan developed pursuant to paragraph (f) of this subsection for the education of Kentucky's children.

(e) The secretary of the Cabinet for Human Resources shall promulgate administrative regulations, pursuant to KRS Chapter 13A, with the assistance of the Kentucky Department of Education and upon recommendation of the State Board for Elementary and Secondary Education regarding the governance, curriculum, and other topics necessary to educate state agency children. The regulations shall include, but shall not be limited to, the Kentucky statutes regarding school-based decision making, student outcomes, accountability, assessment, rewards and sanctions, technology, staff development, salaries, and the development of coordinated individual treatment, education, and transition plans to ensure compliance with present education and treatment laws and regulations specific to the needs of children in the programs of the Cabinet for Human Resources.

(f) The secretary of the Cabinet for Human Resources and the commissioner of the state Department of Education shall initiate development of a plan for implementation of the Kentucky Educational Collaborative for State Agency Children no later than July 15, 1992; and shall ensure full implementation no later than July 1, 1993. The chief state school officer shall authorize the expenditure of an amount not to exceed one percent (1%) of the total appropriation in 1992-1993 for state agency children pursuant to KRS 158.135 for the development of the plan.

Section 4. The following KRS section is repealed:

156.0951 District consortia for professional development -- Withdrawal by school district.

The Committee Substitute to **HB 211** is as follows:

HB 211, AN ACT relating to professional development for educators.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 160.345 is amended to read as follows:

(1) The term "teacher" for the purpose of this section means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.

(2) By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy shall also address and comply with the following:

(a) Each participating school shall form a school council which shall be composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. The parent representatives on the council shall not be employees of the district or employees' relatives, nor shall they be a local board member or his spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees. By July 1, 1993, the State Board for Elementary and Secondary Education shall submit recommendations to the Legislative Research Commission relating to policies and procedures to insure minority representation on school councils.

(b) The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent representatives shall be selected for one (1) year terms. The parent members shall be elected by the parent members of the parent teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. The principal or head teacher shall be the chair of the school council.

(c) The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.

(d) All certified staff at a school may be participants in the school-based decision making. The staff may divide into committees according to their areas of interest, such as, but not limited to, grouped grade levels, subject areas, and special programs. Each committee shall elect by a majority of the committee a chair, who shall serve for a term of one (1) year. The committee shall submit its recommendations to the school council for consideration.

(e) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.

(f) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.

(g) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.

(h) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council.

(i) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.

(j) The school council shall adopt a policy to be implemented by the principal in the following additional areas:

1. Determination of curriculum, including needs assessment and curriculum development;
2. Assignment of all instructional and noninstructional staff time;
3. Assignment of students to classes and programs within the school;
4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
5. Determination of use of school space during the school day;
6. Planning and resolution of issues regarding instructional practices;
7. Selection and implementation of discipline and classroom management techniques, including responsibilities of the student, parent, teacher, counselor, and principal;
8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision; and
9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal.

(3) The policy adopted by the local board to implement school-based decision making shall also address the following:

(a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;

(b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;

(c) School improvement plans, including the form and function of strategic planning and its relationship to district planning;

(d) Professional development plans developed pursuant to KRS 156.095~~[and 156.0951]~~;

(e) Parent, citizen, and community participation including the relationship of the council with other groups;

(f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;

(g) Requirements for waiver of district policies;

(h) Requirements for record keeping by the school council; and

(i) A process for appealing a decision made by a school council.

(4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

(5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon a favorable vote of a majority of the faculty at the school, a school performing above its threshold level requirement as determined by the Department of Education pursuant to KRS 158.6455 may apply to the State Board for Elementary and Secondary Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

(6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making.

(7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the State Board for Elementary and Secondary Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.

(8) The State Board for Elementary and Secondary Education, upon recommendation of the chief state school officer, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. ***Included in the school council formula shall be an allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development with the district's coordinator and other school councils. Small schools shall be encouraged to work with other school councils to maximize professional development opportunities.***

(9) (a) No board member, superintendent of schools, or district employee shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (j) of subsection (2) of this section.

(b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the State Board for Elementary and Secondary Education.

(c) The State Board for Elementary and Secondary Education shall establish by administrative regulation a hearing process for complaints referred by the Office of Education Accountability.

(d) If the State Board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

Section 2. KRS 605.110 is amended to read as follows:

(1) Unless provided otherwise, when any child committed to the cabinet requires medical or surgical care or treatment, the cabinet may provide the same or arrange for the furnishing thereof by other public or private agencies, and may give consent to the medical or surgical treatment. For this purpose, the services and facilities of local health officers and departments shall be made available to the cabinet, and as far as practicable, any publicly-owned hospital shall provide hospitalization without charge for any such child who is a resident of the political subdivision by which the hospital is owned or operated. This section does not authorize nor shall permission be granted for abortion or sterilization.

(2) Any child placed in a foster home by an agency duly authorized in KRS Chapter 620 to place a child in a foster home shall receive a complete medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. Arrangements for a child placed in a foster home to receive such examinations shall be made within two (2) weeks of his placement in a foster home and not less than every twelve (12) months thereafter.

(3) Children maintained in any of the facilities and programs operated or contracted by the cabinet shall, so far as possible, receive a common school education.

(a) The Kentucky Educational Collaborative for State Agency Children shall be established to serve children in facilities and programs operated or contracted by the Cabinet for Human Resources Residential, Day Treatment, Clinical, and Group Home programs. All policies and procedures necessary to educate state agency children shall be approved by the State Board for Elementary and Secondary Education. All duties, responsibilities, rights, and privileges specifically imposed on or granted to the local education administration units shall be imposed on or granted to the Cabinet for Human Resources and contracted agencies with regard to educating agency children. Classrooms for the Kentucky Educational Collaborative for State Agency Children shall be within or near the facilities and programs operated or contracted by the cabinet. The Kentucky Department of Education and the Cabinet for Human Resources, Department for Social Services, Division of Children's Residential Services shall develop a biennial plan regarding the educational needs and provisions of educational programs, with emphasis on the coordination of all treatment services and funds available to provide for the education of state agency children.

(b) An advisory board composed of ten (10) members appointed by the Governor shall provide recommendations in policy development. The advisory board shall consist of one (1) member each from the Cabinet for Human Resources, the Kentucky Developmental Disabilities Council, the Kentucky Department of Education, the Justice Cabinet, the Administrative Office of the Courts, the District Court Judges Association, the Workforce Development Cabinet, a parent, a youth advocate, and a member of the business community.

(c) Teachers and other staff shall be hired on contract through a local school district or if the local school district is not willing to participate, teachers shall be hired by the Kentucky Educational Cooperative for State Agency Children. All certified educational staff of the Kentucky Educational Cooperative for State Agency Children shall be members of the Kentucky Teachers' Retirement System.

(d) Beginning July 1, 1993, the Kentucky Education Collaborative for State Agency Children shall be financed through:

1. The amount generated by state agency children under the Support Education Excellence in Kentucky program as provided in KRS 157.360 for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs;
2. A per pupil distribution of professional development funds with the collaborative serving as ***the professional development coordinator*** ~~[a consortium]~~ for state agency children pursuant to KRS ***156.095***~~[156.0951]~~;
3. A per pupil distribution of technology funds in accordance with the state education technology plan pursuant to KRS 156.670 and the formula for the distribution of funds to local school districts;
4. A per pupil distribution of textbook funds pursuant to KRS 157.100 and 157.190;
5. The funding for school services for state agency children authorized by KRS 158.135; and
6. Other grants and entitlements, including federal funds, identified in the implementation plan developed pursuant to paragraph (f) of this subsection for the education of Kentucky's children.

(e) The secretary of the Cabinet for Human Resources shall promulgate administrative regulations, pursuant to KRS Chapter 13A, with the assistance of the Kentucky Department of Education and upon recommendation of the State Board for Elementary and Secondary Education regarding the governance, curriculum, and other topics necessary to educate state agency children. The regulations shall include, but shall not be limited to, the Kentucky statutes regarding school-based decision making, student outcomes, accountability, assessment, rewards and sanctions, technology, staff development, salaries, and the development of coordinated individual treatment, education, and transition plans to ensure compliance with present education and treatment laws and regulations specific to the needs of children in the programs of the Cabinet for Human Resources.

(f) The secretary of the Cabinet for Human Resources and the commissioner of the state Department of Education shall initiate development of a plan for implementation of the Kentucky Educational Collaborative for State Agency Children no later than July 15, 1992; and shall ensure full implementation no later than July 1, 1993. The chief state school officer shall authorize the expenditure of an amount not to exceed one percent (1%) of the total appropriation in 1992-1993 for state agency children pursuant to KRS 158.135 for the development of the plan.

Section 3. The following KRS section is repealed:

156.0951 District consortia for professional development -- Withdrawal by school district.

The Committee on Elections and Constitutional Amendments reported **HB 30**, with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 30, AN ACT relating to campaign finance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 121.150 TO 121.220 IS CREATED TO READ AS FOLLOWS:

(1) A candidate for the state House of Representatives may make campaign expenditures which, in the aggregate, shall not exceed eighteen thousand four hundred twenty-seven dollars ($18,427) in any one (1) election as defined in KRS 121.015.

(2) A candidate for the state Senate may make campaign expenditures which, in the aggregate, shall not exceed forty-eight thousand four hundred ninety-one dollars ($48,491) in any one (1) election as defined in KRS 121.015.

(3) A candidate for the General Assembly shall not exceed the expenditure limitations of subsection (1) or (2) of this section through an additional reported or unreported expenditure by any person, committee, or contributing organization which does not qualify as an "independent expenditure" as defined in KRS 121.150(1).

(4) The expenditure limit amounts established in subsections (1) and (2) of this section shall be increased or decreased in accordance with the consumer price index for all urban workers, and the registry shall make that adjustment in a year in which members of the General Assembly are elected not later than the filing deadline for the primary election and notify candidates for the General Assembly of the adjusted expenditure limits.

Section 2. KRS 121.180 is amended to read as follows:

(1) (a) Any candidate, slate of candidates, or campaign treasurer, or political issues committee shall be exempt from filing any pre-election finance reports required by subsection (3) of this section or KRS 121A.020(5), whichever is applicable, if the candidate, slate of candidates, or political issues committee chairman or treasurer files a form prescribed and furnished by the registry stating that contributions will not be accepted or expended in excess of three thousand dollars ($3,000) in any one (1) election to further the candidacy or to support or oppose a constitutional amendment or public question which will appear on the ballot. A separate form shall be required for each primary, runoff primary, regular, or special election in which the candidate or slate of candidates participates or in which the public question appears on the ballot. The form shall be filed with the same office

with which a candidate or slate of candidates files nomination papers or, in the case of a political issues committee, with the registry.

(b) Any candidate, slate of candidates, campaign treasurer, or political issues committee shall be exempt from filing any campaign finance reports required by subsections (3) and (4) of this section or KRS 121A.020(5), whichever is applicable, if the candidate, slate of candidates, campaign treasurer, or political issues committee chairman or treasurer files a form prescribed and furnished by the registry stating that currently no contributions have been received and that contributions will not be accepted or expended in excess of two hundred fifty dollars ($250) in any one (1) election. A separate form shall be required for each primary, runoff primary, regular, or special election in which the candidate or slate of candidates participates or in which the public question appears on the ballot. The form shall be filed with the same office with which a candidate or slate of candidates files nomination papers or, in the case of a political issues committee, with the registry.

(c) For a primary election, a candidate, slate of candidates, campaign treasurer, or political issues committee chairman or treasurer shall file a request for exemption not later than the deadline for filing nomination papers and shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline. For a runoff primary election, a slate of candidates shall file its request for exemption not later than five (5) days after the date of the preceding primary election and it shall be bound by its terms unless it rescinds it in writing not later than ten (10) days after the date of the preceding primary election. For a regular election, a candidate, slate of candidates, campaign treasurer, or political issues committee chairman or treasurer shall file a request for exemption not later than ten (10) days after the date of the preceding primary election, or runoff primary, if one is held, and shall be bound by its terms unless it is rescinded in writing not later than twenty-five (25) days after the date of the primary election, or runoff primary, if one is held. For a special election, a candidate, slate of candidates, or campaign treasurer shall file a request for exemption not later than ten (10) days after being nominated for a special election, and shall be bound by its terms unless it is rescinded in writing not later than twenty-five (25) days after the date on which the nomination for a special election is made.

(d) Any candidate, slate of candidates, campaign treasurer, or political issues committee that is exempt from filing campaign finance reports pursuant to paragraph (a) or (b) of this subsection that accepts contributions or expends, or whose campaign treasurer accepts contributions or expends, in excess of the applicable limit in any one (1) election without rescinding the request for exemption in a timely manner shall comply with all applicable reporting requirements and, in addition to other penalties prescribed by law, in the case of a candidate or slate of candidates, upon a final determination that a violation occurred, be ineligible as a candidate or slate of candidates for the office sought, the nomination or election shall be void, and a vacancy shall be declared.

(2) State and county executive committees shall make a full report, upon a prescribed form, to the registry, of all money, loans, or other things of value, received from any source since the date of the last report, including the name and business address of the permanent committee, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee for each contribution of any amount made by a permanent committee, and the full name and address of each other contributor, and the age if less than the legal voting age, the employer of each contributor and the spouse of the contributor or, if the contributor or the spouse of the contributor is self-employed, the name under which he is doing business, and occupation of each person or group contributing in excess of one hundred dollars ($100), the amount contributed by each and the date of the contribution, whether the contribution was in cash, and a complete statement of all expenditures authorized, incurred, or made. The total amount of cash contributions received during the reporting period shall be listed as a separate item. The complete statement of expenditures shall include the name and address of each person to whom an expenditure is made in excess of twenty-five dollars ($25), and the amount, date, and purpose of each expenditure. This report shall be made to the registry within thirty (30) days after the primary, runoff primary if slates of candidates of that party participate, and regular elections. If an individual gives a reportable contribution to a state or county executive committee with the intention that the contribution or a portion of the contribution go to a candidate or slate of candidates, the name of the contributor and the sum shall be indicated on the committee report. The receipts and expenditures of funds remitted to each political party under KRS 141.071 to 141.073 shall be separately accounted for and reported to the registry in the manner required by KRS 121.230. The separate report may be made a separate section within the report required, by this subsection, to be submitted within thirty (30) days after each regular election.

(3) Except for candidates or slates of candidates, campaign treasurers, or political issues committees exempted from reporting requirements pursuant to subsection (1) of this section, each campaign treasurer of a candidate, slate of candidates, campaign committee, or political issues committee who accepts contributions or expends, expects to accept contributions or expend, or contracts to expend more than three thousand dollars ($3,000) in any one (1) election, and each fundraiser who secures contributions in excess of three thousand dollars ($3,000) in any one (1) election, shall make a full report, upon a prescribed form, to the registry, of all money, loans, or other things of value, received from any source, since the date of the last report, including the name and business address of the permanent committee, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee for each contribution of any amount made by a permanent committee, and the full name and address of each other contributor, and the age if less than the legal voting age, the employer of each other contributor and the spouse of

the contributor or, if the contributor or spouse of the contributor is self-employed, the name under which he is doing business, and occupation of each person or group contributing in excess of one hundred dollars ($100), to a candidate, slate of candidates, or political issues committee the amount contributed by each and the date of the contribution, whether the contribution was in cash, and a complete statement of all expenditures authorized, incurred, or made. The total amount of cash contributions received during the reporting period shall be listed as a separate item. The complete statement of expenditures shall include the name, address, and occupation of each person to whom an expenditure is made in excess of twenty-five dollars ($25), and the amount, date, and purpose of each expenditure. Reports of all candidates, campaign committees, political issues committees, and registered fundraisers shall be made as follows:

(a) Candidates as defined in KRS 121.015(8), campaign committees, political issues committees, and fundraisers which register in the year before the year an election in which the candidate or public question shall appear on the ballot, shall file financial reports with the registry at the end of the first calendar quarter after the person becomes a candidate or following registration of the committee or fundraiser, and each calendar quarter thereafter, ending with the last calendar quarter of that year. Candidates, committees, and registered fundraisers shall make all reports required by this section during the year in which the election takes place;

(b) All candidates, campaign committees, political issues committees, and registered fundraisers shall make reports on the thirty-second day preceding an election, including all previous contributions and expenditures;

(c) All candidates, campaign committees, political issues committees, and registered fundraisers shall make reports on the twelfth day preceding the date of the election; and

(d) All reports to the registry shall be in the hands of the registry or postmarked within five (5) days after each filing deadline.

(4) All candidates, regardless of funds received or expended, campaign committees, political issues committees, and registered fundraisers shall make post-election reports within thirty (30) days after the election.

(5) In making the preceding reports, the total gross receipts from each of the following categories shall be listed: proceeds from the sale of tickets for events such as testimonial affairs, dinners, luncheons, rallies, and similar fundraising events, mass collections made at the events, and sales of items such as campaign pins, buttons, hats, ties, literature, and similar materials. When any individual purchase or the aggregate purchases of any item enumerated above exceeds one hundred dollars ($100), the purchaser shall be identified by name, address, age, if less than the legal voting age, occupation, and employer and the employer of the spouse of the purchaser or, if the purchaser or the spouse of the purchaser is self-employed, the name under which he is doing business, and the amount purchased shall be reported to the registry. The lists shall be maintained by the campaign treasurer, political issues committee treasurer, registered fundraiser, or other sponsor for inspection by the registry for six (6) years following the date of the election.

(6) (a) Each permanent committee, inaugural committee, or contributing organization shall make a full report, upon a prescribed form, to the registry of all money, loans, or other things of value, received by it from any source, since the date of the last report, including the name and business address of the permanent committee, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee for each contribution of any amount made by a permanent committee, and the full name and address of each other contributor, and the age if under the legal voting age, employer of each contributor and the spouse of the contributor or, if the contributor or the spouse of the contributor is self-employed, the name under which he is doing business, and occupation of each person or group contributing in excess of one hundred dollars ($100) and if in cash it shall be so stated. An aggregate amount of cash contributions shall also be reported, the amount contributed by each and the date of the contribution, and a complete statement of all expenditures authorized, incurred or made, including "independent expenditures" as defined in KRS 121.150(1). This report shall be made by a permanent committee, inaugural committee, or contributing organization to the registry on the last day of the first calendar quarter following the registration of the committee with the registry and on the last day of each succeeding calendar quarter until such time as the committee terminates. A contributing organization shall file a report of contributions received and expenditures made on forms prescribed by the registry not later than the last day of each calendar quarter in which contributions are received or expenditures are made. All reports to the registry shall be postmarked or received not later than five (5) days after each filing deadline; and

(b) A permanent committee shall pay an administrative fee to the registry in an amount equal to five percent (5%) of the expenditures, including independent expenditures, the permanent committee makes in support of or opposition to all candidates or slates of candidates for office. The payment for the administrative fee shall accompany each report a permanent committee makes to the registry which documents expenditures in support of or defeat of any candidate or slate of candidates during the reporting period covered by the report. The amount of administrative fees received by the registry from permanent committees for each reporting period shall be transferred to the State Treasurer for deposit in the election campaign fund established by KRS 121A.020.

(7) If the final statement of a candidate, campaign committee, or political issues committee shows an unexpended balance of contributions, continuing debts and obligations, or an expenditure deficit, the campaign treasurer shall file with the registry a supplemental statement of contributions and expenditures not more than thirty (30) days after the deadline for filing the final statement. Subsequent supplemental statements shall be filed semiannually, to be in the hands of the

registry or postmarked within ten (10) days after April 15 and October 15, until the account shows no unexpended balance, continuing debts and obligations, expenditures, or deficit. All contributions shall be subject to KRS 121.150.

(8) All reports filed under the provisions of this chapter shall be a matter of public record open to inspection by any member of the public immediately upon receipt of the report by the registry. A duplicate copy of each report filed with the registry shall be filed by the candidate, slate of candidates, or committee with the county clerk in the county in which the candidate or persons running as a slate of candidates reside at the same time. County clerks shall maintain these reports for public inspection for a period of one (1) year from the date the last report is required to be filed.

(9) A candidate or slate of candidates is relieved of the duty personally to file reports and keep records of receipts and expenditures if the candidate or slate states in writing or on forms provided by the registry that:

(a) Within five (5) business days after personally receiving any contributions, the candidate or slate of candidates shall surrender possession of the contributions to the treasurer of their principal campaign committee without expending any of the proceeds thereof. No contributions shall be commingled with the candidate's or slated candidates' personal funds or accounts. Contributions received by check, money order, or other written instrument shall be endorsed directly to the campaign committee and shall not be cashed or redeemed by the candidate;

(b) The candidate or slate of candidates shall not make any unreimbursed expenditure for the campaign, except that this paragraph does not preclude a candidate or slate from making an expenditure from personal funds to the designated principal campaign committee, which shall be reported by the committee as a contribution received; and

(c) The waiver shall continue in effect as long as the candidate or slate of candidates complies with the conditions under which it was granted.

(10) No candidate, slate of candidates, campaign committee, political issues committee, or contributing organization shall use or permit the use of contributions or funds solicited or received for the person or in support of or opposition to a public issue which will appear on the ballot to further the candidacy of the person for a different public office, to support or oppose a different public issue, or to further the candidacy of any other person for public office; except that nothing in this subsection shall be deemed to prohibit a candidate or slate of candidates from using funds in the campaign account to purchase admission tickets for any fundraising event or testimonial affair for another candidate or slate of candidates if the amount of the purchase does not exceed one hundred dollars ($100) per event or affair. Any funds or contributions solicited or received by or on behalf of a candidate, slate of candidates, or any committee, which has been organized in whole or in part to further any candidacy for the same person or to support or oppose the same public issue, shall be deemed to have been solicited or received for the current candidacy or for the election on the public issue if the funds or contributions are solicited or received at any time prior to the regular election for which the candidate, slate of candidates, or public issue is on the ballot. Except as provided in KRS 121A.080(6), any unexpended balance of funds not otherwise obligated for the payment of expenses incurred to further a political issue or the candidacy of a person shall, in whole or in part, at the election of the candidate or committee, escheat to the State Treasury***;***~~[,]~~ be returned pro rata to all contributors***;***~~[,]~~ or, in the case of a partisan candidate, be transferred to the state or county executive committee of the political party of which the candidate is a member***;*** ~~[except that a candidate, committee, or an official may retain the funds to further the same public issue or to seek election to the same office]~~ or may ***be donated***~~[donate the funds]~~ to any charitable, nonprofit, or educational institution recognized under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and any successor thereto. ***In addition to the foregoing options for disposing of an unexpended balance of campaign funds, a candidate for the state House of Representatives may retain in his campaign account from one (1) election cycle, including a primary and regular election combined, to the succeeding election cycle an amount not to exceed three thousand dollars ($3,000). A candidate for the state Senate may retain in his campaign account from one (1) election cycle to the succeeding election cycle an amount not to exceed seven thousand eight hundred dollars ($7,800). Any other candidate, committee, or an official may retain the unexpended balance in a campaign account, in whole or in part, to further the same public issue or to seek election to the same office.***

(11) Any publisher of newspapers or magazines, owner or lessor of billboards, a radio or television station or network, or any other person, company, corporation, or business organization offering its communications or advertising services for hire to the public who receives funds for the purchase of advertising services or material shall file with the registry a copy of the material or communication purchased by any person to support or oppose any slate of candidates or committee, which shall be provided by the purchaser for filing with the registry, and a copy of the receipt for the funds paid, and shall identify for the registry the person purchasing the services or material, and the source of the funds used to make the purchase if different than the purchaser. The information shall be reported to the registry not more than thirty (30) days after receiving the initial advertising or communications purchase for an election and every thirty (30) days thereafter if purchases are made in the ensuing period; except that reports of purchases shall be made to the registry every fourteen (14) days during the fifty-six (56) days before the primary and regular elections for Governor and Lieutenant Governor. The provisions of this subsection shall apply only to purchases of advertising services or material to support or oppose a slate of candidates for election to the offices of Governor and Lieutenant Governor.

The Committee Substitute to **HB 30** is as follows:

HB 30, AN ACT relating to campaign finance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 121.150 TO 121.220 IS CREATED TO READ AS FOLLOWS:

(1) A candidate for the state House of Representatives may make campaign expenditures which, in the aggregate, shall not exceed eighteen thousand four hundred twenty-seven dollars ($18,427) in any one (1) election as defined in KRS 121.015.

(2) A candidate for the state Senate may make campaign expenditures which, in the aggregate, shall not exceed forty-eight thousand four hundred ninety-one dollars ($48,491) in any one (1) election as defined in KRS 121.015.

(3) A candidate for the General Assembly shall not exceed the expenditure limitations of subsection (1) or (2) of this section through an additional reported or unreported expenditure by any person, committee, or contributing organization which does not qualify as an "independent expenditure" as defined in KRS 121.150(1).

(4) The expenditure limit amounts established in subsections (1) and (2) of this section shall be increased or decreased in accordance with the consumer price index for all urban workers, and the registry shall make that adjustment in a year in which members of the General Assembly are elected not later than the filing deadline for the primary election and notify candidates for the General Assembly of the adjusted expenditure limits.

The Committee on Economic Development reported **HB 322** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 322, AN ACT relating to administrative regulations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 13A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Administrative body" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity, except the General Assembly and the Court of Justice, authorized by law to promulgate administrative regulations;

(2) "Administrative regulation" means each statement of general applicability promulgated by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any administrative body. The term includes an existing administrative regulation, a proposed administrative regulation, an emergency administrative regulation, and the amendment or repeal of an existing administrative regulation, but does not include:

  (a) Statements concerning only the internal management of an administrative body and not affecting private rights or procedures available to the public; or

  (b) Declaratory rulings; or

  (c) Intradepartmental memoranda not in conflict with KRS 13A.130; or

  (d) Statements relating to acquisition of property for highway purposes and statements relating to the construction or maintenance of highways; or

  (e) Rules, regulations, and policies of the governing boards of institutions of higher education pertaining to students attending or applicants to such institutions or to the control and maintenance of land and buildings occupied by the respective institutions;

(3) "Adopted" means that ***an*** ~~[a proposed administrative regulation, proposed amendment to an existing administrative regulation, proposed repeal of an existing administrative regulation, or emergency]~~ administrative regulation has become effective in accordance with the provisions of this chapter;

(4) "Authorizing signature" means the signature of the head of the administrative body authorized by statute to promulgate administrative regulations;

(5) "Commission" means the Legislative Research Commission;

(6) ***"Economic impact" means a financial impact on:***

  (a) Commercial enterprises;

  (b) Retail businesses;

  (c) Service businesses;

  (d) Industry;

  (e) Consumers of a product or service; or

(f) Taxpayers.

(7) "Federal mandate" means any federal constitutional, legislative or executive law or order which requires or permits any administrative body to engage in regulatory activities which impose compliance standards, reporting requirements, recordkeeping, or similar responsibilities upon entities in the Commonwealth;

(8)[~~(7)~~] "Federal mandate comparison" means a written statement containing the information required by KRS 13A.245;

(9)[~~(8)~~] "Filed" means that [~~a proposed administrative regulation, proposed amendment to an existing administrative regulation, proposed repeal of~~] an [~~existing administrative regulation, or emergency~~] administrative regulation***, or other document required to be filed by this chapter,*** has been submitted to the Commission in accordance with this chapter;

(10) "Promulgate" means that an administrative body has approved an administrative regulation for filing with the Commission in accordance with the provisions of KRS Chapter 13A.

(11) "Proposed administrative regulation", except as provided by subsection (6) of Section 3 of this Act, means an administrative regulation that an administrative body proposes to promulgate.

(12)[~~(9)~~] "Regulatory impact analysis" means a written statement containing the provisions required by KRS 13A.240;

(13)[~~(10)~~] "Statement of consideration" means that an administrative body must either accept suggestions or recommendations regarding an administrative regulation or issue a concise statement setting forth the reasons for not accepting suggestions or recommendations regarding an administrative regulation;

(14)[~~(11)~~] "Subcommittee" includes the Administrative Regulation Review Subcommittee, any other subcommittee of the Legislative Research Commission, a standing committee of the General Assembly, or a House and Senate standing committee meeting jointly; and

(15)[~~(12)~~] "Tiering" means the tailoring of regulatory requirements to fit the particular circumstances surrounding regulated entities.

SECTION 2. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

(1) Except as provided by subsection (6) of Section 3 of this Act, prior to the promulgation of an administrative regulation, an administrative body shall:

(a) Publish a notice of its intent to promulgate an administrative regulation in the administrative register; and

(b) Hold a public hearing on the proposed administrative regulation as provided by this section.

(2) The notice of intent published in the administrative register shall include:

(a) A statement that the administrative body intends to promulgate an administrative regulation;

(b) The specific subject matter of the proposed administrative regulation;

(c) A statement that the administrative body will hold a public hearing:

1. If a public hearing is requested at least twenty (20) days prior to the date of the public hearing, in writing, by five (5) persons, or by an administrative body, or by an association having at least five (5) members;

2. Thirty (30) days after the notice of intent to promulgate is published in the administrative register, excluding the date of publication;

3. At which it will accept oral and written comments from any interested person;

(d) The address to which the written request for a public hearing and written comments shall be sent;

(e) The date, time, and place of the public hearing;

(f) The following information relating to the proposed administrative regulation:

1. The statutory authority for the administrative regulation;

2. A summary of the administrative regulation, including how an existing administrative regulation will be amended by the proposed administrative regulation, if applicable;

3. A statement of the need for, and the function of, the administrative regulation;

4. A statement of the benefits expected from the administrative regulation;

5. How the administrative regulation will be implemented;

6. A statement that the proposed administrative regulation will have, or will not have, an economic impact;

7. A synopsis of the assessment report submitted by the administrative body pursuant to the provisions of Section 3 of this Act; and

(g) A statement that a copy of the assessment report may be obtained from the administrative body, including the address of the administrative body.

(3) (a) An administrative body shall provide a form to be completed and filed by a person who wishes to be notified of the intent of the administrative body to promulgate an administrative regulation.

(b) A copy of the notice of intent shall be mailed:

1. To every person who has filed this form;

2. On the date the notice is published in the administrative register.

(4) (a) An administrative body shall file the notice of its intent to promulgate an administrative regulation with the regulations compiler.

(b) The date a notice of intent to promulgate an administrative regulation is published in the administrative register shall be governed by the provisions of KRS 13A.050(3) and 13A.150.

(c) The Commission may prescribe the format for the notice of intent.

SECTION 3. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

(1) An assessment report for a proposed administrative regulation shall include:

(a) A statement of the need for, and the purpose of, the proposed administrative regulation;

(b) The statutory authority for the proposed administrative regulation;

(c) A summary of the proposed administrative regulation, including how an existing administrative regulation will be amended by the proposed administrative regulation, if applicable;

(d) A summary of how the proposed administrative regulation will be implemented;

(e) A statement of the benefits expected from the proposed administrative regulation;

(f) The source of revenue to be used for the implementation of the proposed administrative regulation;

(g) A statement of the short and long term economic impact upon all persons who will be directly or indirectly financially affected by the proposed administrative regulation, including an analysis of which persons will:

1. Bear the costs; and

2. Directly and indirectly benefit;

(h) For the geographical area in which the proposed administrative regulation will be implemented, and for the state, the effect of the proposed administrative regulation on the:

1. Cost of living;

2. Employment;

3. Cost of doing business; and

4. Other aspects of the economy, including the effects of the economic activities arising from the administrative regulation;

(i) A statement of the effect of the proposed administrative regulation on the public health and environmental welfare of the geographical area in which the proposed administrative regulation will be implemented, and on the state; and

(j) If there would be a detrimental effect on the environment and public health if the proposed administrative regulation is not implemented:

1. A statement to that effect; and

2. An explanation of the detrimental effect.

(2) An assessment report shall not consider the benefits or burdens on an out-of-state political body or business.

(3) (a) The determination of the need for a proposed administrative regulation shall include an assessment of its qualitative and quantitative benefits and burdens.

(b) The assessment of benefits and burdens that cannot be precisely quantified may be expressed in qualitative terms.

(c) An assessment report shall include a statement of the:

1. Uncertainties associated with the estimation of particular benefits and burdens; and

2. The difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and burdens.

(4) (a) Prior to the publication of the notice of its intent to promulgate an administrative regulation in the administrative register, an administrative body shall submit the assessment report on the proposed administrative regulation to the Governor's office for policy and management for review.

(b) The office for policy and management may:

1. Request additional information from the administrative body submitting the assessment report, or *from another administrative body; and*

2. Amend the assessment report.

(5) (a) If information contained in an assessment report changes materially before the proposed administrative regulation for which it was submitted becomes effective, or before it is approved or disapproved by a legislative subcommittee or the General Assembly, an administrative body shall submit corrected information to the Commission.

(b) The Commission shall transmit the corrected information to the legislative subcommittee considering the administrative regulation under the provisions of KRS 13A.290.

(6) The provisions of this section, and Sections 2 and 4 of this Act, shall not apply to an emergency administrative regulation an administrative body proposes to promulgate, if it will not be replaced by an ordinary administrative regulation.

SECTION 4. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

(1) Following a public hearing on a proposed administrative regulation held pursuant to the provisions of Section 2 of this Act, the administrative body shall give consideration to all comments received or made prior to the adjournment of the public hearing.

(2) The administrative body shall file with the Commission on or before 12 noon, eastern time, on the fifteenth day following the public hearing, a statement:

(a) Identifying the persons who submitted written comments, or attended the public hearing; and

(b) Containing a summary of the:

1. Comments received or made at the public hearing; and

2. Its response to the comments.

(3) The administrative body shall provide a copy of the summary to any person who attended the public hearing and requested that a copy of the summary be provided.

(4) The regulations compiler shall transmit a copy of the summary to a legislator upon request.

(5) If the administrative body promulgates an administrative regulation that was the subject of a public hearing required under the provisions of this section and Sections 2 and 3 of this Act, the regulations compiler shall transmit a copy of the summary to every member of the General Assembly.

(6) The administrative body shall provide a copy of the summary to persons who attended the public hearing and requested that a copy of the summary be provided.

Section 5. KRS 13A.030 is amended to read as follows:

(1) The Administrative Regulation Review Subcommittee shall:

(a) Conduct a continuous study as to whether additional legislation or changes in legislation are needed based on various factors, including but not limited to, review of *new, emergency, and* [~~proposed administrative regulations, review of~~] existing administrative regulations, the lack of administrative regulations, and the needs of administrative bodies;

(b) Review and comment upon administrative regulations submitted to it by the Commission;

(c) Make recommendations for changes in statutes, new statutes, repeal of statutes affecting administrative regulations or the ability of administrative bodies to promulgate them; and

(d) Conduct such other studies relating to administrative regulations as may be assigned by the Commission.

(2) The subcommittee may make a nonbinding determination:

(a) That [~~a proposed administrative regulation, proposed amendment to~~] an administrative regulation[~~, emergency administrative regulation, or existing administrative regulation~~]:

1. Is wrongfully promulgated;

2. Appears to be in conflict with an existing statute;

3. Appears to have no statutory authority for its promulgation;

4. Appears to impose stricter or more burdensome state requirements than required by the federal mandate, without reasonable justification;

5. Fails to use tiering when tiering is applicable;

6. Is in excess of the administrative body's authority; or

7. Appears to be deficient in any other manner;

(b) That an administrative regulation is needed to implement an existing statute;

(c) That an [~~existing~~] administrative regulation should be amended or repealed.

(3) The subcommittee may require any administrative body to submit [~~such~~] data and information as required by the subcommittee in the performance of its duties under this chapter*,* and no administrative body shall fail to provide the information or data required.

Section 6. KRS 13A.040 is amended to read as follows:

The director of the Legislative Research Commission shall appoint an administrative regulations compiler who shall:

(1) Receive administrative regulations***, and other documents required to be filed by the provisions of this Act,*** tendered for filing;

(2) Stamp administrative regulations tendered for filing with the time and date of receipt;

(3) Provide administrative and support services to the subcommittee;

(4) Maintain a file of [~~proposed administrative regulations, proposed amendment to existing administrative regulations, proposed repeal of existing administrative regulations, emergency~~] administrative regulations, ***other documents required to be filed by this chapter,*** and regulatory impact analysis for public inspection, with suitable indexes;

(5) Maintain a file of ineffective administrative regulations;

(6) Maintain a file of material incorporated by reference, including superseded or ineffective material incorporated by reference;

(7) Prepare the Kentucky Administrative Regulations Service;

(8) Make certifications required by this chapter;

(9) Correct errors that do not change the substance of an administrative regulation, including, but not limited to, typographical errors, errors in format, and grammatical errors;

(10) Refuse to accept for filing [~~proposed~~] administrative regulations***, and other documents required to be filed by this chapter,*** that do not conform to the provisions of KRS 13A.222 and 13A.224, and notify the administrative body in writing of the reasons for refusing to accept ***an*** [~~a proposed~~] administrative regulation for filing; and

(11) Perform [~~such~~] other duties [~~as~~] required by the Commission or by a subcommittee.

Section 7. KRS 13A.050 is amended to read as follows:

(1) The Legislative Research Commission shall compile, publish and distribute the administrative regulations filed by administrative bodies. This compilation shall be known as the Kentucky Administrative Regulations Service and shall constitute the official state publication of administrative regulations.

(2) There is hereby created a publication known as "The Administrative Register" to be printed and published on a monthly basis by the Legislative Research Commission for the purpose of giving notice of [~~proposed~~] administrative regulations filed in accordance with this chapter. Every administrative regulation forwarded to the Legislative Research Commission shall have its complete text printed in the Administrative Register along with the accompanying statements required by KRS 13A.190 and 13A.210 through 13A.250.

(3) The Administrative Register shall be published the first day of each month and shall include all [~~proposed~~] administrative regulations ***and the notice of intent required by the provisions of Section 2 of this Act,*** received by the Legislative Research Commission by 12 noon, eastern time, on the fifteenth day of the preceding month. When the fifteenth day falls on a Saturday, Sunday, or holiday the deadline is the working day which immediately precedes the Saturday, Sunday, or holiday.

(4) The compiler shall cause to be prepared a certificate to the effect that the text of the administrative regulations as printed in this service is correct. One (1) copy of the Kentucky Administrative Regulations Service with the original certificate therein shall be maintained in the Office of the Secretary of State. All other copies shall contain a printed copy of the certificate and shall constitute prima facie evidence of the law in all courts and proceedings.

(5) The Commission shall prescribe reasonable fees for subscription to the Kentucky Administrative Regulations Service and the Administrative Register. All fees paid to the Commission for these publications shall be placed in the State Treasury to the credit of a revolving, trust or agency fund account, for use by the Legislative Research Commission in carrying out the provisions of this section.

(6) Copies of regulatory impact analysis shall be made available to any interested party upon request to the Legislative Research Commission. The Commission may prescribe reasonable fees for duplication services and all fees paid to the Commission for duplication services shall be placed in the State Treasury to the credit of a revolving trust or agency fund account, for use by the Legislative Research Commission in carrying out the provisions of this subsection.

Section 8. KRS 13A.080 is amended to read as follows:

Each issue of the Administrative Register shall contain a notice describing the regulation review process and the methods by which the public may comment upon ***administrative*** [~~proposed~~] regulations, including the procedure for contacting agencies about public hearings.

Section 9. KRS 13A.120 is amended to read as follows:

(1) An administrative body may ***promulgate*** [~~adopt~~] administrative regulations to implement a statute only when the act of

the General Assembly creating or amending the statute specifically authorizes the ***promulgation*** [~~adoption~~] of ***administrative*** [~~such~~] regulations or ***administrative*** [~~such~~] regulations are required by federal law, in which case ***administrative*** [~~such~~] regulations shall be no more stringent than the federal law or regulations.

(2) An administrative body shall not promulgate administrative regulations:

(a) When a statute prohibits the administrative body from promulgating administrative regulations;

(b) When the administrative body is not authorized by statute to promulgate administrative regulations;

(c) When a statute prohibits the administrative body from regulation of that particular matter;

(d) When the administrative body is not authorized by statute to regulate that particular matter;

(e) When a statute prescribes the same or similar procedure for the matter regulated;

(f) When a statute sets forth a comprehensive scheme of regulation of the particular matter;

(g) On any matter which is not clearly within the jurisdiction of the administrative body;

(h) On any matter which is beyond the statutory authorization of the administrative body to promulgate administrative regulations or which is not clearly authorized by statute; and

(i) Which modify or vitiate a statute or its intent.

(3) If a statute requires the submission of ***an*** [~~a proposed~~] administrative regulation to an official or another administrative body for review or approval, an administrative body shall not file an administrative regulation without first having obtained ***the*** [~~such~~] review or approval.

(4) Any administrative regulation in violation of this section or the spirit thereof is null, void, and unenforceable.

(5) No administrative body, other than the Court of Justice, shall issue rules.

(6) No administrative body shall issue standards or by any other name issue a document of any type where an administrative regulation is required or authorized by law.

Section 10. KRS 13A.190 is amended to read as follows:

(1) An emergency administrative regulation is one that ***must be placed into effect immediately in order*** [~~due~~] to***:*** [~~the exigencies of the situation must be placed into effect immediately, and~~]

(a) ***Meet an imminent threat to public health, safety, or welfare; or***

(b) Prevent an actual loss of federal funds; and

(c) Is temporary in nature and will expire as provided ***in this section*** [~~herein~~]; or

(b) Is temporary in nature and will be replaced by an ordinary administrative regulation as provided ***in this section*** [~~herein~~].

(2) Emergency administrative regulations shall become effective and shall be considered as adopted upon filing. Emergency administrative regulations shall be published in the next Administrative Register.

(3) Emergency administrative regulations shall expire one hundred twenty (120) days after the date of publication or when the same matter filed as an ordinary administrative regulation filed for review is adopted, whichever occurs first.

(4) An emergency administrative regulation shall not be renewed for a period of nine (9) months after it has been initially filed. No other emergency administrative regulation that is identical to or substantially the same as the previously filed emergency administrative regulation shall be promulgated.

(5) When an emergency administrative regulation governing the same subject matter governed by an emergency administrative regulation filed within the previous nine (9) months is filed, it shall contain a detailed explanation of the manner in which it differs from the previously filed emergency administrative regulation. The detailed explanation shall be included in the statement of emergency.

(6) Each emergency administrative regulation shall contain a statement of:

(a) The nature of the emergency;

(b) The reasons why an ordinary administrative regulation is not sufficient;

(c) Whether or not the emergency administrative regulation will be replaced by an ordinary administrative regulation;

(d) If the emergency administrative regulation will not be replaced by an ordinary administrative regulation, the reasons therefor; and

(e) If applicable, the explanation required by subsection (5) of this section.

(7) An administrative body shall attach the statement of emergency required by subsection (6) of this section to the front of the original and each copy of a proposed emergency administrative regulation.

(8) A space no smaller than four (4) inches wide by two (2) inches long in the upper right hand corner of the statement shall be left blank for the regulations compiler's stamp. The number of the emergency administrative regulation shall be typed

directly below the heading "Statement of Emergency." The number of the emergency administrative regulation shall be the same number as the ordinary administrative regulation followed by an "E."

(9) Each executive department emergency administrative regulation shall be signed by the head of the administrative body and countersigned by the Governor prior to filing with the Commission. These signatures shall be on the statement of emergency attached to the front of the emergency administrative regulation.

(10) (a) If it is intended that the subject matter of an emergency administrative regulation remain in effect longer than one hundred twenty (120) days after publication of the emergency administrative regulation, the ordinary administrative regulation covering that subject matter shall be filed on or before the effective date of the emergency administrative regulation.

(b) If such an ordinary administrative regulation has been filed and is withdrawn, the emergency administrative regulation shall expire on the date the ordinary administrative regulation is withdrawn.

(c) If such an ordinary administrative regulation is withdrawn, the administrative body shall inform the regulations compiler of the reasons for withdrawal in writing.

(11) (a) If an emergency administrative regulation, that was intended to be replaced by an ordinary administrative regulation, is withdrawn, the emergency administrative regulation shall expire on the date it is withdrawn.

(b) If an emergency administrative regulation has been withdrawn, the ordinary administrative regulation that was filed with it shall not expire unless the administrative body informs the regulations compiler that the ordinary administrative regulation is also withdrawn.

(c) If an emergency administrative regulation is withdrawn, the administrative body shall inform the regulations compiler of the reasons for withdrawal in writing.

(12) A subcommittee may review an emergency administrative regulation and may recommend to the Governor that the regulation be revoked.

Section 11. KRS 13A.200 is amended to read as follows:

An administrative regulation in contemplation of a statute provides a means whereby an administrative body may promulgate and file an administrative regulation following the enactment of a statute authorizing or directing its promulgation by the General Assembly and its approval by the Governor or its becoming law without signature but before the effective date subject to the following:

(1) The administrative regulation may be filed any time after signature by the Governor or upon the act becoming law without the Governor's signature but prior to the act's effective date.

(2) The [~~proposed~~] administrative regulation may be reviewed, hearings held, and all other steps taken with regard thereto, except for adoption, prior to the effective date of the statute which authorized or directed its issuance.

(3) All dates and other procedures which apply to an ordinary administrative regulation shall apply to an administrative regulation in contemplation of a statute.

(4) An administrative regulation in contemplation of a statute shall in all other respects be considered as ***an*** [~~a proposed~~] ordinary administrative regulation.

Section 12. KRS 13A.220 is amended to read as follows:

All [~~proposed~~] administrative regulations[~~, proposed amendments to administrative regulations, proposed repeals of administrative regulations, and emergency administrative regulations~~] shall comply with the provisions of KRS 13A.222 and 13A.224.

(1) An administrative body shall file the original and five (5) copies of ***an*** [~~a proposed~~] administrative regulation with the regulations compiler. The original and each copy of each administrative regulation shall be stapled in the top left corner. The original and the five (5) copies of each administrative regulation shall be grouped together.

(2) ***An*** [~~A proposed~~] amendment to an administrative regulation shall not be made on a copy of the administrative regulation reproduced from the Kentucky Administrative Regulations Service or the Administrative Register. It shall be a typed original in the format specified in subsection (3) of this section.

(3) The format of ***an*** [~~a proposed~~] administrative regulation shall be as follows:

(a) ***An*** [~~A proposed~~] administrative regulation shall be typewritten on white paper, size eight and one-half (8.5) by eleven (11) inches and shall be double-spaced. Copies of the [~~proposed~~] administrative regulation may be mechanically reproduced;

(b) A space no smaller than four (4) inches wide by two (2) inches long in the upper right hand corner shall be left blank for the regulations compiler's stamp indicating the date and time of receipt of the [~~proposed~~] administrative regulation;

(c) The cabinet, department and division of the administrative body shall be listed on separate single spaced lines two (2) inches from the top in the upper left hand corner of the first page. This shall be followed by "([~~Proposed~~] Amendment)" or "(Amended After Hearing)," whichever is applicable. If ***an*** [~~a proposed~~] administrative regulation is new, the notation shall read "(***New*** ~~[Proposed]~~ Administrative Regulation)";

(d) The notation shall be followed by the number and title of the ~~[proposed]~~ administrative regulation. The line on which the number and title appear shall begin two (2) lines below the notation. The promulgating administrative body shall contact the regulations compiler prior to filing to obtain an administrative regulation number for a new ~~[proposed]~~ administrative regulation;

(e) Two (2) lines following the number and title of an administrative regulation, after the words "RELATES TO:," the administrative body shall list ***all*** ~~[any]~~ statutes and other enactments, including appropriation acts or executive orders, to which the ~~[proposed]~~ administrative regulation relates or which shall be affected by the ~~[proposed]~~ administrative regulation. After the words "STATUTORY AUTHORITY:" the administrative body shall list the specific statutes and other enactments, where applicable, authorizing the promulgation of the ~~[proposed]~~ administrative regulation. Federal statutes and regulations shall be cited in the "RELATES TO:" and "STATUTORY AUTHORITY:" sections as provided by KRS 13A.2261, 13A.2264, 13A.2267; and

(f) Following the citations provided for in paragraph (e) of this subsection, and following the words "NECESSITY AND FUNCTION:" the administrative body shall include a brief statement setting forth the necessity for promulgating the administrative regulation and a summary of the functions intended to be implemented by the ~~[proposed]~~ administrative regulation.

(4) The numbering within the body of an administrative regulation shall be the responsibility of the promulgating body, subject to the authority of the regulations compiler to divide or renumber an administrative regulation. The following format shall be used by the administrative body in the numbering of each administrative regulation. Each section shall begin with the word "Section" followed by an arabic number, and titles of sections shall be initially capitalized. Subsections shall be designated by an arabic number in parentheses. Paragraphs shall be designated by lower case letters of the alphabet in parentheses, (e.g., (a), (b), (c), etc.). Subparagraphs shall be designated by an arabic number followed by a period, (e.g., 1., 2., etc.). Sub-subparagraphs shall be designated by lower case letters of the alphabet followed by a period, (e.g., a., b., c., etc.).

(5) After the complete text of ***an*** ~~[a proposed]~~ administrative regulation, the administrative body shall include the following information:

(a) If the provisions of KRS 13A.120(3) are applicable, a statement that the official or the head of the administrative body has reviewed or approved the administrative regulation; the signature of such official or head; and the date on which such review or approval occurred.

(b) The authorizing signature of the administrative body promulgating the ~~[proposed]~~ administrative regulation, and the date on which the administrative body approved the promulgation;

(c) The signature of an attorney certifying that he has examined and approved the ~~[proposed]~~ administrative regulation as to form;

(d) Information relating to public hearings as required by KRS 13A.160 and 13A.270.

(e) The name of the contact person of the administrative body. The contact person shall be the person authorized by the head of an administrative body to:

1. Receive information relating to issues raised by the public or by a subcommittee prior to a public meeting of the subcommittee;

2. Negotiate changes in language with a subcommittee in order to resolve such issues; and

3. Answer questions relating to the administrative regulation.

Section 13. KRS 13A.222 is amended to read as follows:

(1) In a new ~~[proposed]~~ administrative regulation, there shall be no underlining or bracketing.

(2) In ***an amendment*** ~~[all proposed amendments]~~ to ***an*** administrative ***regulation*** ~~[regulations]~~, the ~~[proposed]~~ new words shall precede the ~~[proposed]~~ deleted words. Exceptions may be permitted by the regulations compiler. The administrative body shall:

(a) Underline all ~~[proposed]~~ new words; and

(b) Place the ~~[proposed]~~ deleted words in brackets and strike through these words.

(3) (a) ***An*** ~~[No]~~ administrative regulation shall ***not*** be amended by reference to a section only. ***An*** ~~[A proposed]~~ amendment shall contain the full text of the administrative regulation being amended.

(b) A section of an administrative regulation shall not be reserved for future use.

(4) In drafting administrative regulations, the administrative body shall comply with the following:

(a) The administrative body shall use plain and unambiguous words that are easily understood by laymen. The administrative body shall avoid ambiguous, indefinite, or superfluous words and phrases;

(b) A duty, obligation or prohibition shall be expressed by "shall" or "shall not." "Should," "could," or "must" shall not be used. The future tense shall not be expressed by the word "shall." A discretionary power shall be expressed by "may;"

(c) The words "said," "aforesaid," "hereinabove," "hereinafter," "beforementioned," "whatsoever," or similar words of reference or emphasis shall not be used. Where an article may be used, the administrative body shall not use the word "such." It shall not use the expression "and/or" and shall not separate alternatives with a slash. It shall not use contractions. When a number of items are all mandatory, the word "and" shall be used. When all of a number of items are not mandatory, the word "or" shall be used;

(d) Certain words are defined in the Kentucky Revised Statutes. Where applicable, these definitions shall be used. Definitions appearing in the Kentucky Revised Statutes shall not be duplicated in a proposed administrative regulation. A reference shall be made to the chapters and sections of the Kentucky Revised Statutes in which such definitions appear;

(e) If definitions are used, they shall be placed in the first section of ***an*** ~~[a proposed]~~ administrative regulation or in a separate administrative regulation. The section or administrative regulation shall be titled "Definitions." If definitions are placed in a separate administrative regulation, that administrative regulation shall be the first administrative regulation of a specific chapter of the Kentucky Administrative Regulations Service. The title of the administrative regulation shall also contain the number of the chapter of the Kentucky Administrative Regulations Service to which the definitions apply. In the text of an administrative regulation, the word defined in the definitions section, rather than the definition, shall be used. Definitions shall be used only:

1. When a word is used in a sense other than its dictionary meaning, or is used in the sense of one of several dictionary meanings;
2. To avoid repetition of a phrase; or
3. To limit or extend the provisions of ***an*** ~~[a proposed]~~ administrative regulation;

(f) If a word has the same meaning as a phrase, the word shall be used;

(g) The present tense and the indicative mood shall be used. Conditions precedent shall be stated in the perfect tense if their happening is required to be completed;

(h) The same arrangement and form of expression shall be used throughout an administrative regulation, unless the meaning requires variations;

(i) "If" or "except" shall be used rather than "provided that" or "provided, however." "If" shall be used to express conditions, rather than the words "when" or "where;"

(j) A word importing the masculine gender may extend to females. A word importing the singular number may extend to several persons or things;

(k) An administrative body shall use the phrases specified in this subsection:

Do Not Use:	Use:
And/or	"and" for a conjunctive "or" for a disjunctive
Any and all	either word
As provided in this administrative regulation	----
At the time	when
And the same hereby is	is
Either directly or indirectly	----
Except where otherwise provided	State specific exemption.
Final and conclusive	final
Full force and effect	force or effect
In the event that; In case	if
Is authorized; Is empowered	may
Is defined and shall be construed to mean	means
Is hereby required to	shall
It shall be lawful	may
Latin words	Do not use unless medical or scientific terminology.

Null and void and of no effect	void
Order and direct	either word
Provision of law	law
Until such time as	until
Until Whenever	if

(1) ***1.*** Unless the authority for an administrative regulation is an appropriation act that is not codified in the Kentucky Revised Statutes, the specific chapter and section number of the Kentucky Revised Statutes authorizing the promulgation of ***an*** ~~[a proposed]~~ administrative regulation shall be cited.

2. If an act has not been codified at the time a proposed administrative regulation is promulgated, or if the authority is an appropriation act, the citation shall be as follows: "Acts (year), Chapter (chapter number), Section (section number)." When an act has been codified, the administrative body shall notify the regulations compiler of the proper citation in writing. Upon receipt of such written notice, the regulations compiler shall correct the citation.

Section 14. KRS 13A.2251 is amended to read as follows:

(1) An administrative regulation incorporating material by reference shall include:

(a) The effective date of the material incorporated by reference;

(b) Information on how the material may be obtained; and

(c) A statement that the material is available for public inspection and copying, subject to copyright law, at the main, regional, or branch offices of the administrative body, and the address and office hours of each.

The information required by this subsection shall appear in the section of an administrative regulation that incorporates the material by reference.

(2) A summary of the incorporated material, in detail sufficient to identify the subject matter to which it pertains, shall be attached to an administrative regulation that incorporates material by reference. This summary shall include:

(a) Relevant programs, statutes, funds, rights, duties, and procedures affected by the material and the manner in which they are affected;

(b) A citation of the specific state or federal statutes or regulations authorizing or requiring the procedure or policy found in the material incorporated by reference; and

(c) The total number of pages incorporated by reference.

(3) One (1) copy of the material incorporated by reference shall be filed with the regulations compiler when the administrative regulation is filed. Material incorporated by reference shall be placed in a binder. The administrative body shall stamp or type the number of ***the*** ~~[a proposed]~~ administrative regulation to which material incorporated by reference pertains and the date on which it is filed on the front binder cover and on the first page of the material incorporated by reference.

Section 15. KRS 13A.2255 is amended to read as follows:

When ***an*** ~~[a proposed]~~ administrative regulation amends material that had been previously incorporated by reference, the amendment shall be accomplished by submission of:

(1) An entire new document in which the amendments have been made but are not reflected in the manner specified in KRS 13A.222;

(2) A summary listing the pages upon which changes have been made, and a detailed summary of the changes and their effect. This summary shall be attached to the ~~[proposed]~~ administrative regulation; and

(3) The page or pages of the document in which changes have been made, with the changes accomplished in the manner specified in KRS 13A.222.

Section 16. KRS 13A.230 is amended to read as follows:

(1) The administrative body shall attach the following forms to the back of the original and each copy of ***an*** ~~[a proposed]~~ administrative regulation:

(a) Regulatory impact analysis;

(b) Tiering statement;

(c) Local mandate impact statement, if the administrative regulation relates to any aspect of local government or any service provided thereby;

(d) Federal mandate comparison, if applicable; and

(e) The summaries provided for in KRS 13A.2261, 13A.2264, and 13A.2267, if applicable.

(2) The forms required by subsection (1) of this section shall be obtained from the regulations compiler.

Section 17. KRS 13A.240 is amended to read as follows:

(1) Every administrative body shall prepare and submit to the Legislative Research Commission an original and five (5) duplicate copies of a regulatory impact analysis for every [~~proposed~~] administrative regulation ***when it is filed with the Commission***. The regulatory impact analysis shall include, but not be limited to, the following information:

(a) The type and number of individuals, businesses, organizations, and state and local governments affected by the administrative regulation; and

(b) The direct and indirect costs or savings, ***including the:***

1. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented; and [~~as well as the~~]

2. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented; and

3. Compliance, reporting, and paperwork requirements of the administrative regulation on those affected for the first year following the implementation of the administrative regulation, and the continuing costs or savings for the second ***and subsequent years*** [~~year~~] with any factors which might increase or decrease the cost of the administrative regulation, including the effect on competition being noted; and

(c) The direct and indirect costs or savings and paperwork requirements to the promulgating administrative body for the administration and enforcement of the administrative regulation for the first year following the implementation of the administrative regulation, and the continuing costs or savings for the second year with any factors which might increase or decrease the cost of the administrative regulation being noted; and

(d) An assessment of any anticipated effect on state and local revenues; and

(e) ***The source of the revenue to be used for the implementation and enforcement of the administrative regulation; and***

(f) The effect of the administrative regulation on the economy of the geographical area in which the administrative regulation will be implemented, and on the state, including the effects of the economic activities arising from the administrative regulation; and

(g) An assessment of alternative methods for accomplishing the purpose of the administrative regulation and the reasons why they were rejected in favor of the [~~proposed~~] administrative regulation; and

(h) An assessment of the expected benefits of the administrative regulation; and

(i) A statement :

1. Identifying the effects of the administrative regulation on the public health and environmental welfare of the geographical area in which the administrative regulation will be implemented and upon the state; and

2. Stating whether there would be a detrimental effect on the environment and public health if the administrative regulation is not implemented; and

3. If there would be a detrimental effect on the environment and public health, an explanation of the detrimental effect; and

(j)[~~(f)~~] A written statement identifying any statute, rule, regulation, or governmental policy which the [~~proposed~~] administrative regulation may be in conflict with, overlap, or duplicate; and a written statement for the necessity to promulgate the administrative regulation if conflict, overlapping, or duplication is found to exist. The administrative body shall also indicate whether or not any effort has been made to harmonize the [~~proposed~~] administrative regulation with any statute, rule, regulation, or governmental policy with which it has been found to be in conflict***; and***

(k) An explanation of why the administrative regulation is needed, including:

1. An analysis of the qualitative and quantitative benefits and burdens considered in the determination that the administrative regulation was needed; and

2. A statement of the uncertainties associated with the estimation of particular benefits and burdens, and the difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and burdens.

(2) The Legislative Research Commission shall review all regulatory impact analyses submitted by all administrative bodies, and prepare a written analysis thereof and of the [~~proposed~~] administrative regulation. The Legislative Research Commission may require any administrative body to submit background data upon which ***the information required by subsection (1) is*** [~~subsections (1)(a) through (1)(f) are~~] based***,*** and an explanation of how the data was gathered.

Section 18. KRS 13A.250 is amended to read as follows:

(1) Each administrative body which promulgates ***an*** [~~a proposed administrative regulation, proposed amendment to an~~

~~administrative regulation, repeal of an administrative regulation, or emergency]~~ administrative regulation which relates to any aspect of local government or any service provided thereby shall prepare and submit with the ***administrative*** regulation a fiscal note.

(2) The form of the fiscal note shall be determined by the Commission by administrative regulation.

(3) Any administrative body may request the advice and assistance of the Commission in the preparation of the fiscal note.

Section 19. KRS 13A.270 is amended to read as follows:

(1) Not less than twenty (20) nor more than thirty (30) days following publication in the Administrative Register of the text of ***an*** ~~[a proposed]~~ administrative regulation, the administrative body shall, unless authorized to cancel the hearing pursuant to subsection (4) of this section, hold a hearing, open to the public, on the ~~[proposed]~~ administrative regulation.

(2) Each ~~[proposed]~~ administrative regulation shall state the place, time, and date of the scheduled public hearing and the manner in which interested persons may submit their notification of attending the public hearing pursuant to the provisions of this section.

(3) Persons desiring to be heard at the hearing shall notify the administrative body in writing as to their desire to appear and testify at the hearing not less than five (5) days before the scheduled date of the hearing.

(4) The administrative body shall immediately notify the regulations compiler by telephone and by letter if:

(a) No written notice of intent to attend the public hearing is received by the administrative body at least five (5) days before the scheduled hearing, and it chooses to cancel the public hearing; or

(b) No written notice of intent to attend the public hearing is received by the administrative body at least five (5) days before the scheduled hearing; it has cancelled the public hearing; and it has received written or oral statements that shall be considered.

(5) Upon receipt from interested persons of their intent to attend a public hearing, the administrative body shall notify the regulations compiler by telephone and by letter that the public hearing shall be held.

(6) Every hearing shall be conducted in such a manner as to guarantee each person who wishes to offer comment a fair and reasonable opportunity to do so, whether or not such person has given the notice contemplated by subsection (3) of this section. No transcript need be taken of the hearing, unless a written request for a transcript is made, in which case the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This section shall not preclude an administrative body from making a transcript or making a recording if it so desires.

(7) Nothing in this section shall be construed as requiring a separate hearing on each ~~[proposed]~~ administrative regulation~~[, proposed amendment to an administrative regulation or proposed repeal of an administrative regulation]~~. Administrative regulations may be grouped at the convenience of the administrative body for purposes of hearings required by this section.

Section 20. KRS 13A.280 is amended to read as follows:

(1) Following the scheduled hearing date, the administrative body shall give consideration to all written and oral comments received, whether at the hearing or otherwise, regarding the ~~[proposed administrative regulation, proposed amendment to an administrative regulation, or repeal of an]~~ administrative regulation.

(2) The administrative body shall then file with the commission on or before 12 noon, eastern time, on the fifteenth day following the scheduled hearing date the statement of consideration relating to the administrative regulation.

(3) If the ~~[proposed]~~ administrative regulation~~[, proposed amendment of an administrative regulation, or repeal of an administrative regulation]~~ is amended as a result of the hearing or written or oral comments received, the administrative body shall forward the following to the regulations compiler by noon on the fifteenth day following the hearing:

(a) The original and five (5) copies of the administrative regulation indicating any amendments in the original wording resulting from the hearing, or resulting from written or oral comments received at the hearing or otherwise;

(b) The original and five (5) copies of the statement of consideration as required by subsection (2) of this section; and

(c) The regulatory impact analysis, tiering statement, federal mandate comparison, or fiscal note on local government. These documents shall reflect changes resulting from amendments made after the public hearing.

(4) The format for the statement of consideration shall be as follows:

(a) The statement shall be typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches. Copies of the statement may be mechanically reproduced;

(b) A space no smaller than two (2) by three (3) inches in the upper right hand corner shall be left blank for the regulations compiler's stamp indicating the date and time of receipt of the statement;

(c) The heading of the statement shall consist of the words "STATEMENT OF CONSIDERATION RELATING TO" followed by the number of the administrative regulation that was the subject of the public hearing and the name of the promulgating administrative body. The heading shall be centered three (3) inches from the top of the first page. This shall be followed by the words "Not Amended After Hearing" or "Amended After Hearing," whichever is applicable;

(d) If a hearing has been held the heading is to be followed by:

1. A statement setting out the date, time and place of the hearing;

2. A list of those attending the hearing and the organization, agency, or other entity represented, if applicable; and

3. The name and title of the representative of the promulgating administrative body;

(e) If a hearing has not been held, but written or oral comments have been received:

1. A list of those who have submitted written or oral comments and the organization, agency, or other entity represented, if applicable; and

2. The name and title of the representative of the promulgating administrative body responding to the written or oral comments;

(f) Following the general information, the promulgating administrative body shall summarize the written and oral comments received and the response of the promulgating administrative body. Each subject commented upon shall be summarized in a separate numbered paragraph. Each numbered paragraph shall contain two (2) subsections:

1. Subsection (a) shall be labeled "Comment" and shall contain a summary of the comment; and

2. Subsection (b) shall be labeled "Response" and shall contain the response to the comment by the promulgating administrative body;

(g) Following the summary and comments, the promulgating administrative body shall summarize the statement and the action taken by the administrative body as a result of the public hearing;

(h) If the promulgating administrative body amends the [~~proposed~~] administrative regulation after a public hearing at which there were no participants other than administrative body personnel, this fact shall be noted in the statement; and

(i) If administrative regulations were considered as a group at a public hearing, one (1) statement of consideration may include the group of administrative regulations. If a comment relates to one (1) or more of the administrative regulations in the group, the summary of the comment and response shall specify each administrative regulation to which it applies.

(5) (a) If the [~~proposed~~] administrative regulation is not amended as a result of the public hearing, or written or oral comments received, the administrative body shall file the original and five (5) copies of the statement of consideration as required by subsection (2) of this section with the regulations compiler by noon on the fifteenth day following the hearing.

(b) If the statement of consideration is not forwarded to the regulations compiler at least five (5) working days prior to a meeting of the Administrative Regulation Review Subcommittee, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.

(6) If the administrative regulation is amended pursuant to subsection (3) of this section the full text of the administrative regulation shall be published in the Administrative Register. The administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee after such publication.

(7) If requested, copies of the statement of consideration shall be made available by the promulgating administrative body to persons attending the hearing or submitting comments.

Section 21. KRS 13A.290 is amended to read as follows:

(1) Within forty-five (45) days after publication of an administrative regulation in "The Administrative Register," or within forty-five (45) days of the receipt of a statement of consideration the Administrative Regulation Review Subcommittee shall meet to review the administrative regulation.

(2) The meetings shall be open to the public.

(3) Public notice of the time, date, and place of the Administrative Regulation Review Subcommittee meeting shall be given in the Administrative Register.

(4) A representative of the administrative body promulgating the [~~proposed administrative regulation, proposed amendment of the administrative regulation, proposed repeal of the administrative regulation, or emergency~~] administrative regulation under consideration shall be present to explain the administrative regulation and to answer questions thereon. If a representative of the administrative body with authority to amend the administrative regulation is not present at the subcommittee meeting, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.

(5) Following the meeting and before the next regularly scheduled meeting of the Commission the Administrative Regulation Review Subcommittee shall forward to the Commission its findings, recommendations, or other comments it

deems appropriate in writing. The Administrative Regulation Review Subcommittee shall also forward to the Commission its findings, recommendations, or other comments it deems appropriate on an existing administrative regulation it has reviewed. One (1) copy thereof shall be sent to the promulgating agency. The Administrative Regulation Review Subcommittee's findings shall be published in the Administrative Register.

(6) After review by the Administrative Regulation Review Subcommittee, the Commission shall, at its next regularly scheduled meeting, assign the matter to a subcommittee of appropriate jurisdiction over the subject matter.

(7) Within thirty (30) days of such assignment, the subcommittee shall hold a public meeting during which the regulation shall be reviewed. The subcommittee may also review an existing administrative regulation and make a determination as provided by KRS 13A.030(2) and (3). Notice of the time, date, and place of the meeting shall be placed in the legislative calendar.

(8) An administrative body shall comply with subsection (4) of this section.

(9) The subcommittee shall be empowered to make the same nonbinding determinations and to exercise the same authority as the Administrative Regulation Review Subcommittee as provided in KRS 13A.030(2) and (3).

(10) Following the meeting and before the next regularly scheduled meeting of the Commission the subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. One (1) copy thereof shall be sent to the promulgating agency. The subcommittee's findings shall be published in the Administrative Register.

Section 22. KRS 13A.300 is amended to read as follows:

(1) The administrative body which has promulgated [~~a proposed administrative regulation, proposed amendment to an existing administrative regulation, or proposed repeal of~~] an administrative regulation may request at a meeting of a subcommittee that consideration of the administrative regulation be deferred by ***the*** [~~such~~] subcommittee. Upon receipt of the request, the subcommittee may defer consideration of the ***administrative regulation*** [~~proposal~~].

(2) The deferring of [~~a proposed administrative regulation, proposed amendment to an existing administrative regulation, or proposed repeal of~~] an administrative regulation shall have the same effect as an action under KRS 13A.310.

(3) A subcommittee may request that consideration of an administrative regulation be deferred by the promulgating administrative body. Upon receipt of the request, the promulgating administrative body may agree to defer consideration of the administrative regulation.

(4) Except as provided in subsections (1) to (3) of this section, neither the promulgating administrative body, the Commission, nor a subcommittee shall defer any action which is required to be taken pursuant to this chapter.

Section 23. KRS 13A.310 is amended to read as follows:

(1) An administrative regulation, once adopted, cannot be withdrawn but shall be repealed if it is desired that it no longer be effective.

(2) An administrative regulation, once adopted, cannot be suspended but shall be repealed if it is desired to suspend its effect.

(3) [~~A proposed administrative regulation, proposed amendment of an existing administrative regulation, or proposed repeal of~~] An ***ordinary*** administrative regulation may be withdrawn by the promulgating agency at any time prior to its adoption. If An ordinary administrative regulation is withdrawn, the administrative body shall inform the regulations compiler of the reasons for withdrawal in writing.

(4) Once [~~a proposed administrative regulation, proposed amendment of an existing administrative regulation, or proposed repeal of~~] an ***ordinary*** administrative regulation is withdrawn it shall not be reinstated, except by repromulgation as a totally new matter.

(5) An administrative regulation that has been deferred shall be placed on the agenda of the next scheduled meeting of the subcommittee that is reviewing the administrative regulation. ***The*** [~~Such~~] subcommittee shall consider the matter as if the proposal had met all other requirements of filing. Repromulgation shall not be required in such cases.

Section 24. KRS 13A.315 is amended to read as follows:

(1) An administrative regulation shall be withdrawn and shall not be reviewed by a legislative subcommittee if:

(a) It has not been reviewed or approved by the official or administrative body with authority to review or approve;

(b) An item is not filed on or before a deadline specified by KRS Chapter 13A; or

(c) The administrative body has failed to comply with the provisions of KRS Chapter 13A governing the filing of administrative regulations, public hearings and the statement of consideration.

(2) [~~A proposed administrative regulation, proposed amendment of an existing administrative regulation, or proposed repeal of~~] An administrative regulation which has not complied with all the provisions of this chapter and any regulations promulgated under this chapter shall be considered procedurally defective and void.

Section 25. KRS 13A.320 is amended to read as follows:

(1) (a) An administrative body may amend an administrative regulation at a subcommittee meeting with the consent of

the subcommittee. A subcommittee may amend an administrative regulation at a subcommittee meeting with the consent of the administrative body.

(b) An administrative regulation shall not be amended at a public meeting of a subcommittee unless the amendment concerns an issue that was:

1. Related to the [~~proposed administrative regulation or the proposed amendment to an existing~~] administrative regulation filed with the Legislative Research Commission; and
2. Considered at the public hearing; or
3. Raised by the subcommittee.

(c) Nothing in this chapter shall be construed to require its resubmission or refiling or other action. The administrative regulation may be adopted as amended. Subsequent to its adoption it shall be published in the Administrative Register.

(2) When an administrative body intends to amend an administrative regulation at a meeting of the subcommittee the following requirements shall be met:

(a) Amendments ***offered*** [~~proposed~~] by the administrative body to resolve issues raised by a subcommittee prior to its meeting shall be approved by the head of the administrative body;

(b) Amendments initiated by the administrative body shall be contained in a letter to the subcommittee, shall identify the administrative body, and shall state the number of the administrative regulation and the date. Such amendments shall be filed with the regulations compiler at least five (5) working days prior to the meeting of the subcommittee;

(c) The number of the section and subsection to which the amendment applies shall precede the amendment and shall be underlined; and

(d) If a word or phrase is to be deleted, the amendment shall identify the word or phrase to be deleted. If a word or phrase is to be replaced by another word or phrase, the amendment shall specify the word or phrase that is to be deleted and shall specify the word or phrase with which it is replaced. Example: Section 5, subsection (3): The word "qualify" before the phrase "of the internship program" is deleted. The word "quality" is inserted in lieu of the word "qualify."

Section 26. KRS 13A.330 is amended to read as follows:

(1) [~~A proposed administrative regulation, proposed amendment of an existing administrative regulation, or proposed repeal of~~] An administrative regulation shall be considered as adopted and shall become effective as of the adjournment on the day a subcommittee meets to consider the ***administrative regulation*** [~~proposal~~] pursuant to KRS 13A.290(7).

(2) ***If*** [~~Where~~] a subcommittee fails to meet within thirty (30) days of assignment of ***an administrative*** [~~a proposed~~] regulation as provided in KRS 13A.290(7), the ***administrative*** [~~proposed~~] regulation[~~, amendment, or repeal thereof~~] shall become effective as of the expiration of such thirty (30) day period.

Calendar

HB 107, HB 298, HB 307, HB 309, HB 310, HB 335, HB 351, HB 222, HB 165, HB 287, HB 96, HB 127 and **HB 215** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Consent Calendar

HB 218, HB 294, HB 347, HB 348 and **HB 243** taken from the Consent Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Floor Amendments (Continued)

Floor Amendment No. 2 to the Committee Substitute to **HB 215**, by Representative Little:

On page 7, after line 18 by adding the following:

"SECTION 3. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The rates for basic reparations benefits, first-party medical benefits, and uninsured motorists coverages on any motor vehicle subject to the provisions of Section 1 of this Act shall be reduced by each insurer by twenty-five percent

(25%) as of the effective date of this Act from the insurer's rates in effect for such coverages immediately prior to the effective date of this Act. The reduced rates shall remain in effect for at least one (1) year. There shall be no exception to the requirements of this section unless the commissioner shall find that the use of the reduced rates required as to any insurer will result in rates which are inadequate under this chapter.

(2) Beginning one (1) year after the effective date of this Act, due consideration in making rates for motor vehicle insurance shall be given to any reduction in losses or other effects that may be attributable to the use of seat belts. An exhibit detailing these changes and any credits or discounts shall be included in each filing pertaining to insurance on motor vehicles subject to Section 1 of this Act.".

Floor Title Amendment to **HB 215**, by Representative Little:

By amending the title to read as follows:
"AN ACT relating to motor vehicles."

Orders of the Day

HB 191 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Johnson moved that **HB 191** be passed.

On the roll call the vote was: Yeas 86, Nays 1. (See February 2 , 1994 roll call on **HB 191** - Appendix)

HB 191 was passed and the title agreed to.

Representative Johnson moved that the vote by which **HB 191** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 13, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of the Committee Substitute to **HB 13**. Agreed.

Representative Long moved that **HB 13**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 84, Nays 0. (See February 2, 1994 roll call on **HB 13** - Appendix)

HB 13, by way of Committee Substitute, was passed and the title agreed to.

Representative Long moved that the vote by which **HB 13**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 31 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Sanders moved that **HB 31** be passed.

On the roll call the vote was: Yeas 88, Nays 1. (See February 2 , 1994 roll call on **HB 31** - Appendix)

HB 31 was passed and the title agreed to.

Representative Sanders moved that the vote by which **HB 31** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 85, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of the Committee Substitute to **HB 85**. Agreed.

Representative Long moved that **HB 85**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 84, Nays 2. (See February 2, 1994 roll call on **HB 85** - Appendix)

HB 85, by way of Committee Substitute, was passed and the title agreed to.

Representative Long moved that the vote by which **HB 85**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 100 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved that **HB 100** be passed.

Representative Lindsay moved that **HB 100** be laid on the Clerk's Desk. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 3 to the Committee Substitute to **HB 215**, by Representative Stumbo:

On page 1, line 25, following the "***per se.***" to all the following:

"***In a jury trial in which damages relating to a personal injury, wrongful death, or property damages resulting from a motor vehicle accident are involved, evidence as to the use, improper use, or nonuse of a seat belt by any person shall not be admissible at the trial.***"

Floor Amendment No. 1 to **HB 34**, by Representative Wayne:

On page 3, lines 2-5, by adding the strike throughs to the closing bracket "]".

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 75** and **HB 80** have been examined and found correctly enrolled . Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time - 2:40 p.m.)

Orders of the Day (Continued)

HB 157 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lear moved that **HB 157** be passed.

On the roll call the vote was: Yeas 91, Nays 0. (See February 2 , 1994 roll call on **HB 157** - Appendix)

HB 157 was passed and the title agreed to.

Representative Lear moved that the vote by which **HB 157** was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the three day posting requirement be waived on **HB 359** and **HB 277**. Agreed.

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions and Committee Reports. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 418, by Representative Jensen: AN ACT relating to elections.

HB 419, by Representatives Mullinix, McElroy, Farley, Deskins, Worthington, Gedling, Ford, Bryant and Noland: AN ACT relating to courts.

HB 420, by Representative Lear: AN ACT relating to the development of the primary and secondary wood products industries.

HB 421, by Representative R. Smith: AN ACT relating to abandoned utilities.

HB 422, by Representative R. Smith: AN ACT relating to penalties for violating provisions of KRS Chapter 278.

HB 423, by Representative R. Smith: AN ACT relating to Public Service Commission finances.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills have been posted for Committee consideration:

Appropriations and Revenue: **HB 190**

Cities: **HB 369, HB 381**

Motions, Petitions and Communications (Continued)

Representative Lewis moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Lewis moved that he be recorded as voting "yea" on **HB 191**. Agreed.

Representative Gray moved the adoption of the following **Legislative Citation No. 18**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby joins Representative Leonard Gray in recognizing, February as Black History Month The entire month of February is dedicated to observing the many positive world civic, educational and personal contributions that Black Americans have made seeking self awareness, unity and justice for all of mankind.

Representative Gray moved the adoption of the following **Legislative Citation No. 40**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby commends Napoleon Phillips, Jefferson County Community Servant for contributing so greatly to the community of Parkland. The time and energy you devote to Parkland depicts leadership and humanitarian qualities. The entire membership joins Representative Leonard Gray in commending this very distinguished citizen for the noble deeds he so unselfishly renders to his community.

The following members filed requests to have their names added as co-sponsors to Bills under rules previously suspended: **HB 204, HB 205, HB 224**, Representative Cave; **HB 204, HB 224**, Representative Lile; **HB 204, HB 205, HB 224**, Representative Reinhardt; **HB 250**, Representative Crenshaw; **HB 323**, Representative Treesh; **HB 368**, Representative Clarke; **HB 405**, Representative Nunn.

Announcements

The Clerk announced the following meetings:

Tourism Development and Energy, fifteen minutes upon adjournment, Room 149

Budget Review Subcommittee on Human Resources, 3:30 p.m., Room 125

Budget Review Subcommittee on Economic Development, 10:00 a.m., February 3, 1994

Committee on Rules, upon adjournment, Speaker's Office

Labor and Industry, cancelled, February 3, 1994

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Thursday, February 3, 1994.

On the roll call the vote was **Yeas 84**--Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bryant, Buis, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Harper, Hatcher, Jensen, Johnson, Kerr, Lear, Lee, Lewis, Lindsay, Lyne, Maggard, Maricle, Marzian, Mason, Moberly, Morris, Mullinix, Napier, Nesler, Noland, Northup, Nunn, Palumbo, Rasche, Reinhardt, Richards, Ridley, Riggs, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, R. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Zimmerman. **Nays 3**--Heleringer, LeMaster, Lile.

The motion to adjourn was adopted.

THURSDAY, FEBRUARY 3, 1994

TWENTIETH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend Harry Roland, Ft. Mitchell Baptist Church, Ft. Mitchell.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Hancock, Hatcher, Heleringer, Keith and Lewis.

Senate Message

Announcing passage of **SB 61** and **SB 120**. (Time: 2:05 p.m.)

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of February 2, 1994 be dispensed with and the same approved. Agreed.

HB 75 and **HB 80** delivered to the Senate, signed by the President. Delivered to the Governor on February 2, 1994 at 2:55 p.m.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Introduction of Bills and Resolutions

HB 424, by Representative Ballard: AN ACT relating to motor vehicles.

HB 425, by Representatives Nesler, Cyrus, P. Clark, Deskins, Yates, Brown, L. Clark, Butler, French, Burch and Gray: AN ACT relating to collective bargaining for firefighters in cities of the second through fourth classes.

Floor Amendments

Floor Amendment No. 1 to the Committee Substitute to **HB 169**, by Representative Little:

On page 2, line 10 after "*(c)*" by inserting the following:

"***The members of the State Board for Elementary and Secondary Education, the employees of the Department of Education, and the members of the design team that created the original plan selected for the purposes of subsection (2) shall not be liable for any claim arising from the use of a selected plan.***

(d)".

Floor Amendment No. 2 to **HB 104**, by Representative Mullinix:

On page 1, line 21 by deleting "***January***" and inserting in lieu thereof the word "***October***"; and

On page 1, line 22 by inserting a closing bracket after the word "of"; and

On page 1, line 23 by deleting the strike throughs from the words "each year immediately preceding, and by deleting the closing bracket; and

On page 3, by deleting lines 7 through 12 in their entirety; and

On page 3, line 13, by deleting "*(6)*" and inserting in lieu thereof "*(5)*"; and

On page 3, line 21, by deleting "*(7)*" and inserting in lieu thereof "*(6)*".

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Appropriations and Revenue: **HB 423**

Cities: **SB 91**

Economic Development: **HB 420**

Education: **SB 51**

Elections and Constitutional Amendments: **HB 418**

Health and Welfare: **HB 416, HB 417**

Judiciary: **HB 414, HB 419**

Natural Resources and Environment: **SB 49**

State Government: **SB 93, SB 98, SB 99, HB 415**

Tourism Development and Energy: **HB 421, HB 422**

Report of Committees

The Committee on Rules reported the following Consent Bills have been posted for passage in the Regular Orders of the Day, February 4, 1994: **HB 218, HB 243, HB 294, HB 347, HB 348**

The Committee on Rules reported that **HB 96, HB 107, HB 165, HB 215, HB 222, HB 287, HB 298, HB 307, HB 309, HB 310, HB 335** and **HB 351** have been posted for passage in the Orders of the Day for February 4, 1994.

The Committee on Rules reported that the following Bill has been recommitted:

Appropriations and Revenue: **HB 127**

The Committee on Judiciary reported **HB 205, HB 224, HB 231,** with Committee Substitute attached thereto, and **HB 359** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 205, AN ACT relating to the Kentucky Unified Juvenile Code.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 610.070 is amended to read as follows:

(1) All cases involving children brought before the court shall be granted a speedy hearing and shall be dealt with by the court without a jury.

(2) The hearings shall be conducted in a formal manner, unless specified to the contrary by other provisions of KRS Chapters 600 to 645.

(3) The general public shall be excluded and only the immediate families or guardians of the parties before the court, witnesses necessary for the prosecution and defense of the case, the probation worker with direct interest in the case, ***the victim, his family, or a legal representative of either,*** such persons admitted as the judge shall find have a direct interest in the case or in the work of the court, and such other persons as agreed to by the child and his attorney may be admitted to the hearing. Witnesses shall be admitted to the hearing only for the duration of their testimony.

(4) If the court finds it to be in the best interest of the child, the court may order the parents, guardians, or persons exercising custodial control over the child to be present at any hearing or other proceeding involving the child.

HB 224, AN ACT relating to the Kentucky Unified Juvenile Code.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

(1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian or other person exercising custodial control or supervision of the child: inflicts or allows to be inflicted upon the child physical or emotional injury by other than accidental means; creates or allows to be created a risk of physical or emotional injury to the child by other than accidental means; commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child; creates or allows to be created a risk that an act of sexual abuse,

sexual exploitation, or prostitution will be committed upon the child; abandons or exploits such child; does not provide the child with adequate care, supervision, food, clothing, shelter and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing his religious beliefs shall not be considered a negligent parent solely because he fails to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;

(2) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the cabinet for the placement of children committed to the cabinet;

(3) "Cabinet" means the Cabinet for Human Resources;

(4) "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Justice Cabinet after consultation with the Cabinet for Human Resources and other appropriate state agencies;

(5) "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;

(6) "Child-caring facility" means any facility or group home other than a state facility, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption or marriage to the person maintaining the facility;

(7) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;

(8) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;

(9) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Human Resources or another facility or agency until the child attains the age of eighteen (18) unless the committing court terminates or extends the order;

(10) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;

(11) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;

(12) "Court" means the juvenile session of District Court;

(13) "Court designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into and supervising diversion agreements and performing such other functions as authorized by law or court order;

(14) "Department" means the Department for Social Services;

(15) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

(16) "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, or a secure juvenile detention facility;

(17) "Diversion agreement" means an agreement entered into between a court designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;

(18) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;

(19) "Emotional harm" means harm to the mental or psychological capacity or emotional stability of a child as testified to by a qualified mental health professional. The age and development of the child shall be considered together with the child's culture or environment in the diagnosis and determination of emotional harm;

(20) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in his ability to function within a normal range of performance and behavior with due regard to his age, development, culture and environment;

(21) "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;

(22) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;

(23) "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;

(24) "Habitual truant" means any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period;

(25) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;

(26) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;

(27) "Informal adjustment" means an agreement reached among the parties after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;

(28) "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;

(29) "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;

(30) "Juvenile holding facility" means a physically secure setting, approved by the Justice Cabinet, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Justice Cabinet may supervise juvenile as well as adult prisoners;

(31) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; and is conducted at the suitable available facility closest to the child's place of residence;

(32) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;

(33) "Parent" means the biological or adoptive mother or father of a child;

(34) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

(35) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;

(36) "Physical injury" means substantial physical pain or any impairment of physical condition;

(37) "Public offense action" means an action brought in the interest of a child who is accused of committing a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a moving motor vehicle offense;

(38) "Qualified mental health professional" means:

(a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of his official duties;

(b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of his official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;

(d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or

(e) A certified clinical social worker licensed for the independent practice of clinical social work under the provisions of KRS Chapter 335, or a certified social worker licensed under the provisions of KRS Chapter 335 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work following certification and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(39) "Residential treatment facility" means a facility with more than eight (8) beds designated by the cabinet for the treatment

of children;

(40) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court designated worker for the purpose of making preliminary inquiries;

(41) "School personnel" means those certified persons under the supervision of the local public or private education agency;

(42) "Secretary" means the secretary of the Cabinet for Human Resources;

(43) "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lock-up, intermittent holding facility, or any building which is a part of, or attached to, any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined;

(44) "Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;

(45) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ;

(46) "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions between a child and an adult in which the parent, guardian or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

(47) "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;

(48) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;

(49) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;

(50) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed; and

(51) "Youthful offender" means any person regardless of age, ***who comes within the criteria set forth in subsections (2), (3), (4), (6), and (7) of KRS 635.020 and is handled under the provisions of KRS Chapter 640*** ~~[transferred to Circuit Court under the provisions of KRS Chapter 640 and who is subsequently convicted in Circuit Court]~~.

Section 2. KRS 635.020 is amended to read as follows:

(1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a child before the court has committed ***an offense*** ~~[a felony]~~ other than those described in subsections (2) and (3) of this section, ~~[a misdemeanor, or a violation,]~~ the court shall initially proceed in accordance with the provisions of this chapter.

(2) If a child charged with a capital offense, Class A felony or Class B felony, ***or an offense involving a deadly weapon or an offense wherein a deadly weapon was used or displayed,*** had attained age fourteen (14) at the time of the alleged commission of the offense, ~~[the court shall, upon motion of the county attorney made prior to adjudication that]~~ the child ***shall*** be proceeded against as a youthful offender ***in the adult session of the Trial Court having jurisdiction over the offense***, ~~[proceed in accordance with the provisions of KRS 640.010]~~.

(3) If a child charged with a Class C or Class D felony has on two (2) prior separate occasions been adjudicated a public offender for a felony offense or a delinquent of a felony offense and had attained the age of sixteen (16) at the time of the alleged commission of the offense, ~~[the court shall, upon motion of the county attorney made prior to adjudication that]~~ the child ***shall*** be proceeded against as a youthful offender, ~~[proceed]~~ in ~~[accordance with]~~ the ***Circuit Court*** ~~[provisions of KRS 640.010]~~.

(4) If a child previously convicted as a youthful offender under the provisions of KRS Chapter 640 is charged with a felony allegedly committed prior to his eighteenth birthday, ~~[the court shall, upon motion of the county attorney made prior to adjudication that]~~ the child ***shall*** be proceeded against as a youthful offender, ~~[proceed]~~ in ~~[accordance with]~~ the ***Circuit Court*** ~~[provisions of KRS 640.010]~~.

(5) A child who is charged as is provided in subsection (2) of this section and is also charged with ***any other offenses*** ~~[a Class C or D felony, a misdemeanor or a violation]~~ arising from the same course of conduct, shall have all charges included in the same proceedings; and ~~[the court shall, upon motion of the county attorney made prior to adjudication that]~~ the child ***shall*** be proceeded against as a youthful offender, ~~[proceed]~~ in ~~[accordance with]~~ the ***adult session of the***

Trial Court having jurisdiction over the highest offense [~~provisions of KRS 640.010~~].

(6) If a person who is eighteen (18) or older and before the court is charged with a felony that occurred prior to his eighteenth birthday, [~~the court shall, upon motion of the county attorney made prior to adjudication that~~] the child ***shall*** be proceeded against as a youthful offender, [~~proceed~~] in [~~accordance with~~] the ***Circuit Court*** [~~provisions of KRS 640.010~~].

(7) All offenses arising out of the same course of conduct shall be tried with the felony arising from that course of conduct, whether the charges are adjudicated under this chapter or under KRS Chapter 640 [~~and transferred to Circuit Court~~].

Section 3. KRS 635.090 is amended to read as follows:

(1) If the court chooses to treat the child as other than a youthful offender, [~~if the Commonwealth fails to prove the criteria bringing a case under KRS Chapter 640 or if the county attorney elects not to proceed under KRS Chapter 640,~~] the court may:

(a) If a child is fourteen (14) years of age or older, and is adjudicated a public offender in the commission of a capital offense, Class A felony or Class B felony, ***or an offense involving a deadly weapon or an offense wherein a deadly weapon is used or displayed,*** the court in its discretion may commit the child to the cabinet for purposes of treatment or placement in a facility or program for an indeterminate period of time not less than six (6) months. The cabinet may petition the court to continue the commitment for the purpose of completing a treatment program but the commitment shall not extend past the child's nineteenth birthday; or

(b) If a child is sixteen (16) years of age or older, and is adjudicated a public offender in the commission of a felony offense and has previously been adjudicated delinquent of two (2) or more felony offenses not arising out of the same course of conduct in two (2) or more separate adjudications, or has previously been adjudicated a public offender for two (2) or more felony offenses not arising out of the same course of conduct in two (2) or more separate adjudications, the court in its discretion may commit the child to the cabinet for purposes of treatment or placement in a facility or program for an indeterminate period of time not less than six (6) months. The cabinet may petition the court to continue the commitment for the purpose of completing a treatment program but the commitment shall not extend past the child's nineteenth birthday.

(2) The cabinet shall maintain jurisdiction over the child during the period of the commitment. The committing court may, upon motion of the cabinet, order the child released from the facility or program operated by the cabinet.

(3) The cabinet shall notify the committing court if it transfers the child to a different facility or program and note the reasons for the transfer.

(4) The cabinet shall notify the committing court prior to the termination of treatment or placement as to the future intentions of the cabinet as they relate to continued treatment of the child.

(5) The committing court may, upon motion of the child, grant shock probation to any child committed under this section after the child has been committed for a minimum of thirty (30) days.

[~~(6) After a child has been committed to the cabinet as provided in this section, he may not then be transferred to the Circuit Court as provided for in KRS 640.020.~~]

Section 4. KRS 640.010 is amended to read as follows:

(1) For children who are alleged to be youthful offenders by falling in the purview of KRS 635.020(2), (3), (4), (5), (6), or (7), the ***judge*** [~~court~~] shall at arraignment assure that the child's rights as specified in KRS 610.060 have been explained and followed.

(2) In the case of a child alleged to be a youthful offender by falling within the purview of KRS 635.020, the court shall upon motion by the ***Commonwealth or youthful offender conduct a*** [~~county attorney to proceed under this chapter, conduct a preliminary~~] hearing to determine if the ***youthful offender*** [~~child~~] should be transferred to ***the juvenile session of District Court*** [~~Circuit Court as a youthful offender~~]. The [~~preliminary~~] hearing shall be conducted in accordance with the Rules of Criminal Procedure.

(a) At the [~~preliminary~~] hearing, the court shall determine if there is probable cause to believe that an offense was committed, that the child committed the offense, and that the child is of sufficient age and has the requisite number of prior adjudications, if any, necessary to fall within the purview of KRS 635.020.

(b) If the court determines probable cause exists, the court shall consider the following factors before determining whether the child's case shall be transferred to the ***juvenile session of District*** [~~Circuit~~] Court:

1. The seriousness of the alleged offense;
2. Whether the offense was against persons or property, with greater weight being given to offenses against persons;
3. The maturity of the child as determined by his environment;
4. The child's prior record;
5. The best interest of the child and community;

6. The prospects of adequate protection of the public; and
7. The likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available to the juvenile justice system.

(c) If, following the completion of the [~~preliminary~~] hearing, the court is of the opinion, after considering the factors enumerated in subsection (b) of this section, that the child should be transferred to ***the juvenile session of District*** [~~Circuit~~] Court, the court shall issue an order transferring the child [~~as a youthful offender~~] and shall state on the record the reasons for the transfer. The child shall then be proceeded against in the ***District*** [~~Circuit~~] Court as ***a juvenile*** [~~an adult~~], except as otherwise provided in ***KRS Chapter 635*** [~~this chapter~~].

(d) If, following completion of the preliminary hearing, the court is of the opinion, after considering the factors enumerated in subsection (b) of this section that the child shall not be transferred [~~to the Circuit Court~~], the case shall be dealt with as provided in ***this chapter*** [~~KRS Chapter 635~~].

(3) If the child is ***not*** transferred [~~to Circuit Court~~] under this section and the grand jury does not find that there is probable cause to indict the child as a youthful offender, as defined in KRS 635.020(2), (3), (4), and (6), but does find that there is probable cause to indict the child for another criminal offense, the child shall not be tried as a youthful offender [~~in Circuit Court~~] but shall be returned to District Court to be dealt with as provided in KRS Chapter 635.

HB 231, AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 514.110 is amended to read as follows:

(1) A person is guilty of receiving stolen property when he receives, retains, or disposes of movable property of another knowing that it has been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner.

(2) The possession by any person of any recently stolen movable property shall be prima facie evidence that such person knew such property was stolen.

(3) Receiving stolen property is a Class A misdemeanor unless the value of the property is ***three hundred dollars ($300)*** [~~$100~~] or more, ***or unless the property is a firearm (regardless of the value of the firearm),*** in which case it is a Class D felony.

The Committee Substitute to **HB 231** is as follows:

HB 231, AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 514.110 is amended to read as follows:

(1) A person is guilty of receiving stolen property when he receives, retains, or disposes of movable property of another knowing that it has been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner.

(2) The possession by any person of any recently stolen movable property shall be prima facie evidence that such person knew such property was stolen.

(3) Receiving stolen property is a Class A misdemeanor unless the value of the property is ***three hundred dollars ($300)*** [~~$100~~] or more, ***or unless the property is a firearm (regardless of the value of the firearm),*** in which case it is a Class D felony.

Section 2. KRS 514.030 is amended to read as follows:

(1) A person is guilty of theft by unlawful taking or disposition when he unlawfully:

(a) Takes or exercises control over movable property of another with intent to deprive him thereof; or

(b) Obtains immovable property of another or any interest therein with intent to benefit himself or another not entitled thereto.

(2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the value of the property is three hundred dollars ($300) or more, ***or unless the property is a firearm (regardless of the value of the firearm),*** in which case it is a Class D felony.

HB 359, AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 527 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of possession of a handgun by a minor when, being under the age of eighteen (18) years, he possesses, manufactures, or transports a handgun as defined by KRS 527.010, except when the person is:

(a) In attendance at a hunter's safety course or a firearms safety course;

(b) Engaging in practice in the use of a firearm, or target shooting at an established firing range, or any other area where the discharge of a firearm is not prohibited;

(c) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by a group organized under Section 501(c)(3) of the Internal Revenue Code or any successor thereto which uses firearms as a part of the performance;

(d) Hunting or trapping pursuant to a valid license issued to him pursuant to the statutes or administrative regulations of this Commonwealth;

(e) Traveling to or from any activity described in paragraphs (a) to (d) of this subsection with any unloaded handgun in his possession;

(f) On real property which is under the control of an adult and has the permission of that adult and his parent or legal guardian to possess a handgun; or

(g) At his residence and with the permission of his parent or legal guardian possesses a handgun and is justified under the principles of justification set forth in KRS Chapter 503 in using physical force or deadly physical force.

(2) For the purposes of subsection (1) of this section, a handgun is "loaded" if:

(a) There is a cartridge in the chamber of the handgun; or

(b) There is a cartridge in the cylinder of the handgun, if the handgun is a revolver; or

(c) There is a cartridge in the magazine of a semiautomatic handgun, if the magazine is attached to the handgun; or

(d) The handgun and the ammunition for the handgun, are carried on the person of one under the age of eighteen (18) years or are in such close proximity to him that he could readily gain access to the handgun and the ammunition and load the handgun.

(3) Possession of a handgun by a minor is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

SECTION 2. A NEW SECTION OF KRS CHAPTER 527 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of unlawfully providing a handgun to a juvenile or permitting a juvenile to possesses a handgun when he:

(a) Intentionally, knowingly, or recklessly provides a handgun, with or without remuneration, in violation of Section 1, 3, or 4 of this Act to any person he knows or has reason to believe is under the age of eighteen (18) years; or

(b) Is the parent or legal guardian of a juvenile and intentionally, knowingly, or recklessly provides a handgun to the juvenile or permits the juvenile to possess a handgun knowing that there is a substantial risk that the juvenile will use a handgun to commit a felony offense; or, with knowledge that the juvenile has been convicted of a crime of violence as defined in KRS 439.3401 or has been adjudicated a public offender of an offense which would constitute a crime of violence as defined in KRS 439.3401, provides a handgun to that juvenile.

(2) Unlawfully providing a hand gun to a juvenile or permitting a juvenile to possess a handgun is a Class D felony.

Section 3. KRS 527.040 is amended to read as follows:

(1) A person is guilty of possession of a handgun by a convicted felon when he possesses, manufactures, or transports a handgun when he has been convicted of a felony, as defined by the laws of the jurisdiction in which he was convicted, in any state or federal court and has not:

(a) Been granted a full pardon by the Governor or by the President of the United States;

(b) Been granted relief by the United States Secretary of the Treasury pursuant to the Federal Gun Control Act of 1968, as amended.

(2) Possession of a handgun by a convicted felon is a Class D felony.

(3) ***The provisions of this section shall apply to any youthful offender convicted of a felony offense under the laws of this Commonwealth. The exceptions contained in Section 1 of this Act prohibiting possession of a handgun by a minor shall not apply to this section.***

(4) The provisions of this section shall apply only to persons convicted after January 1, 1975.

Section 4. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

(1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian or other person exercising custodial control or supervision of the child: inflicts or allows to be inflicted upon the child physical or emotional injury by other than accidental means; creates or allows to be created a risk of physical or emotional injury to the child by other than accidental means; commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child; creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child; abandons or exploits such child; does not provide the child with adequate care, supervision, food, clothing, shelter and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing his religious beliefs shall not be considered a negligent parent solely because he fails to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;

(2) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the cabinet for the placement of children committed to the cabinet;

(3) "Cabinet" means the Cabinet for Human Resources;

(4) "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Justice Cabinet after consultation with the Cabinet for Human Resources and other appropriate state agencies;

(5) "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;

(6) "Child-caring facility" means any facility or group home other than a state facility, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption or marriage to the person maintaining the facility;

(7) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;

(8) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;

(9) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Human Resources or another facility or agency until the child attains the age of eighteen (18) unless the committing court terminates or extends the order;

(10) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;

(11) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;

(12) "Court" means the juvenile session of District Court;

(13) "Court designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into and supervising diversion agreements and performing such other functions as authorized by law or court order;

(14) "Department" means the Department for Social Services;

(15) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

(16) "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, or a secure juvenile detention facility;

(17) "Diversion agreement" means an agreement entered into between a court designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;

(18) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;

(19) "Emotional harm" means harm to the mental or psychological capacity or emotional stability of a child as testified to by a qualified mental health professional. The age and development of the child shall be considered together with the child's culture or environment in the diagnosis and determination of emotional harm;

(20) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in his ability to function within a normal range of performance and behavior

with due regard to his age, development, culture and environment;

(21) "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;

(22) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;

(23) "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;

(24) "Habitual truant" means any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period;

(25) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;

(26) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;

(27) "Informal adjustment" means an agreement reached among the parties after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;

(28) "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;

(29) "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;

(30) "Juvenile holding facility" means a physically secure setting, approved by the Justice Cabinet, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Justice Cabinet may supervise juvenile as well as adult prisoners;

(31) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; and is conducted at the suitable available facility closest to the child's place of residence;

(32) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;

(33) "Parent" means the biological or adoptive mother or father of a child;

(34) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

(35) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;

(36) "Physical injury" means substantial physical pain or any impairment of physical condition;

(37) "Public offense action" means an action brought in the interest of a child who is accused of committing ***an offense under KRS Chapter 527 or*** a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a moving motor vehicle offense;

(38) "Qualified mental health professional" means:

(a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of his official duties;

(b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of his official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;

(d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or

(e) A certified clinical social worker licensed for the independent practice of clinical social work under the provisions of KRS Chapter 335, or a certified social worker licensed under the provisions of KRS Chapter 335 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work following certification and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(39) "Residential treatment facility" means a facility with more than eight (8) beds designated by the cabinet for the treatment of children;

(40) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court designated worker for the purpose of making preliminary inquiries;

(41) "School personnel" means those certified persons under the supervision of the local public or private education agency;

(42) "Secretary" means the secretary of the Cabinet for Human Resources;

(43) "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lock-up, intermittent holding facility, or any building which is a part of, or attached to, any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined;

(44) "Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;

(45) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ;

(46) "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions between a child and an adult in which the parent, guardian or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

(47) "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;

(48) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;

(49) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;

(50) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed; and

(51) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 640 and who is subsequently convicted in Circuit Court.

The Committee on Transportation reported **HB 2,** with Committee Substitute attached thereto, and **HB 136** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 2, AN ACT relating to motor vehicle usage tax.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 138.450 is amended to read as follows:

As used in KRS 138.455 to 138.470, unless the context requires otherwise:

(1) "Dealer" means ***a***~~[any]~~ person engaged in the sale of motor vehicles at retail;

(2) "Motor vehicle" means ***a***~~[any]~~ vehicle that is propelled by other than muscular power***,*** and that is used for ***the*** transportation of persons or property over the public highways of the state, except road rollers, mopeds, vehicles that travel exclusively on rails, and vehicles propelled by electric power obtained from overhead wires;

(3) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank ***and***~~[so long as it]~~ also has pedals, or a motorized bicycle with a step through type frame

that~~[which]~~ may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;

(4) ***"Retail price" for used motor vehicles means the total cash consideration paid or to be paid for a motor vehicle at the time of purchase or at a later date, including all equipment and accessories, standard and optional, and transportation charges, as attested to in an affidavit signed by both the seller and the buyer.***

(5) ***"Retail price"***~~[Except as provided in subsection (5) of this section, "retail price" shall be determined as follows:~~

~~(a)]~~ for new motor vehicles ~~["retail price"]~~ shall be ninety percent (90%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges. "Retail price" shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate a physically handicapped operator or passenger***.***~~[;]~~

(6) Any person who willfully and fraudulently gives a false statement as to the total and actual cash consideration required in subsection (4) of this section shall be guilty of a Class D felony

~~[(b) For used motor vehicles whose values appear in the automotive reference manual prescribed by the Revenue Cabinet, "retail price" shall be the value given in such reference manual;~~

~~(c) For the older used motor vehicles whose values no longer appear in the automotive reference manual, "retail price" shall be determined as follows:~~

~~Number of Years Removed From Manual~~	~~Retail Price~~
~~1~~	~~75% of value of same make vehicle last appearing in manual~~
~~2~~	~~50% of value of same make vehicle last appearing in manual~~
~~3~~	~~25% of value of same make vehicle last appearing in manual~~
~~All Others~~	~~10% of value of same make vehicle last appearing in manual;~~

~~(d) In the case of used motor vehicles previously registered in this state, which are sold in this state, a trade-in allowance equal to the "retail price" of the vehicle taken in trade shall be deducted in computing the "retail price" of the vehicle sold.~~

~~(e) If a holder of a U Drive It permit transfers a vehicle which he has registered as a U Drive It within one hundred eighty (180) days of such registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a U Drive It, then the "retail price" of such vehicle shall be the same as the retail price determined in subsection (4)(b) or (c) of this section computed as of the date on which the vehicle is transferred except that the provisions of subsection (d) of this section shall not apply.~~

~~(5) "Wrecked motor vehicle" means any motor vehicle damaged by any cause except wear and tear or rust, including but not limited to damage caused by collision, fire, flood, wind, or vandalism. Any other provision of subsection (4) notwithstanding, the retail price of a wrecked motor vehicle shall be the retail price as determined without reference to this subsection minus the average of the repair estimates submitted to the county clerk. The owner of the wrecked motor vehicle shall obtain a minimum of two (2) repair estimates from disinterested persons regularly engaged in the repair of motor vehicles and submit them to the county clerk~~].

Section 2. KRS 138.460 is amended to read as follows:

(1) ***Except for motor vehicles exempted by KRS 138.470*** ~~[On and after July 1, 1990]~~, a tax ***shall be*** levied upon ***the*** ~~[its]~~ retail price ***of a motor vehicle*** at the rate of six percent (6%) ***and*** shall be paid on the use in this state of every motor vehicle~~[, except those exempted by KRS 138.470,]~~ at the time and in the manner provided in this section. ~~[In the case of trucks of gross weight in excess of ten thousand (10,000) pounds, the tax shall be levied upon ninety percent (90%) of the retail price of the vehicle.]~~

(2) The tax shall be collected by the county clerk or other officer with whom the vehicle is required to be registered:

(a) When [~~he collects~~] the registration fee ***is collected*** for registering and licensing a motor vehicle the first time it is offered for registration in this state; ***or***

(b) [~~Or~~] Upon the transfer of ownership of any motor vehicle previously registered in this state.

(3) The tax collected by the county clerk under this section shall be reported and remitted to the Revenue Cabinet on forms ***prescribed and*** provided by the cabinet [~~and on such forms as the cabinet may prescribe~~]. The county clerk shall [~~for his services in collecting the tax~~] be entitled to retain an amount equal to three percent (3%) of the tax collected and accounted for.

(4) ***A*** [~~No~~] county clerk or other officer shall ***not*** register or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is [~~then~~] being offered for registration for the first time, or transfer the ownership of any motor vehicle previously registered in this state, unless the owner or his agent pays the tax levied under this section in addition to the transfer, registration, and license fees.

(5) When a resident of this state offers a motor vehicle for registration for the first time in this state which was registered in another state that levied a tax substantially identical to the tax levied under this section, ***the resident*** [~~such person~~] shall be entitled to receive a credit against the tax imposed by this section equal to the amount of tax paid to the other state. ***A*** [~~No~~] credit shall ***not*** be given under this subsection for taxes paid in another state if that state does not grant similar credit for substantially identical taxes paid in this state.

(6) ***A*** [~~No~~] county clerk or other officer shall ***not*** register or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is [~~then~~] being offered for registration for the first time, unless the seller or his agent delivers to the county clerk or other officer a certified or photostat copy of the manufacturer's price label for passenger cars or a certified or photostat copy of the itemized billing to the customer in the case of all other motor vehicles***.*** [~~; and~~] The clerk shall attach the certified or photostat copy to the copy of the certificate of registration and ownership mailed to the cabinet.

(7) Notwithstanding the provisions of KRS 138.450(4) ***and (5)***, [~~in no case shall~~] the tax ***shall not*** be less than five dollars ($5) upon first registration of***,*** or any transfer of***,*** ownership of a motor vehicle in this state, except where ***the*** [~~such~~] vehicle is exempt from tax under KRS 138.470.

(8) Where a motor vehicle is sold by a dealer in this state and the purchaser returns the vehicle for any reason to the same dealer within sixty (60) days for a vehicle replacement or a refund of the purchase price, the purchaser shall be entitled to a refund of the amount of usage tax received by the Revenue Cabinet as a result of the registration of the returned vehicle. In the case of a new motor vehicle, the registration of the returned vehicle shall be canceled and the vehicle shall be considered to have not been previously registered in Kentucky when resold by the dealer.

(9) When a manufacturer refunds the retail purchase price or replaces a new motor vehicle for the original purchaser within ninety (90) days because of malfunction or defect, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the Revenue Cabinet as a result of the first registration. ***A*** [~~No~~] person shall ***not*** be entitled to a refund unless ***a report has been*** [~~he shall have~~] filed with the Revenue Cabinet [~~a report from the manufacturer~~] identifying the vehicle that was replaced and stating the date of replacement.

(10) Notwithstanding the time limitations of subsections (8) and (9) of this section, when a dealer or manufacturer refunds the retail purchase price or replaces a motor vehicle for the purchaser as a result of formal arbitration or litigation, or, in the case of a manufacturer, because ordered to do so by a dispute resolution system established under KRS 367.865 or 16 C.F.R. 703, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the Revenue Cabinet as a result of the registration. ***A*** [~~No~~] person shall ***not*** be entitled to a refund unless ***a report has been*** [~~he shall have~~] filed with the Revenue Cabinet [~~a report from the dealer or manufacturer~~] identifying the vehicle that was replaced.

The Committee Substitute to **HB 2** is as follows:

HB 2, AN ACT relating to motor vehicle usage tax.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 138.450 is amended to read as follows:

As used in KRS 138.455 to 138.470, unless the context requires otherwise:

(1) "Dealer" means ***a***[~~any~~] person engaged in the sale of motor vehicles at retail;

(2) "Motor vehicle" means ***a***[~~any~~] vehicle that is propelled by other than muscular power***,*** and that is used for ***the*** transportation of persons or property over the public highways of the state, except road rollers, mopeds, vehicles that travel exclusively on rails, and vehicles propelled by electric power obtained from overhead wires;

(3) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank ***and***[~~so long as it~~] also has pedals, or a motorized bicycle with a step through type frame ***that***[~~which~~] may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding

fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;

(4) ***"Retail price" for used motor vehicles means ninety percent (90%) of the value given in the most recent automotive reference manual prescribed by the Revenue Cabinet. Retail price of a used motor vehicle shall reflect deductions or additions to the estimated value of the vehicle based upon high or low mileage as calculated in the automotive reference manual.***

(5) Except as provided in ***subsections (4) and (6)*** ~~[subsection (5)]~~ of this section, "retail price" shall be determined as follows:

(a) For new motor vehicles***,*** "retail price" shall be ninety percent (90%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges. "Retail price" shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate a physically handicapped operator or passenger***.***~~[;~~

~~(b) For used motor vehicles whose values appear in the automotive reference manual prescribed by the Revenue Cabinet, "retail price" shall be the value given in such reference manual;]~~

(b)~~[(c)]~~For the older used motor vehicles whose values no longer appear in the automotive reference manual, "retail price" shall be determined as follows:

Number of Years Removed From Manual	Retail Price
1	75% of value of same make vehicle last appearing in manual
2	50% of value of same make vehicle last appearing in manual
3	25% of value of same make vehicle last appearing in manual
All Others	10% of value of same make vehicle last appearing in manual;

(c)~~[(d)]~~In the case of used motor vehicles previously registered in this state, which are sold in this state, a trade-in allowance equal to the "retail price" of the vehicle taken in trade shall be deducted in computing the "retail price" of the vehicle sold.

(d)~~[(e)]~~If a holder of a U-Drive-It permit transfers a vehicle which he has registered as a U-Drive-It within one hundred eighty (180) days of such registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a U-Drive-It, then the "retail price" of such vehicle shall be the same as the retail price determined in subsection (4)~~[(b) or (c)]~~ of this section computed as of the date on which the vehicle is transferred except that the provisions of subsection ***(5)(c)***~~[(d)]~~ of this section shall not apply.

(6)~~[(5)]~~ "Wrecked motor vehicle" means any motor vehicle damaged by any cause except wear and tear or rust, including but not limited to damage caused by collision, fire, flood, wind, or vandalism. Any other provision of subsection (4) ***or (5)*** notwithstanding, the retail price of a wrecked motor vehicle shall be the retail price as determined without reference to this subsection minus the average of the repair estimates submitted to the county clerk. The owner of the wrecked motor vehicle shall obtain a minimum of two (2) repair estimates from disinterested persons regularly engaged in the repair of motor vehicles and submit them to the county clerk.

Section 2. KRS 138.460 is amended to read as follows:

(1) ***Except for motor vehicles exempted by KRS 138.470*** ~~[On and after July 1, 1990]~~, a tax ***shall be*** levied upon ***the*** ~~[its]~~ retail price ***of a motor vehicle*** at the rate of six percent (6%) ***and*** shall be paid on the use in this state of every motor vehicle~~[, except those exempted by KRS 138.470,]~~ at the time and in the manner provided in this section. In the case of trucks of gross weight in excess of ten thousand (10,000) pounds, the tax shall be levied upon ninety percent (90%) of the retail price of the vehicle.

(2) The tax shall be collected by the county clerk or other officer with whom the vehicle is required to be registered:

(a) When ~~[he collects]~~ the registration fee ***is collected*** for registering and licensing a motor vehicle the first time it is offered for registration in this state; ***or***

(b) [~~Or~~] Upon the transfer of ownership of any motor vehicle previously registered in this state.

(3) The tax collected by the county clerk under this section shall be reported and remitted to the Revenue Cabinet on forms ***prescribed and*** provided by the cabinet [~~and on such forms as the cabinet may prescribe~~]. The county clerk shall [~~for his services in collecting the tax~~] be entitled to retain an amount equal to three percent (3%) of the tax collected and accounted for.

(4) ***A*** [~~No~~] county clerk or other officer shall ***not*** register or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is [~~then~~] being offered for registration for the first time, or transfer the ownership of any motor vehicle previously registered in this state, unless the owner or his agent pays the tax levied under this section in addition to the transfer, registration, and license fees.

(5) When a resident of this state offers a motor vehicle for registration for the first time in this state which was registered in another state that levied a tax substantially identical to the tax levied under this section, ***the resident*** [~~such person~~] shall be entitled to receive a credit against the tax imposed by this section equal to the amount of tax paid to the other state. ***A*** [~~No~~] credit shall ***not*** be given under this subsection for taxes paid in another state if that state does not grant similar credit for substantially identical taxes paid in this state.

(6) ***A*** [~~No~~] county clerk or other officer shall ***not*** register or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is [~~then~~] being offered for registration for the first time, unless the seller or his agent delivers to the county clerk or other officer a certified or photostat copy of the manufacturer's price label for passenger cars or a certified or photostat copy of the itemized billing to the customer in the case of all other motor vehicles. [~~; and~~] The clerk shall attach the certified or photostat copy to the copy of the certificate of registration and ownership mailed to the cabinet.

(7) Notwithstanding the provisions of KRS 138.450(4) ***and (5)***, [~~in no case shall~~] the tax ***shall not*** be less than five dollars ($5) upon first registration of, or any transfer of, ownership of a motor vehicle in this state, except where ***the*** [~~such~~] vehicle is exempt from tax under KRS 138.470.

(8) Where a motor vehicle is sold by a dealer in this state and the purchaser returns the vehicle for any reason to the same dealer within sixty (60) days for a vehicle replacement or a refund of the purchase price, the purchaser shall be entitled to a refund of the amount of usage tax received by the Revenue Cabinet as a result of the registration of the returned vehicle. In the case of a new motor vehicle, the registration of the returned vehicle shall be canceled and the vehicle shall be considered to have not been previously registered in Kentucky when resold by the dealer.

(9) When a manufacturer refunds the retail purchase price or replaces a new motor vehicle for the original purchaser within ninety (90) days because of malfunction or defect, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the Revenue Cabinet as a result of the first registration. ***A*** [~~No~~] person shall ***not*** be entitled to a refund unless ***a report from the manufacturer has been*** [~~he shall have~~] filed with the Revenue Cabinet [~~a report from the manufacturer~~] identifying the vehicle that was replaced and stating the date of replacement.

(10) Notwithstanding the time limitations of subsections (8) and (9) of this section, when a dealer or manufacturer refunds the retail purchase price or replaces a motor vehicle for the purchaser as a result of formal arbitration or litigation, or, in the case of a manufacturer, because ordered to do so by a dispute resolution system established under KRS 367.865 or 16 C.F.R. 703, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the Revenue Cabinet as a result of the registration. ***A*** [~~No~~] person shall ***not*** be entitled to a refund unless ***a report from the dealer or manufacturer has been*** [~~he shall have~~] filed with the Revenue Cabinet [~~a report from the dealer or manufacturer~~] identifying the vehicle that was replaced.

HB 136, AN ACT relating to automobile dealer license plates.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186.070 is amended to read as follows:

(1) (a) Every manufacturer of, or dealer in, motor vehicles in this state shall register with each county clerk in which his principal office or place of business and branch office, [~~or~~] sub-agent, or agency is located, and pay an annual registration fee of twenty-five dollars ($25) to each clerk.

(b) Upon receipt of ***the twenty-five dollar ($25)*** [~~this~~] fee, the clerk shall issue the manufacturer or dealer a certificate of registration and one (1) dealer plate. Every manufacturer or dealer registered under this section shall be furnished additional dealer's plates upon the payment of twelve dollars and fifty cents ($12.50) for each ***additional*** plate ***requested*** [~~so desired~~]. One dollar ($1) shall be retained ***by the clerk*** for each ***additional*** plate ***issued*** [~~so desired~~].

(c) A motor vehicle bearing dealer's plates may be used on the highways only by the ***following people:***

1. A licensed dealer, [~~or by a~~] bona fide salesman, or employee of the dealer; [~~, or by any~~]

2. ***A*** manufacturer or dealer licensed ***pursuant to the laws of this state*** ~~[as provided above in]~~ transporting ***a*** ~~[any]~~ motor vehicle ~~[over the highways of this state]~~ to his place of retail business from a manufacturer or wholesale dealer in motor vehicles***; and*** ~~[. Any dealer in motor vehicles may allow any]~~

3. ***A*** bona fide customer ***of a licensed dealer,*** or the customer's employees ***when a motor vehicle*** ~~[to use the dealer's tag on the motor vehicle that]~~ is being demonstrated. This provision shall be limited to one (1) trip or demonstration to the same prospective customer.

(d) License plates issued under this section shall ***annually*** expire on December 31.

(e) As used in this section, "bona fide salesman or employee" means a licensed salesman, or an employee, who is actively engaged in and devotes a substantial part of his time to the conduct of the dealer business***.***~~[;]~~

(f)~~[(b)]~~ A vehicle bearing a dealer plate, except when ***that*** ~~[such]~~ vehicle is being transported to ***a*** ~~[that]~~ dealer's place of business from a manufacturer, ***shall*** ~~[must]~~ have, in the case of a new motor vehicle, a "monroney" sticker attached to the vehicle, or, in the case of a used motor vehicle, a Federal Trade Commission buyer's guide sticker attached to the vehicle.

(2) (a) Each manufacturer and dealer when making application for dealer's plates shall file a verified statement on at least a quarterly basis with the ***county*** clerk, giving the name, address***,*** and Social Security number of each dealer, and each bona fide salesman or employee entitled to the use of the plates for demonstration purposes only. When any bona fide salesman or employee so registered is no longer ***employed by the manufacturer or dealer*** ~~[in the employ of the firm]~~, ***the manufacturer or dealer shall file*** an amended verified statement ~~[shall be filed]~~ with the clerk ***stating*** ~~[showing]~~ that fact, and when any additional salesmen or employees are employed, an amended verified statement showing their names and addresses shall be filed with the clerk so that the records in the clerk's office will at all times show the bona fide salesmen and employees actually in the service of the registered dealer or manufacturer;

(b) The names of each dealer and each bona fide salesman and employee shall be entered by the clerk into the AVIS where it will be readily available to law enforcement agencies. ***This*** ~~[Such]~~ information shall be entered by the clerk immediately after each quarterly filing of the verified statement by the dealer;

(c) Any person who is hired as a driver by a motor vehicle dealer for the limited, specific purpose of transporting a motor vehicle to or from that dealer's place of business shall be authorized, for that purpose only, to operate a motor vehicle bearing a dealer plate. For the purpose of ***this paragraph*** ~~[such operation]~~, the dealer shall provide to that driver a permit, provided by the Transportation Cabinet***. The***~~[, such]~~ permit ***shall*** ~~[to]~~ be valid for ~~[no longer than]~~ five (5) days from the date of issuance. ***A*** ~~[No]~~ fee shall ***not*** be charged for ***the*** ~~[such]~~ permit.

(3) The license of any dealer or manufacturer may be revoked by the Transportation Cabinet for the violation of any of the provisions of this section. ***A*** ~~[Such]~~ manufacturer or dealer shall be given an opportunity to be heard in defense of the charge that he has violated any of the provisions of this section and the Transportation Cabinet shall ~~[adopt and]~~ promulgate ***administrative*** ~~[rules and]~~ regulations governing the ***revocation*** procedure ~~[for such revocation]~~. ***A*** ~~[Provided, however, that any]~~ manufacturer or dealer whose license is ~~[so]~~ revoked may ~~[prosecute an]~~ appeal ***the revocation*** to the Kentucky Board of Tax Appeals as provided by law. ***A*** ~~[Such]~~ manufacturer or dealer whose license has been suspended is prohibited from engaging in the business of selling or buying motor vehicles. The license of any manufacturer or dealer shall be revoked for a period of one (1) year and his dealer's plates canceled ***if*** ~~[in the event]~~ he violates any of the provisions of this section during this suspension period or has been suspended by the cabinet more than twice for violations of this section. At the end of the revocation or suspension period the manufacturer or dealer whose license has been revoked or suspended and dealer's plates canceled may follow the provisions of this section and again be registered and secure dealer's plates from the clerk.

(4) The Transportation Cabinet shall be responsible for the ***issuance and cancellation of the plates provided for in this section, and the motor vehicle commission shall be responsible for the enforcement*** ~~[administration]~~ of this section, except for the normal responsibilities of law enforcement agencies***. The cabinet may***~~[, and is empowered to]~~ promulgate ***administrative*** ~~[rules and]~~ regulations pertaining to the administration ***of this section*** ~~[thereof]~~.

The Committee on Transportation reported **HB 184, HB 341,** and **HB 365** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 184, AN ACT relating to motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186.240 is amended to read as follows:

(1) It shall be the duty of the cabinet to carry out the provisions of KRS 186.005 to 186.260, and:

(a) Prepare and furnish to the clerk in each county a sufficient supply of all forms and blanks provided for in KRS 186.005 to 186.260. The forms for receipts shall be designated for the writing of not less than triplicate copies, the originals ~~[of which]~~ shall be numbered consecutively for each county, ***and*** the second and third copies ***shall***

bear[~~bearing~~] the same number as the original. Receipts to be used as duplicates for lost receipts, as provided in KRS 186.180(1), shall be in duplicate [~~only~~], and shall not be numbered;

(b) Keep a numerical record of all registration numbers issued in the state, for which they may use the second copy of receipts forwarded by the clerk of each county, and also keep a record of motor or vehicle identification numbers required by KRS 186.160; and

(c) Furnish to each clerk, originally each year upon estimate, and thereafter upon requisition at all times, a sufficient supply of plates and other insignia evidencing registration for all classes of vehicles required to be registered. The cabinet shall prescribe a plate of practical form and size for police identification purposes that shall contain:

1. The registration number;
2. The word "Kentucky;" and
3. The name of the county in which the plate is issued, or in lieu thereof the words "Official," "Transportation," "Executive," or "Farm." Plates for commercial vehicles[~~,~~] shall contain the year the license expires and words or information the Department of Vehicle Regulation may prescribe by administrative regulation, pursuant to KRS Chapter 13A. Numerals indicating a year shall not be placed upon any license plate issued pursuant to KRS 186.060, relating to the licensing of vehicles owned exclusively by the state and KRS 186.061, relating to the licensing of vehicles owned exclusively by a nonprofit volunteer fire department, volunteer fire prevention unit, and volunteer fire protection unit. A state slogan may be placed upon the plate.

(2) License plates issued pursuant to KRS 186.050(1) shall conform to the provisions of subsection (1)(c) of this section except:

(a) The word "Kentucky" shall be centered above the county name in which the plate is issued;

(b) The words "Bluegrass State" shall be centered at the ***bottom***[~~top~~] of the plate ***below***[~~above~~] the registration number; and

(c) The name of the county in which the plate is issued shall be centered in the ***upper***[~~lower~~] portion of the plate ***above***[~~below~~] the registration number***.*** [~~and shall be printed in letters that are the same size as those used to print the word "Kentucky." Beginning January 1, 1993,~~] The Transportation Cabinet shall provide for the issuance of reflectorized plates for all motor vehicles, and shall collect a fee, in addition to the fee set out in KRS Chapter 186 and KRS 281.860, of fifty cents ($0.50);

(3) [~~(a) Upon initial application or registration renewal in calendar year 1991, persons registering a motor vehicle according to KRS 186.050(1) or (3)(a) shall receive a "bicentennial" license plate, in lieu of the registration plate described in subsection (2) of this section. Applications shall be accompanied by payment of the regular registration fee;~~]

~~(b) The "bicentennial" license plate shall be designed by the Bicentennial Commission and approved by the Transportation Cabinet and shall be issued for calendar year 1991 and shall expire at the end of the applicant's renewal month in 1993 and shall not be renewable thereafter. At the time of renewal in 1992, the clerk shall issue a renewal decal designed by the commission and as approved by the Transportation Cabinet;~~

~~(c) The registration plate under this subsection shall be issued for a period of two (2) years, replacing the regular registration plate, and shall be subject to the registration provisions of KRS Chapter 186, the provisions of this section notwithstanding;~~

~~(4)~~] The Transportation Cabinet shall receive all moneys forwarded by the clerk in each county and turn it over to the State Treasurer for the benefit of the state road fund;

(4)[~~(5)~~] The Transportation Cabinet shall require an accounting by the clerk in each county for any moneys received by him under the provisions of this chapter, after the deduction of his fees under this chapter, and for all receipts, forms, plates, and insignia consigned to him. The Auditor of Public Accounts, pursuant to KRS 43.071, shall annually audit each county clerk concerning his responsibilities for the collection of various fees and taxes associated with motor vehicles. The secretary of the Transportation Cabinet, with the advice, consultation, and approval of the Auditor, shall develop and implement an inventory and accounting system which shall insure that the audits mandated in KRS 43.071 are performed in accordance with generally accepted auditing standards. The Transportation Cabinet shall pay for the audits mandated by KRS 43.071; and

(5)[~~(6)~~] When applied for under KRS 186.160, motor or vehicle numbers assigned shall be distinctive to show that they were designated by the cabinet.

HB 341, AN ACT relating to commercial driver's licenses.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 281A.160 is amended to read as follows:

(1) ***Except as provided in subsection (3) of this section,*** the State Police shall be responsible for administering both the

knowledge and skills test required by KRS 281A.130.

(2) The State Police, upon request of an applicant who has passed both the vision and knowledge tests, may schedule the applicant for the skills test at the first available test date at a test site designated by the state police but not less than ten (10) days after the applicant has filed his application.

(3) [~~Notwithstanding subsection (1) of this section,~~] The state police ***shall*** [~~may~~] authorize a person, including an agency of this or another state, an employer, a private driver training facility, a private institution, or a department, agency, or instrumentality of local government, to administer the knowledge ***and*** [~~or~~] skills test specified by this section, if:

(a) The test is the same that would otherwise be administered by the state; and

(b) The third party has entered into an agreement with this Commonwealth which complies with requirements of Title 49, Code of Federal Regulations, Part 383.75, as adopted by the Transportation Cabinet.

(4) ***A third-party tester authorized by subsection (3) of this section may provide a vehicle for a person to use during the skills portion of the commercial driver's license exam. If the third-party tester provides a vehicle, he may charge the person taking the skills test a fee of twenty-five dollars ($25) for use of the vehicle.***

(5) Applicants shall be permitted to take the knowledge or skills test for a particular class vehicle an unlimited number of times; however, ***an*** [~~no~~] applicant ***shall not*** [~~may~~] retest more than one (1) time in any twenty-four (24) hour period. Subject to the provisions of KRS 281A.150, a fee shall be charged for each test that is retaken as a result of a failing score.

(6)[~~(5)~~] An applicant who seeks reinstatement of a commercial driver's license after a suspension, withdrawal, revocation, or disqualification of less than one (1) year shall pay the reinstatement fee as prescribed by KRS 281A.150(6) and shall receive his commercial driver's license with all endorsement and restrictions that were in effect at the time of suspension. An applicant who seeks reinstatement of a commercial driver's license after a suspension, withdrawal, revocation, or disqualification of one (1) year or more shall submit to the skills, knowledge, and vision tests.

HB 365, AN ACT relating to motor vehicle operator's licenses.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186.412 is amended to read as follows:

(1) ***Except as provided in subsection (6) of this section,*** every person seeking an ***original or renewal*** operator's license ***to operate***[~~, or a renewal of an operator's license for the operation of~~] a motor vehicle, motorcycle, [~~or~~] moped***,*** or ***obtain*** an identification card shall apply in person to the circuit [~~Court~~] clerk of the county in which the applicant resides ***on*** [~~and shall make application upon~~] a form furnished by the Transportation Cabinet. The application form shall contain [~~and shall require~~] the ***applicant's*** full and legal name and signature, date of birth, Social Security number, sex, present resident address***, and brief physical description*** [~~of the applicant, and briefly describe the applicant~~]. It shall also state whether the applicant has previously been licensed as an operator and if so, when and by what state or county, whether any license has ever been canceled, suspended, revoked, or refused, and if so, the date of and reason for the cancellation, suspension, revocation, or refusal, and [~~such~~] other information ***the cabinet*** [~~as~~] may ***require*** [~~be required~~].

(2) The Transportation Cabinet shall issue a plastic laminated operator's license bearing [~~thereon~~] a color photograph of the ***applicant. The*** [~~licensee, which~~] photograph shall be taken by the circuit clerk ***so*** [~~in such a manner~~] that one (1) exposure will photograph the applicant and the application simultaneously, using the process determined under provisions of KRS 186.413. The license shall designate by color coding and [~~by~~] use [~~of~~] the phrase "under (21)" if the licensee is under the age of twenty-one (21); "CDL" if the license is issued pursuant to KRS Chapter 281A; or "under 21 CDL" if the licensee holds a commercial driver's license issued pursuant to KRS Chapter 281A and is under twenty-one (21).

(3) Every applicant shall make oath to the circuit clerk as to the truthfulness of the statements contained in the form.

(4) The clerk may, after determining that the applicant has fully complied with the law governing applications, issue a temporary operator's license to be valid for not more than ninety (90) days. The temporary license shall be valid in lieu of the permanent license during the certification period and shall be destroyed upon receipt of the permanent operator's license.

(5) Every person seeking a color photo identification card may apply in person to the circuit clerk in the county in which he resides. When requested by the clerk, a person shall bring a birth certificate and Social Security card. The Social Security card shall contain his signature. Every applicant shall make oath to the circuit clerk as to the truthfulness of the statements contained on the form. The identification card shall designate by color coding and by use of the phrase "under (21)" if the licensee is under the age of twenty-one (21).

(6) Military personnel and other licensed drivers temporarily out-of-county may be issued a license without a photograph. The license shall show in the space provided for the photograph the legend "valid without photo and signature." ***If a citizen of the Commonwealth has been serving in the United States military and has allowed his operator's license to expire, he shall be permitted to renew his license without having to take a written test or road test.***

(7) The cabinet shall provide on each license to operate motor vehicles or motorcycles issued a space for the licensed driver's blood type; a space for a medical insignia to be stamped with the proper insignia by the circuit ~~[Court]~~ clerk, if the person provides evidence that a medical identification bracelet noting specific physical ailments or a drug allergy is being worn or other proof as may be required by the cabinet; and a statement whereby the owner of the license may certify in the presence of two (2) witnesses his willingness to make an anatomical gift under KRS 311.195. In addition, if the motor vehicle operator denotes a physical ailment or drug allergy on the license, he may apply for and shall receive, for a fee of one dollar ($1), a medical insignia decal which may be affixed to the lower left side of the front windshield of a motor vehicle. The applicant shall remit a fee of one dollar ($1) to the circuit clerk, at which time the clerk shall issue the insignia.

(8) An operator's license as issued pursuant to this section shall be designated a Class D license.

(9) ***A*** ~~[No]~~ person shall ***not*** have more than one (1) license.

Section 2. KRS 186.480 is amended to read as follows:

(1) The State Police may examine every unlicensed applicant for an operator's license except as otherwise provided in this section. The examination shall be held in the county where the applicant resides unless the applicant is granted written permission by the circuit clerk of the county in which he resides to take the examination in another county, and the State Police agree to arrange for the examination in the other county. The examination may include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning and directing traffic, his knowledge of traffic laws and an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle. An applicant for a motorcycle operator's license shall be required to show his ability to operate a motorcycle, in addition to other requirements of this section. The provisions of this subsection shall not apply to an applicant who***:*** ~~[,]~~

(a) At the time of application, holds a valid operator's license from another state, provided that state affords a reciprocal exemption to a Kentucky resident***; or***

(b) Is a citizen of the Commonwealth who has been serving in the United States military and has allowed his operator's license to expire. ~~[The Division of Driver's Licensing in the Transportation Cabinet shall by July 1, 1988, inform the agencies in all other states which issue operators' licenses of the reciprocal exemption available. The division shall actively seek to obtain, either through a statutory change or agreement between themselves and these other states, the same exemption for Kentucky residents as is afforded in this subsection.]~~

(2) Any person whose operator's license is denied, suspended***,*** or revoked for cause shall apply for reinstatement at the termination of the period for which the license was denied, suspended***,*** or revoked by submitting to the examination. The provisions of this subsection shall not apply to any person whose license was suspended for failure to meet the conditions described in KRS 186.411 when, within one (1) year of suspension, the driving privileges of such individuals are reinstated.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Health and Welfare: **HB 374, HB 407, HB 408, HB 353**

Appropriations and Revenue: **HB 48, HB 283, HB 398, HB 411**

Business Organizations and Professions: **HB 27**

Agriculture and Small Business: **HB 395**

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 104**, by Representative Long:

On page 1, line 20 after the "." by adding the following language; "***The Revenue Cabinet shall offer two (2) regular examinations.***"; and

On page 1, line 20 by deleting the word "***examination***" ; and

On page 1, line 21, by removing the opening bracket, strikethroughs and closing bracket from the word "examinations"; and

On page 1, line 21 after the word "***Kentucky***" by adding the following new language: "***on the third Saturday in October of each year preceding each year in which property valuation administrators are to be elected, and***"; and

On page 1, line 24, after the ".", by adding the following language: "***Any person failing to obtain a certificate based upon the results of the October examination may take the examination again in January.***"

On page 3, by deleting lines 7 through 12 in their entirety; and

On page 3, line 13, by deleting "*(6)*" and inserting in lieu thereof "*(5)*"; and

On page 3, line 21, by deleting "*(7)*" and inserting in lieu thereof "*(6)*".

Calendar

HB 34, HB 73, HB 220, HB 239, HB 154, HB 169, HB 211, HB 30 and **HB 322** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Representative Stumbo moved that the rules be suspended to introduce guests. Agreed.

Representative Ballard moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Ballard moved the adoption of the following **Legislative Citation No. 44**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to Pride Elementary School Fourth Grade Students and Faculty in recognition of their display here in the Capitol and their study on Kentucky Heritage. Your time and effort toward the success of the Kentucky Heritage project is outstanding, and you have brought a great deal of recognition to your school. The entire membership joins Representative Eddie Ballard in extending its very best wishes on this memorable occasion.

Orders of the Day

HB 6, with Committee Substitutes attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Gedling moved the adoption of the Committee Substitute No. 2 to **HB 6**. Agreed.

Representative Gedling moved that **HB 6**, by way of Committee Substitute No. 2, be passed.

On the roll call the vote was: Yeas 93, Nays 0. (See February 3, 1994 roll call on **HB 6** - Appendix)

HB 6, by way of Committee Substitute No. 2, was passed and the title agreed to.

Representative Gedling moved that the vote by which **HB 6**, by way of Committee Substitute No. 2, was passed be reconsidered and said motion be placed on the table. Agreed.

Representative Harper moved that the rules be suspended to introduce a former member and to grant floor privileges. Agreed.

HR 16 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bruce moved that **HR 16** be adopted.

HR 16 was adopted.

Motions, Petitions and Communications

Representative Stumbo moved that **HB 398** be reassigned to the Committee on Counties and Special Districts. Agreed.

Representative Stumbo moved that the rules be suspended for the Introduction of Bills and Resolutions and Committee Reports. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 426, by Representative B. Smith: AN ACT relating to insurance.

HB 427, by Representative B. Smith: AN ACT relating to insurance.

HB 428, by Representative Burch: AN ACT relating to the registry of malpractice claims against physicians.

HB 429, by Representative Little: AN ACT relating to the Workforce Development Cabinet.

HB 430, by Representative Rapier: AN ACT relating to crimes and punishments.

HB 431, by Representative Rapier: AN ACT relating to liquefied petroleum gas.

HB 432, by Representative Palumbo: AN ACT relating to the state board of examiners and registration of landscape architects.

HB 433, by Representatives Sanders, Arnold, Buis, Gedling and French: AN ACT relating to prisoners.

HB 434, by Representative McElroy: AN ACT relating to the leasing and vesting of title to severed mineral interests in surface owners.

HB 435, by Representative Northup: AN ACT relating to medical assistance.

HB 436, by Representatives B. Smith and Farrow: AN ACT relating to grain.

HB 437, by Representative Riner: AN ACT relating to the Code of Legislative Ethics.

HB 438, by Representative Scorsone: AN ACT relating to educators.

HB 439, by Representative Geveden: AN ACT relating to a seismic monitoring network and making an appropriation therefor.

HB 440, by Representative Geveden: AN ACT relating to embalmers and funeral directors.

HB 441, by Representative R. Smith: AN ACT relating to penalties for violating provisions of KRS Chapter 278.

HB 442, by Representative Curd: AN ACT relating to the Education Professional Standards Board.

HB 443, by Representative Wayne: AN ACT relating to the audit of public funds.

HB 444, by Representative Collins: AN ACT relating to escheats.

HCR 30, by Representative Burch: A CONCURRENT RESOLUTION to create a Task Force on family caregivers in Kentucky.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Judiciary: **HB 232**

Appropriations and Revenue: **HB 400**

Floor Amendments (Continued)

Floor Amendment No. 4 to the Committee Substitute to **HB 215**, by Representative Napier:

On page 7, lines 4 and 5, after "(25)" by deleting the remainder of the material on line 4 and by deleting line 5 in its entirety

And page 7, line 6, by deleting "***(26)***"

And on page 7, line 9, by deleting "***(27)***" and by removing the brackets and strike throughs from "(26)"

Floor Amendment No. 6 to the Committee Substitute to **HB 215**, by Representative Lindsay:

On page 1, line 20, by removing the brackets and strike throughs from the material on lines 20 and 21

And on page 1, line 20, before "(4)" by inserting "***(5)***" and by placing brackets around and striking through "(4)" and after "subsection" by inserting "***(7)***" and by placing brackets around and striking through "(2)"

And on page 1, line 22, before "(5)" by inserting "***(6)***" and by placing brackets around and striking through "(5)"

And on page 2, line 1, before "(6)" by inserting "***(7)***" and by placing brackets around and striking through "(6)"

And on page 2, lines 2 to 3, by deleting the words "***properly adjusted and***"

And on page 2, line 11, by deleting "***(7)***" and inserting in lieu thereof "***(8)***" and by deleting "***or seize***"

And on page 2, line 12, by deleting "***(6)***" and inserting in lieu thereof "***(7)***"

And on page 2, line 13, by deleting "***or seize***" and by deleting "***(6)***" and inserting in lieu thereof "***(7)***"

And on page 2, line 13, after "***section.***" by inserting "***A passenger shall not be in violation of subsection (7) of this section for failure to wear a seat belt, if all the manufacturer installed seat belts are being used and an additional seat belt is not available.***"

And on page 2, line 14, by deleting "***(8)***" and inserting in lieu thereof "***(9)***" and by deleting "***(6) and (7)***" and inserting in lieu thereof "***(7) and (8)***"

And on page 2, line 16, by deleting "***(6) and (7)***" and inserting in lieu thereof "***(7) and (8)***"

And on page 7, line 4, by deleting "***(6)***" and inserting in lieu thereof "***(7)***"

And on page 7, line 5, by deleting "***twenty-five dollars ($25)***" and inserting in lieu thereof "***ten dollars ($10)***"

Motions, Petitions and Communications (Continued)

Representative Deskins moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Deskins moved that he be recorded as voting "yea" on **HB 191**, **HB 13**, **HB 31**, **HB 85** and **HB 157**. Agreed.

The following members filed requests to have their names added as co-sponsors to Bills: **HB 6**, Representative Nelson; **HB 222**, Representatives Shacklette, Trapp; **HB 408**, Representative Trapp; **HB 368**, Representatives Arnold, Fox.

Representative Stumbo moved that no further business be conducted on this day other than the filing of Floor Amendments. Agreed.

Representative Stumbo moved that when the House adjourns, it does so by voice vote. Agreed.

Representative Stumbo moved that when the House adjourns, it does so until 9:00 a.m., Friday, February 4, 1994. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to the Committee Substitute to **HB 96**, by Representative Riner:

On page 16, between lines 25 and 26, to add the following,

Section 16. KRS 532.080 is amended to read as follows:

"(1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the sentence of imprisonment assessed under KRS 532.060 for the crime of which such person presently stands convicted, shall fix a sentence of imprisonment as authorized by subsection (5) or (6) of this section. When a defendant is charged with being a persistent felony offender, the determination of whether or not he is such an offender and the punishment to be imposed pursuant to subsection (5) or (6) of this section shall be determined in a separate proceeding from that proceeding which resulted in his last conviction. Such proceeding shall be conducted before the court sitting with the jury that found the defendant guilty of his most recent offense unless the court for good cause discharges that jury and impanels a new jury for that purpose.

(2) A persistent felony offender in the second degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of one (1) previous felony. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

(a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and

(b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and

(c) That the offender:

1. Completed service of the sentence imposed on the previous felony conviction within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

2. Was on probation, parole, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or

3. Was discharged from probation, parole, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or

5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

(3) A persistent felony offender in the first degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of two (2) or more felonies. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

(a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and

(b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and

(c) That the offender:

1. Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which he now stands convicted; or

2. Was on probation, parole, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or

3. Was discharged from probation, parole, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or

5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

(4) For the purpose of determining whether a person has two (2) or more previous felony convictions, two (2) or more convictions of crime for which that person served concurrent or uninterrupted consecutive terms of imprisonment shall be deemed to be only one (1) conviction, unless one (1) of the convictions was for an offense committed while that person was imprisoned.

(5) A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted. A person who is found to be a persistent felony offender in the second degree shall not be eligible for probation, shock probation or conditional discharge.

(6) A person who is found to be a persistent felony offender in the first degree shall be sentenced to imprisonment as follows:

(a) If the offense for which he presently stands convicted is a Class A or Class B felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than twenty (20) years nor more than life imprisonment; or

(b) If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years.

(7) A person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, nor for parole until having served a minimum term of incarceration of not less than ten (10) years.

(8) The provisions of any other statute to the contrary notwithstanding, a person who has been convicted a second or subsequent time of an offense described in KRS 532.045(2) and who on each occasion has occupied a position of authority or position of special trust as described in KRS 532.045(1) shall be deemed to be a persistent felony sex offender and in lieu of the sentence provided for the underlying offense or for a persistent felony offender in the first or second degree, shall be sentenced to life imprisonment without probation, conditional discharge, diversion, or other form of early release, or possibility of parole."; and

On page 16, line 26, to delete "16" and to insert in lieu thereof "17".

Recess

Representative Stumbo moved that the House recess for thirty minutes. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Floor Amendments (Continued)

Floor Amendment No. 2 to the Committee Substitute to **HB 169**, by Representative Bowling:

On page 1, line 7, after "Education.", by adding the following sentence:

"***He shall disapprove any plan or specification he deems to be energy inefficient, based on the life-cycle energy cost analysis prepared pursuant to KRS 162.070.***; and

On page 2, line 3, after "***program***" by adding "***, taking into consideration the energy efficiency of submitted designs***"; and

On page 2, line 8, after "***designs,***", by adding "***the energy life-cycle cost analysis for each design,***"; and

On page 2, after line 13, by adding the following section:

Section 2. KRS 162.070 is amended to read as follows:

The contracts for the erection of new school buildings, additions and repairs to old buildings, except additions or repairs not exceeding seven thousand five hundred dollars ($7,500), shall be made by the board of education with the lowest and best responsible bidder complying with the terms of the letting, after advertisement for competitive bids pursuant to KRS Chapter 424, ***taking into account the energy-related costs over the life of the project,*** but the board may reject any or all bids. All necessary specifications and drawings shall be prepared for all such work ***and a life-cycle energy cost analysis shall be included in any bid. The State Board for Elementary and Secondary Education shall promulgate administrative regulations to establish guidelines for preparation of life-cycle energy cost analyses***. The board shall advertise for bids on all supplies and equipment that it desires to purchase, except where the amount of the purchase does not exceed seven thousand five hundred dollars ($7,500), and shall accept the bid of the lowest and best bidder, but the board may reject any and all bids.

Floor Title Amendment No. 2 to the Committee Substitute to **HB 215**, by Representative Little:

On page 1, the title, delete the title appearing thereon and insert in lieu thereof:

"AN ACT proposing to amend the Constitution of Kentucky by creating a Section 226B relating to the use of seatbelts, and child restraints."

Floor Amendment No. 7 to the Committee Substitute to **HB 215**, by Representative Little:

From page 1, line 1, to page 7, line 18, delete all text and to insert in lieu thereof:

"SECTION 1. IT IS PROPOSED THAT A NEW SECTION BE ADDED TO THE CONSTITUTION OF KENTUCKY TO BE NUMBERED 226B AND BE READ AS FOLLOWS:

(1) Except as otherwise provided in this section, "motor vehicle" as used in this section means every vehicle designed to carry ten (10) or fewer passengers and used for the transportation of persons, but the term does not include:

(a) Motorcycles; or

(b) Motor driven cycles.

(2) No person shall sell any new passenger vehicle in this state nor shall any person make application for registering a new passenger vehicle in this state unless the front or forward seat or seats have adequate anchors or attachments secured to the floor and/or sides to the rear of the seat or seats to which seat belts may be secured.

(3) Any driver of a motor vehicle, when transporting a child of forty (40) inches in height or less in a motor vehicle operated on the roadways, streets and highways of this state, shall have the child properly secured in a child restraint system of a type meeting federal motor vehicle safety standards.

(4) As used in this section, "child restraint system" means any device manufactured to transport children in a motor vehicle which conforms to all applicable federal motor vehicle safety standards.

(5) Failure to wear a child passenger restraint shall not be considered as contributory negligence, nor shall such failure to wear said passenger restraint system be admissible as evidence in the trial of any civil action. Failure of any person to wear a seat belt shall not constitute negligence per se.

(6) No person shall operate a motor vehicle manufactured after 1965 on the public roadways of this state unless the driver and all passengers are wearing a properly adjusted and fastened seat belt, unless the passenger is a child who is secured as required in subsection (3) of this section. The provisions of this subsection shall not apply to:

(a) A person who has in his possession at the time of the conduct in question a written statement from a physician or licensed chiropractor that he is unable, for medical or physical reasons, to wear a seat belt; or

(b) A letter carrier of the United States postal service while engaged in the performance of his duties.

(7) A peace officer shall not stop or seize a person nor issue a uniform citation for a violation of subsection (6) of this section if the officer has no other cause to stop or seize the person other than a violation of subsection (6) of this section.

(8) The provisions of subsections (6) and (7) of this section shall supersede any existing local ordinance involving the use of seat belts. No ordinance contrary to subsections (6) and (7) of this section may be enacted by any unit of local government.

(9) Any person who violates the provisions of subsection (3) of this section shall be fined fifty dollars ($50).

(25) Any person who violates the provisions of subsection (6) of this section shall be fined an amount not to exceed twenty-five dollars ($25).

Section 2. This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under KRS 118.415."

Floor Amendment No. 5 to the Committee Substitute to **HB 215**, by Representative Lindsay:

On page 1, line 20, by removing the brackets and strike throughs from the material on lines 20 and 21

And on page 1, line 20, before "(4)" by inserting "***(5)***" and by placing brackets around and striking through "(4)" and after "subsection" by inserting "***(7)***" and by placing brackets around and striking through "(2)"

And on page 1, line 22, before "(5)" by inserting "***(6)***" and by placing brackets around and striking through "(5)"

And on page 2, line 1, before "(6)" by inserting "***(7)***" and by placing brackets around and striking through "(6)"

And on page 2, lines 2 to 3, by deleting the words "***properly adjusted and***"

And on page 2, line 11, by deleting "***(7)***" and inserting in lieu thereof "***(8)***" and by deleting "***or seize***"

And on page 2, line 12, by deleting "***(6)***" and inserting in lieu thereof "***(7)***"

And on page 2, line 13, by deleting "***or seize***" and by deleting "***(6)***" and inserting in lieu thereof "***(7)***"

And on page 2, line 13, after "***section.***" by inserting "***A passenger shall not be in violation of subsection (7) of this section for failure to wear a seat belt, if all the manufacturer installed seat belts are being used and an additional seat belt is not available.***"

And on page 2, line 14, by deleting "***(8)***" and inserting in lieu thereof "***(9)***" and by deleting "***(6) and (7)***" and inserting in lieu thereof "***(7) and (8)***"

And on page 2, line 16, by deleting "***(6) and (7)***" and inserting in lieu thereof "***(7) and (8)***"

And on page 7, line 4, by deleting "***(6)***" and inserting in lieu thereof "***(7)***"

Announcements

The Clerk announced the following meetings:

Budget Review Subcommittee on Tourism, one-half hour upon adjournment, Room 125

Tourism Development and Energy, fifteen minutes upon adjournment, Room 129

Adjournment

Representative Richards moved that the House adjourn until 9:00 a.m., Friday, February 4, 1994.

The motion to adjourn was adopted by voice vote.

FRIDAY, FEBRUARY 4, 1994

TWENTY-FIRST LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend Mike Currans, Capital City Christian Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Hancock, Hatcher, Keith, Ridley and R. Smith.

Senate Message

Announcing passage of **SB 11, SB 85, SB 106, SJR 13, SJR 27** (Time: 9:0 5 a.m.)

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of February 3, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Representative Stumbo moved that the House and Senate resolve in to Joint Session. Agreed.

Representative Stumbo moved that floor privileges be granted to the Constitutional Officers and invited guests. Agreed.

Joint Session

The Chief Doorkeeper announced the arrival of the President of the Senate.

The President of the Senate assumed the Chair and called the Joint Session to order.

Representative Stumbo moved to dispense with a call of the roll. Agreed.

Speaker Clarke introduced Dan Sprague who briefly addressed the General Assembly.

Representative Stumbo moved that the Joint Session of the House and Senate be dissolved. Agreed.

The Speaker resumed the Chair.

Introduction of Bills and Resolutions

HB 445, by Representative Long: AN ACT relating to licensure fees for the board of physical therapy.

HB 446, by Representative Cyrus: AN ACT relating to sales and use tax.

HB 447, by Representative Little: AN ACT relating to motor vehicles.

HB 448, by Representative Little: AN ACT relating to hazardous materials.

HB 449, by Representative Johnson: AN ACT relating to liquefied petroleum gas.

HB 450, by Representatives Arnold, Lyne and Farrow: AN ACT relating to incarceration of prisoners.

HB 451, by Representative Farrow: AN ACT relating to mortgages.

HB 452, by Representative Farrow: AN ACT relating to pesticides.

HB 453, by Representative Rapier: AN ACT relating to landlord and tenant.

HB 454, by Representative B. Smith: AN ACT proposing to amend Section 54 of the Constitution of Kentucky relating to recovery restrictions.

HB 455, by Representative Long: AN ACT relating to sales and use tax.

HB 456, by Representative Long: AN ACT relating to property tax administration.

HB 457, by Representative Maggard: AN ACT relating to medical records.

HB 458, by Representative Moberly: AN ACT relating to deaf or hard of hearing students attending public institutions of higher education.

HB 459, by Representative Lewis: AN ACT relating to crime, punishment, and corrections.

HB 460, by Representatives Collins and Stumbo: AN ACT relating to public safety.

HB 461, by Representative Stengel: AN ACT relating to the civil jurisdiction of District Court.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Agriculture and Small Business: **HB 436**

Banking and Insurance: **HB 426, HB 427**

Business Organizations and Professions: **HB 432**

Cities: **SB 120**

Education: **HB 438, HB 442**

Health and Welfare: **HCR 30, HB 428, HB 435, HB 440**

Judiciary: **HB 430, HB 444**

Labor and Industry: **HB 425, HB 431**

Natural Resources and Environment: **HB 434, HB 439**

State Government: **SB 61, HB 429, HB 433, HB 437, HB 443**

Tourism Development and Energy: **HB 441**

Transportation: **HB 424**

Floor Amendments

Floor Amendment No. 3 to **HB 104**, by Representative French:

On page 3, line 7, after the "***(5)***" by inserting the following: "***A person that does not hold a valid certificate issued by the Revenue Cabinet shall not be eligible as a write-in candidate for the office of property valuation administrator.***" and by deleting the remainder of the new language; and

On page 3, beginning with line 8 and ending with line 12, by deleting the language in its entirety.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills and Resolutions have been posted for Committee consideration:

Counties and Special Districts: **HB 398, HB 410, HB 306, HB 186**

Education: **HB 256, HB 304, HB 328, HB 329, HB 327, HR 18, HJR 23**

Appropriations and Revenue: **HB 127, HB 423**

Report of Committees

The Committee on State Government reported **HB 175, HB 234**, with Committee Amendment attached thereto, **HB 269, HB 277,** with Committee Amendment attached thereto, **HB 295, HB 299**, with Committee Substitute attached thereto, **HB 325, HB 339, HCR 19, HR 20, SB 44** and **HB 315**, with Committee Amendments attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 175, AN ACT relating to the affordable housing trust fund.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 198A.700 is amended to read as follows:

As used in KRS 198A.700 to 198A.730, unless the context otherwise requires:

(1) "Homeless individual" means a person who:
  (a) Lacks a fixed, regular, or adequate nightime residence;
  (b) Is at risk of becoming homeless in a rural or urban area because the residence is not safe, decent, sanitary, or secure;
  (c) Has as a primary nighttime residence a publicly- or privately-operated shelter designed to provide temporary living accommodations;
  (d) Has as a primary nightime residence a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or
  (e) Is a family or a person who does not have access to normal accommodations due to violence or the threat of violence from a cohabitant.

(2) "Nonprofit organization" means an organization duly organized and validly existing as a not-for-profit organization under the laws of the Commonwealth, any other state, or the United States and whose purpose includes the development, construction, rehabilitation, or acquisition of housing.

(3) "Technical assistance" means activities that are directly related to a nonprofit organization's ability to provide housing for very low-income persons in assisted projects under KRS 198A.700 to 198A.730, and includes land use and planning costs, design and engineering services, finance services, loan packaging assistance, program development assistance, construction consultation, and marketing assistance for developers, and budgeting assistance, independent living skill development, homeownership, tenant education, and self-sufficiency development for renters and homeowners.

(4) "Trust fund" means the affordable housing trust fund.

(5) "Very low-income" means the income of individuals or families that is below ***sixty percent (60%)*** [~~fifty percent (50%)~~] of the ***area*** median income for the Commonwealth as determined by the United States Department of Housing and Urban Development.

Section 2. KRS 198A.715 is amended to read as follows:

(1) The administering agency for the trust fund shall be the Kentucky Housing Corporation, which shall use moneys from the trust fund to make, or participate in the making, of loans or grants for the eligible activities described in this section. Loans or grants shall be made upon the determination by the corporation that the loan or grant shall be used to create new sources of funding, or to supplement existing sources of funding for eligible activities, and shall not be used to replace existing or available funds.

(2) Activities eligible for funding shall include:
  (a) Provision of matching funds for federal housing dollars requiring a local or state match including, but not limited to, the National Affordable Housing Act of 1990;
  (b) Acquisition of housing units for the purpose of preservation or conversion as very low-income housing;
  (c) New construction or rehabilitation of very low income housing units;
  (d) Matching funds for technical assistance directly related to providing housing for persons pursuant to KRS 198A.700 to 198A.730; and
  (e) Administrative costs for housing assistance programs or organizations eligible for funding pursuant to subsection (3) of this section, if the grants or loans will substantially increase the recipient's access to housing funds other than those available under KRS 198A.700 to 198A.730.

(3) Organizations eligible for funding from the trust fund include local governments, local government housing authorities, nonprofit organizations, and regional or statewide housing assistance organizations.

(4) Housing units provided to very low-income persons or families pursuant to KRS 198A.700 to 198A.730, shall be deed-restricted under the following conditions:
  (a) Rental housing shall be deed-restricted for a minimum of thirty (30) years. Amendments may be granted by the board of directors of the corporation on a case-by-case basis. Investment from the trust fund into a specific housing type shall revert to like housing for very low-income persons.
  (b) Single-family units or units for sale shall be deed restricted for a minimum of five (5) years.

(5) In the development of housing pursuant to KRS 198A.700 to 198A.730, displacement of very low-income persons shall not be permitted unless the project shall pay all reasonable relocation costs as defined by the board of directors of the corporation.

(6) There shall not be discrimination in the sale or rental, or otherwise making available or denying, a dwelling funded

under KRS 198A.700 to 198A.730 to any buyer or renter because of race, religion, sex, familial status, handicap, or national origin.

(7) In the event that the corporation chooses to use trust fund dollars with or as a match to the federal Home Investment Partnership program or other federal programs, the strictest affordability requirements shall apply.

(8) Trust fund dollars shall be contributed permanently to a project, except when serving as a match for federal housing programs that require all funds to be contributed permanently to the federal program. All repayment, interest, or other return on the investment of trust fund dollars are required to be returned to the trust fund and used for eligible trust fund activities in accordance with the requirements of KRS 198A.700 to 198A.730. Trust fund dollars invested in a project with federal dollars requiring a permanent contribution shall be recaptured to the federal program account.

Section 3. KRS 198A.720 is amended to read as follows:

(1) The corporation shall issue a public notice to eligible recipients of the availability of trust funds at least twice each calendar year and provide for reasonable opportunity for the filing of applications.

(2) The corporation shall approve or deny properly submitted and completed applications within sixty (60) days of their receipt.

(3) The corporation shall grant as many applications as will effectively use available funds.

(4) The corporation shall grant or deny applications by ranking the application's competitively using criteria established by the board of directors of the corporation. Applications shall receive the following priority rankings:

(a) Applications for projects submitted by nonprofit organizations or local governments for new construction for families shall receive first priority funding;

(b) Applications for projects using existing privately-owned housing stock, including stock purchased by nonprofit public development authorities, shall receive second priority funding;

(c) Applications for projects using existing publicly-owned housing stock shall receive third priority funding; and

(d) Applications from local governments for projects that demonstrate effective zoning, conversion, or demolition controls for single room occupancy units shall receive fourth priority funding.

(5) The corporation shall limit funds to be used for administrative costs to no more than five percent (5%) of available funds, and shall disapprove any project in which more than five percent (5%) of available funds shall be used for administrative costs.

(6) The corporation shall require at least forty percent (40%) of all funds received to be used for rural areas of the Commonwealth, excluding the following areas: Ashland, Bowling Green, Covington, Henderson, Hopkinsville, Jefferson County, Lexington-Fayette County, Louisville, Owensboro, and Paducah.

(7) [~~The corporation shall require at least twenty percent (20%) of all funds received to be used for persons whose income is below thirty percent (30%) of the median income of the Commonwealth.~~

~~(8)~~] Funds targeted under this section that are not expended or set-aside within twenty-four (24) months from allocation may be reallocated in nontargeted communities for very low-income persons. The corporation may extend the twenty-four (24) month period for good cause; however, an extension shall not exceed an additional twelve (12) month period.

(8)[~~(9)~~] The corporation shall provide technical assistance to eligible recipients seeking to construct, rehabilitate, or finance housing-related services for very low-income persons. The corporation may contract with nonprofit organizations to provide the technical assistance required by this subsection.

(9)[~~(10)~~] The corporation shall provide or contract for the following services:

(a) Financial planning and packaging for housing projects including alternative ownership programs and bridge financing;

(b) Project design, architectural planning, siting, and compliance with planning requirements;

(c) Securing matching resources for project development;

(d) Maximizing local government contributions to project development in the form of land donations, infrastructure improvements, waivers of development fees, local and state managed funds, zoning variances, density bonuses for low rise-multifamily projects, or creative local planning;

(e) Coordination with local planning, economic development, environmental, technical assistance, and recreational activities;

(f) Construction and material management; and

(g) Project maintenance and management.

[~~(11) The corporation shall have the authority to disburse funds and to promulgate administrative regulations pursuant to KRS Chapter 13A regarding the trust fund, the grant and loan process, the criteria for eligible projects, the preferences to be given and evaluation criteria to be used to approve projects, and other administrative regulations necessary to carry out~~

~~the purposes of KRS 198A.700 to 198A.730.~~]

HB 234, AN ACT relating to loans of the Kentucky Housing Corporation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 198A.065 is amended to read as follows:

(1) The General Assembly of the Commonwealth of Kentucky hereby finds and determines that in order to provide for the greatest possible participation by the corporation in programs ***for the insurance or guarantee of mortgage loans for the construction or rehabilitation of residential housing projects by*** [~~of~~] the United States of America, or an agency or instrumentality thereof***; or by any other entity, including private mortgage insurance, which has been duly approved for these loans by the United States of America or by the Commonwealth or any agency or instrumentality thereof; or for mortgage loans that are insured or reinsured by the corporation under KRS 198A.040(25)***[~~, for the insurance or guarantee of mortgage loans for the construction or rehabilitation of multifamily residential housing projects~~], it is appropriate and proper that there be provision by which the maximum amounts of income for persons and families of lower and moderate income established by this chapter may be waived in certain circumstances so that the corporation may ***insure or reinsure mortgage loans or*** qualify for [~~the aforesaid~~] insurance or guarantee of mortgage loans.

(2) Notwithstanding the requirements of KRS 198A.010(13), 198A.060(1), or any other provisions of law to the contrary, the corporation may, by action of its board of directors, suspend or terminate any income-eligibility requirements established by this chapter upon written request of ***any private mortgage insurance company or*** any agency or instrumentality of the United States of America which has insured or guaranteed mortgage loans made by the corporation for the construction or rehabilitation of a specific [~~multifamily~~] residential housing project ***or for any mortgage loan insured or reinsured by the corporation under KRS 198A.040(25),*** upon a finding by the board of directors of the existence of one (1) or more of the following conditions with respect to that project:

(a) Serious rental or occupancy problems which threaten the financial stability of the project, defined as a project which cannot meet its debt service obligation from available rental income; or

(b) A default as to one (1) or more of the terms of the mortgage loan; or

(c) A foreclosure of the mortgage loan; or

(d) A conveyance of real estate by a deed in lieu of foreclosure.

The Committee Amendment No. 1 to **HB 234** is as follows:

On page 1, line 9, by inserting, after "***thereof***" the words "***, if the criteria for state approval are specified in administrative regulations promulgated under KRS Chapter 13A by the state agency granting the approval***"; and

On page 1, line 20, by inserting between "chapter" and "upon" the words "***, for a single, nonrenewable period no longer than twelve (12) consecutive months,***".

HB 269, AN ACT relating to retirement and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 61.691 is amended to read as follows:

(1) The board shall increase retirement allowances each year of the biennium by fifty percent (50%) of the rate margin for the nonhazardous members of the Kentucky Employees Retirement System as determined by the board's actuary in the annual actuarial valuation prior to the biennium with a maximum increase of five percent (5%) per year, as averaged over a five (5) year period. The first period for averaging shall be from July 1, 1986, to August 1, 1990. Each year thereafter, the next year shall be added and the first year shall be dropped from the five (5) year averaging period.

(2) Effective ***July 1, 1994 and July 1, 1995*** [~~August 1, 1990~~], each recipient of a retirement allowance under KRS [~~16.510 to 16.652 and 61.515 to 61.705 and~~] 78.520 to 78.852 [~~whose retirement date preceded January 1, 1982,~~] shall have his benefits increased ***ninety-nine hundredths percent (0.99%)*** [~~two dollars and fifty cents ($2.50) for each year the retirement allowance has been issued. This increase in retirement allowance shall be calculated and applied to the recipient's retirement allowance prior to any other increase provided for in this section.~~

~~(3) Effective August 1, 1990, and July 1, 1991, a recipient of a retirement allowance under KRS 16.510 to 16.652 and 61.515 to 61.705 and 78.520 to 78.852 shall have his retirement allowance increased by two and nine-tenths percent (2.9%)~~].

(3)[~~(4)~~] A reemployed retired member whose payments are suspended as provided under KRS 61.637 shall be eligible for an increase in his suspended retirement allowance as provided under this section, computed as if he were receiving the retirement allowance at the time the increase under this section is effective.

Section 2. Because the General Assembly finds it important to provide for administrative convenience, an emergency is declared to exist and this Act shall become effective July 1, 1994.

HB 277, AN ACT relating to state mandates.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS 6.950 TO 6.975 IS CREATED TO READ AS FOLLOWS:

(1) Any state mandate, as determined by KRS 6.965, shall provide a means to finance the ongoing cost for the local governments affected, except as provided for in subsection (4) of this section. Within the limitations of the Kentucky Revised Statutes and the Constitution, the means of financing a state mandate may be through:

(a) The remission of additional funds of the state to the local governments;

(b) Specific authority granted the local governments to levy a special tax; or

(c) Other sources provided by the mandate.

(2) The method of financing shall bear a reasonable relationship to the determination by the fiscal note of the costs of the state mandate and shall not reduce or adversely affect other state or federal revenues shared with or granted to local governments.

(3) If subsection (1)(a) of this section is chosen to finance the state mandate, a statement containing an estimate of its effect on expenditures or revenues of the state government for the first full fiscal year shall be prepared by the Legislative Research Commission. This statement shall be attached to the state mandate prior to any vote on it by either house of the General Assembly.

(4) The provisions of subsection (1) of this section may, in times of fiscal emergency or constraint, be suspended by a majority vote of the membership of the General Assembly.

SECTION 2. A NEW SECTION OF KRS 6.950 TO 6.975 IS CREATED TO READ AS FOLLOWS:

(1) The Legislative Research Commission shall prepare a biennial report that:

(a) Identifies existing state mandates;

(b) Examines a cross-section of the local governments of the Commonwealth to determine the fiscal impact of existing state mandates;

(c) Categorizes which mandates are best financed by state government, local governments, or both; and

(d) Proposes methods for financing state mandates.

(2) This report shall be distributed to the members of the General Assembly and the Governor by September 15, 1994, and by September 15 every two (2) years thereafter.

Section 3. KRS 6.950 is amended to read as follows:

As used in KRS 6.955 to 6.975, unless the context otherwise requires:

(1) "Fiscal note" means a realistic statement of the estimated effect on expenditures or revenue of local government in implementing or complying with any proposed act of the General Assembly whether filed in regular session or prefiled during the interim, regulation, order, or administrative law.

(2) "Local government" means cities, counties***,*** ~~[or]~~ urban-county***, or charter-county*** governments.

(3) "State mandate" means any state constitutional, legislative, or executive law or order which requires any local government to establish, expand, or modify its activities, programs, or structure in such a way as to affect expenditures from local revenues.

The Committee Amendment No. 1 to **HB** 277 is as follows:

On page 1, line 3, by deleting "***Any state mandate, as determined by KRS 6.965***" and by inserting in lieu thereof "***Any bill, regulation, or order, promulgated after the effective date of this section and determined, under KRS 6.965, to be a state mandate***".

HB 295, AN ACT relating to the registration for legislative lobbying and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 6.807 is amended to read as follows:

(1) Each legislative agent and employer, within seven (7) days following engagement of a legislative agent, shall file with the commission an initial registration statement listing the following:

(a) The name, business address and telephone number, and occupation of the legislative agent;

(b) The name, brief description of the nature of the business, business address and telephone number of the employer, and the real party in interest on whose behalf the legislative agent is lobbying, if it is different from the employer. For the purposes of this section, if a trade association or other charitable or fraternal organization that is exempt from federal income taxation under Section 501(c) of the Internal Revenue Code is the employer, the statement shall not list the names and addresses of each member of the association or organization, if the association or organization itself is listed;

(c) The name, bill number, or a brief description of the legislative action for which the legislative agent is or will be engaged in lobbying;

(d) The date on which the legislative agent was engaged; and

(e) Certification by the employer and legislative agent that the information contained in the registration statement is complete and accurate.

(2) ***(a)*** The registration shall be ***in effect*** ~~[valid]~~ through the next thirty-first day of December of an odd-numbered year, unless previously terminated.

(b) If a legislative agent or his employer notifies the commission, pursuant to subsection (5)(b) of this section, that the legislative agent is no longer engaged by the employer to lobby, the commission may terminate the registration of the legislative agent as to that employer and, if appropriate, the registration of the employer.

(c) If a legislative agent's registration or the registration of his employer is terminated pursuant to subsection (2)(b) of this section, the legislative agent or employer whose registration is terminated shall remain subject to the provisions of subsections (4) to (8) of KRS 6.811 through the next thirty-first day of December of an odd-numbered year.

(3) (a) In addition to the initial registration statement required by subsection (1) of this section, each legislative agent and employer shall file an updated registration statement with the commission to be received by the commission, not later than 4 p.m. on the fifteenth day of January, February, March, April, and May, and the fifteenth day of September of each even-numbered year, and the fifteenth day of January, May, and September in each odd-numbered year, for the period since the end of the period covered by the previous report until the last day of the month preceding the filing date. The commission may grant a reasonable extension of time for filing the updated registration statement for good cause shown.

(b) The updated registration statement shall confirm the continuing existence of each engagement described in an initial registration statement, and list the specific bills or resolutions on which the agent lobbied under that engagement during the period covered by the updated statement. Any statement of expenditures required to be filed by KRS 6.821 and any details of financial transactions required to be filed by KRS 6.824 shall be filed with the updated registration statement.

(4) If a legislative agent is engaged by more than one employer, the agent shall file a separate initial and updated registration statement for each engagement. If an employer engages more than one (1) legislative agent, the employer shall file only one (1) updated registration statement under subsection (3) of this section, which shall contain the information required by subsection (3) of this section regarding all legislative agents engaged by the employer.

(5) (a) A change in any information required by subsection (1)(a), (b), or (c) of this section shall be reflected in the next updated registration statement filed under subsection (3) of this section.

(b) Within thirty (30) days after the termination of an engagement, the ***employer or the*** legislative agent who was employed under the engagement shall file written notice of the termination with the commission.

(6) Upon registration pursuant to subsection (1) of this section, the legislative agent shall be issued a card by the commission, showing that the legislative agent is registered. The registration card shall be valid from the date of its issuance through the next thirty-first day of December of an odd-numbered year.

(7) Any legislative agent or employer who fails to file the initial registration statement or updated registration statement, or who fails to remedy a deficiency in any filing in a timely manner, may be fined by the commission an amount not to exceed one hundred dollars ($100) per day, up to a maximum total fine of one thousand dollars ($1,000).

(8) Any legislative agent or employer who intentionally fails to register shall be guilty of a Class D felony.

Section 2. Whereas it is important that public confidence in the integrity of the legislative process be maintained, an emergency is declared to exist and this Act shall become effective upon its passage and approval by the Governor.

HB 299, AN ACT relating to state procurement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 13 of this Act, unless the context requires otherwise:

(1) "Bond counsel" means an attorney who provides legal counsel to a bond issuing agency with regard to bond

issuance and provides an unqualified legal opinion to the agency with respect to validity and tax treatment;

(2) "Bond issuance" means the formulation, authorization, and issuance of bonds by a bond issuing agency;

(3) "Bond issuing agency" means the State Property and Buildings Commission, Turnpike Authority of Kentucky, Kentucky Housing Corporation, Kentucky Infrastructure Authority, Kentucky Higher Education Student Loan Corporation, Kentucky River Authority, Kentucky Agricultural Finance Corporation, Kentucky Local Correctional Facilities Construction Authority, School Facilities Construction Commission, Murray State University, Western Kentucky University, University of Louisville when it declines to exercise the authority granted under KRS 164A.585(1) and 164A.605, Northern Kentucky University, Kentucky State University, University of Kentucky when it declines to exercise the authority granted under KRS 164A.585(1) and 164A.605, Morehead State University, and Eastern Kentucky University;

(4) "Bonds" means the revenue bonds, notes, or other debt obligations issued by a bond issuing agency;

(5) "Executive director" means the executive director of the Office of Financial Management and Economic Analysis;

(6) "Office" means the Office of Financial Management and Economic Analysis established by KRS 42.400;

(7) "Underwriter" means:

(a) The financial institution which structures and underwrites the bond issuing agency's issuance of bonds; or

(b) The financial advisor or fiscal agent which provides advice or services to the bond issuing agency with respect to the structure, timing, terms, or other matters concerning bond issuance;

(8) "Underwriter's counsel" means an attorney who provides legal counsel to an underwriter with respect to its work on behalf of a bond issuing agency.

SECTION 2. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) One (1) or more selection committees shall be created in the Office of Financial Management and Economic Analysis. Each selection committee shall have the authority to participate in the selection of both underwriters and bond counsel.

(2) Except as provided in Sections 9 and 10 of this Act, a selection committee shall participate in every instance of a bond issuing agency hiring an underwriter or bond counsel on behalf of a bond issuing agency.

(3) Except as provided in subsection (4) of this section, a selection committee created in the office shall consist of the following six (6) members selected in the manner specified within each paragraph:

(a) Three (3) employees of the office other than the executive director. The executive director shall select the three (3) employees;

(b) Two (2) employees of the bond issuing agency appointed by the head of that agency to participate in the hiring of an underwriter or a bond counsel for that agency; and

(c) A merit employee of the Auditor of Public Accounts, appointed by the Auditor. The merit employee shall serve as a nonvoting member of the committee.

(4) When a selection committee created in the office is choosing underwriter and bond counsel finalists for the Turnpike Authority of Kentucky, Kentucky Agricultural Finance Corporation, Kentucky Local Correctional Facilities Construction Authority, or School Facilities Construction Commission, the selection committee shall consist of the following four (4) members selected in the manner specified within each paragraph:

(a) Two (2) employees of the office other than the executive director. The executive director shall select the two (2) employees;

(b) One (1) employee of the bond issuing agency appointed by the head of that agency to participate in the hiring of an underwriter or bond counsel for that agency; and

(c) A merit employee of the Auditor of Public Accounts, appointed by the Auditor. The merit employee shall serve as a nonvoting member of the committee.

(5) (a) All selection committee members shall have experience which qualifies them to serve on the committee.

(b) Any individual appointed to serve by the executive director or the Auditor of Public Accounts shall serve an initial one (1) year term and may be reappointed to serve for additional successive one (1) year terms. He shall serve until his successor is appointed and qualified. A successor or a replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.

(c) A selection committee member appointed by the head of a bond issuing agency shall serve for the duration of the selection committee's participation in the hiring of an underwriter and a bond counsel for his agency. A replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.

SECTION 3. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) Before a person joins a selection committee, he shall receive an orientation from the office. The orientation shall include, but not be limited to, an explanation of all statutes and administrative regulations pertaining to the person's

service on the selection committee.

(2) For administrative purposes, a selection committee shall be attached to the office.

(3) The office shall provide a selection committee with:

(a) Suitable quarters in Frankfort, Kentucky, in which to conduct its business;

(b) Staff support necessary for the expeditious conduct of a selection committee's duties and responsibilities; and

(c) Office supplies.

SECTION 4. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) (a) Pursuant to Sections 5 and 6 of this Act, one (1) underwriter and one (1) bond counsel shall be chosen for the State Property and Buildings Commission.

(b) The underwriter and the bond counsel chosen for the commission shall provide their services for all bonds issued in one (1) bond project.

(2) (a) Pursuant to Sections 5 and 6 of this Act, one (1) underwriter and one (1) bond counsel shall be chosen for each of the following agencies:

1. Turnpike Authority of Kentucky;

2. Kentucky Housing Corporation;

3. Kentucky Infrastructure Authority;

4. Kentucky Higher Education Student Loan Corporation.

5. Kentucky River Authority;

6. Kentucky Agricultural Finance Corporation; and

7. Kentucky Local Correctional Facilities Construction Authority;

(b) The underwriter and the bond counsel chosen for each agency shall provide their services for all bond issuance over a period of twelve (12) months from their selection. At the conclusion of the twelve (12) month period, the executive director may continue the employment of the underwriter or the bond counsel, on the same terms and conditions, until the end of the Commonwealth biennium. If the employment is not continued, the choosing of an underwriter or bond counsel, as appropriate, shall be conducted pursuant to Sections 5 and 6 of this Act.

(3) (a) Pursuant to Sections 5 and 6 of this Act, one (1) underwriter and one (1) bond counsel shall be chosen to provide their services for all of the following agencies:

1. School Facilities Construction Commission;

2. Murray State University;

3. Western Kentucky University;

4. University of Louisville when it declines to exercise the authority granted under KRS 164A.585(1) and 164A.605;

5. Northern Kentucky University;

6. Kentucky State University;

7. University of Kentucky when it declines to exercise the authority granted under KRS 164A.585(1) and 164A.605;

8. Morehead State University; and

9. Eastern Kentucky University.

(b) The underwriter and the bond counsel chosen for all of the agencies shall provide their services for all bond issuance of the agencies for a period of twelve (12) months from the underwriter's and the bond counsel's selection. At the conclusion of the twelve (12) month period, the executive director may continue the employment of the underwriter or the bond counsel, on the same terms and conditions, until the end of the Commonwealth biennium. If the employment is not continued, the choosing of an underwriter or bond counsel, as appropriate, shall be conducted pursuant to Sections 5 and 6 of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) (a) A firm shall not be considered for providing underwriting or bond counsel services unless the office has prequalified the firm.

(b) A firm's prequalification shall remain in effect for twelve (12) months from the date of prequalification.

(2) (a) The office shall consult with the bond issuing agency before arriving at a request for proposals. The request for proposals shall include, but not be limited to:

1. The deadline for posing written questions about the request for proposals to the selection committee chairman elected pursuant to subsection (7)(b) of this section. This deadline shall occur before the deadline for filing a written response to a request for proposals;

2. The deadline for filing a written response;

3. A description of the services sought;

4. A description of the skills required to perform the services;

5. The relative weight of evaluations factors; and

6. In the case of a request for proposals from underwriters, a statement as to whether the winning underwriter will be hired for a remarketing of the relevant bond issue.

(b) The office shall provide materials to the firms which have prequalified pursuant to subsection (1) of this section. The materials shall include, but not be limited to, the request for proposals and the evaluation sheet to be used by the relevant selection committee.

(3) Prior to the deadline established in the request for proposals, a firm may pose written questions about the request for proposals to the selection committee chairman. The chairman, shall respond in writing. If, in the discretion of the chairman, an answer could have a material effect on other respondents' proposals, then both the question and the answer shall be distributed to all firms at the same time prior to the deadline for the filing of responses to the request for proposals.

(4) A firm shall file a written response to the request for proposals prior to the deadline established in the request for proposals. A firm which fails to meet the deadline shall be barred from the procurement process.

(5) The employees of the office and the members of the selection committee shall keep all responses to a request for proposals confidential until the winning firm has been selected.

(6) The executive director of the office shall designate an office employee to determine which firms have prequalified pursuant to subsection (1) of this section and have filed, in a timely fashion, a written response to a request for proposals. He shall create a list of firms which have done so and certify the list.

(7) The office shall organize the selection committee's first meeting. At that meeting, each selection committee member shall sign a statement of confidentiality. Also, at that meeting, the selection committee shall:

(a) In the case of a six (6) member selection committee, determine whether a majority of the voting members are merit employees of the Commonwealth. If a majority are not merit employees, the selection committee shall disband, and another selection committee shall be selected pursuant to Section 2 of this Act. A majority of its voting members shall be merit employees of the Commonwealth;

(b) Elect from among the voting members of the committee a chairman and vice chairman who shall hold their positions for the duration of the selection committee's involvement in the bond issuance;

(c) Be provided with:

1. The certified list created pursuant to subsection (6) of this section;

2. If applicable, an out-of-state firm's preference handicap created pursuant to subsection (1) of Section 11 of this Act;

3. Written questions and answers produced pursuant to subsection (3) of this section;

4. The firms' responses to the request for proposals;

5. The request for proposals; and

6. The selection evaluation sheets; and

(d) Discuss the future conduct of its affairs.

SECTION 6. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) A selection committee shall meet in executive session to:

(a) Evaluate the materials with which it has been provided;

(b) Select the three (3) to five (5) most qualified firms based upon the weighted evaluation factors in the request for proposals; and

(c) Rank the firms.

(2) In executive session, a selection committee, at its discretion by majority vote, shall determine whether to leave the rankings in place or to interview the three (3) to five (5) firms to arrive at new rankings. If the selection committee decides to leave the rankings in place, the top three (3) ranked firms shall be made finalists. The winning firm shall be chosen pursuant to paragraph (a) or paragraph (b) of subsection (5) of this section, as appropriate.

(3) (a) If the selection committee decides to interview the three (3) to five (5) firms, it shall do so preferably on the same day. The firms shall be interviewed one (1) at a time, and each interview shall be attended only by

representatives of the firm and members of the selection committee. Members of the selection committee shall keep confidential the substance of an interview until a winning firm is chosen.

(b) The selection committee shall meet in executive session to :

1. Rank the three (3) to five (5) firms based upon the weighted evaluation factors established in the request for proposals; and

2. Forward the rankings to the executive director.

(c) The top three (3) ranked firms shall be made finalists.

(d) The winning firms shall be chosen pursuant to paragraph (a) or paragraph (b) of subsection (5) of this section, as appropriate.

(4) The office shall send a letter to each firm which responded to the request for proposals, informing the firm of the three (3) finalists.

(5) (a) 1. The name of the top-ranked underwriter firm shall be provided to the executive director. He shall state in writing to the secretary of the Finance and Administration Cabinet his reasons for agreeing or not agreeing with the selection. The secretary shall order that procurement proceed under subparagraph 2. of this paragraph, or he shall order that the procurement procedure start again from the beginning pursuant to Section 2 of this Act. The secretary shall state in writing the reasons for his actions.

2. The executive director of the office shall negotiate a contract with the top-ranked underwriter firm, as determined by the selection committee, at compensation which the executive director determines in writing to be fair and reasonable to the Commonwealth. In making this decision, he shall take into account the estimated value of the services to be rendered, and the scope, complexity, and professional nature thereof. Should the executive director be unable to negotiate a satisfactory contract with the top-ranking firm, at a price that he considers fair and reasonable to the Commonwealth, he shall formally terminate negotiations with the firm. The executive director shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, he shall formally terminate negotiations. He shall then undertake negotiations with the third-ranked firm. Should the executive director be unable to negotiate a satisfactory contract with any of the selected firms, he shall formally terminate negotiations, and the procurement procedure shall start again from the beginning pursuant to Section 2 of this Act.

(b) When choosing the winning bond counsel firm, the office shall ask the three (3) finalists chosen pursuant to this section to submit a fee proposal on a per one thousand dollar ($1,000) bond basis with an estimated amount of expenses per bond that the firm would agree not to exceed for each bond issue. The fee proposals shall have to be submitted by a deadline established by the office. A fee proposal submitted after the deadline shall not be considered. The name of the firm which has submitted the lowest evaluated fee proposal shall be provided to the executive director. However, if the firm's fee proposal is higher than the one submitted in its response to the request for proposals, then that firm shall not be further considered, and the name of the second-ranked firm shall be submitted to the executive director. He shall state in writing to the secretary of the Finance and Administration Cabinet his reasons for agreeing or not agreeing with the selection. The secretary shall order the hiring of the selected firm, or he shall order that the procurement procedure shall start again from the beginning pursuant to Section 2 of this Act. The secretary shall state in writing the reasons for his actions.

(c) The office may select a national underwriter comanager and a Kentucky underwriter comanager who shall provide local expertise for bond issuance. A Kentucky underwriter comanager shall be selected pursuant to a request for proposals, and a national underwriter comanager shall be selected pursuant to an administrative regulation promulgated by the office. An underwriter selected pursuant to this paragraph shall provide its services to a bond issuing agency over the appropriate period of time stated in Section 4 of this Act.

SECTION 7. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) After a winning firm has been chosen by a selection committee pursuant to Sections 5 and 6 of this Act, the executive director shall supply the name of the firm to each member of the selection committee.

(2) The secretary of the Finance and Administration Cabinet, executive director, head of the relevant bond issuing agency, and each voting member of the selection committee shall sign separate certificates, devised by the office, which shall certify that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a willful violation of Sections 1 to 13 of this Act which has arisen in the procurement process.

(3) The representative of the Auditor of Public Accounts shall prepare and file a report with the Capital Projects and Bond Oversight Committee certifying that the applicable procedural provisions of Sections 1 to 13 of this Act were or were not met.

SECTION 8. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) A person shall not serve on a selection committee if that person, his spouse, either of his parents, any of his siblings,

or any of his children is employed by a bond counsel or underwriter which has prequalified pursuant to subsection (1) of Section 5 of this Act or owns one percent (1%) or more of a bond counsel or underwriter firm which has prequalified pursuant to subsection (1) of Section 5 of this Act.

(2) If, in the course of an individual's service on a selection committee, he, his spouse, either of his parents, any of his siblings, or any of his children is employed by an underwriter or bond counsel which has prequalified pursuant to subsection (1) of Section 5 of this Act or owns one percent (1%) or more of an underwriter or bond counsel firm which has prequalified pursuant to subsection (1) of Section 5 of this Act, then his membership on the selection committee shall end.

(3) For a period of one (1) year after a person ends his service on a selection committee, the Commonwealth shall not consider employing an underwriter or a bond counsel if that person, his spouse, either of his parents, any of his siblings, or any of his children is employed by a firm which was awarded a contract by a selection committee on which he served or owns one percent (1%) or more of a firm which was awarded a contract by a selection committee on which he served.

SECTION 9. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding the other provisions of Sections 1 to 13 of this Act, this section shall govern the selection of an underwriter or a bond counsel in the case of a bona fide emergency.

(2) A bona fide emergency shall be deemed to exist only where the executive director has certified to the secretary of the Finance and Administration Cabinet that an emergency, threatening substantial interests of the Commonwealth, has arisen from:

(a) A change in the federal tax law; or

(b) A situation other than a change in the federal tax law, and the secretary of the Finance and Administration Cabinet has stated in writing that he has independently concluded that the situation constitutes an emergency which threatens substantial interests of the Commonwealth.

(3) (a) The cabinet secretary shall forward to the Capital Projects and Bond Oversight Committee the certificate created pursuant to subsection (2)(a) of this section or the certificate and the secretary's independent conclusion written pursuant to subsection (2)(b) of this section.

(b) The secretary shall also confer with the executive director to determine what measures should be taken to select an underwriter or a bond counsel.

(4) Within thirty (30) days of the selection of an underwriter or a bond counsel pursuant to this section, the executive director, or his designee, shall appear before the Capital Projects and Bond Oversight Committee to report on the emergency selection. The report shall include:

(a) The materials referred to in subsection (3)(a) of this section;

(b) His own description of the bona fide emergency;

(c) The procedure used for selecting the underwriter or bond counsel;

(d) The nature of the services that the underwriter or bond counsel will provide;

(e) The length of time for which the firm will provide these services; and

(f) The costs connected with employing the underwriter or bond counsel.

SECTION 10. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding the other provisions of Sections 1 to 13 of this Act, this section shall govern the selection of an underwriter or a bond counsel to take advantage of an innovation developed by that firm.

(2) The executive director may discuss with an underwriter or a bond counsel an innovation which the firm has developed or is developing.

(3) If the executive director concludes that the Commonwealth will benefit from using the innovation, then the executive director shall negotiate with the firm for it to provide the innovation to the Commonwealth in exchange for the firm's employment on certain bond issues.

(4) After an agreement is reached, but before it is executed, the executive director shall seek the review and recommendation of the Capital Projects and Bond Oversight Committee.

(5) If the committee does not recommend the agreement, the agreement shall be referred to the secretary of the Finance and Administration Cabinet who shall:

(a) Revise the agreement in consideration of the committee's objections;

(b) Cancel the agreement; or

(c) Determine to enter into the agreement.

(6) Within thirty (30) days after the secretary reaches his decision, it shall be transmitted to the committee.

SECTION 11. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) (a) In the competition for Commonwealth bond counsel business or underwriter's counsel business awarded pursuant to Sections 1 to 13 of this Act, a firm with its principal place of business located in Kentucky shall receive a preference over a firm with its principal place of business located outside Kentucky. The preference, if any, shall be equal to the preference that the out-of-state firm receives in its state of origin when that firm as an in-state firm competes against out-of-state firms for state bond counsel or underwriter's counsel business.

(b) The office shall calculate the preference.

1. In the case of bond counsel, if the out-of-state firm should be completely barred from consideration, then the office shall not prequalify the firm. If the preference is less than absolute, then the office shall forward the out-of-state firm's name, along with its preference handicap, to a selection committee.

2. In the case of an underwriter's counsel, if the out-of-state firm should be completely barred from consideration, then the Office shall not prequalify the firm. If the preference is less than absolute, then the office shall apply the preference handicap in determining the winning firm pursuant to subsection (4) of Section 12 of this Act.

(2) (a) If a selection committee vote results in a tie between an underwriter or bond counsel with its principal place of business located in Kentucky and an underwriter or bond counsel with its principal place of business located outside Kentucky, then the in-state firm shall be ranked one place ahead of the out-of-state firm.

(b) If an underwriter's counsel with its principal place of business located in Kentucky and an underwriter's counsel with its principal place of business located outside Kentucky each submit a bid pursuant to subsection (4) of Section 12 of this Act and the bids tie, the office shall rank the in-state firm one place ahead of the out-of-state firm.

SECTION 12. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) (a) An underwriter shall not hire an underwriter's counsel unless the office has prequalified the firm.

(b) A firm's prequalification shall remain in effect until the end of the Commonwealth fiscal year in which the prequalification is granted.

(2) The office shall submit the list of prequalified firms to the underwriter.

(3) When the underwriter is hiring underwriter's counsel, the underwriter shall seek competitive bids from at least three (3) firms on the list.

(4) The underwriter shall instruct the firms to submit their bids to the office by a deadline. Any bid which the office receives after the deadline shall not be considered. The office shall notify the underwriter of the lowest bid. The underwriter shall hire, at the bid price, the firm which submitted the lowest bid. The underwriter shall retain the firm for the length of time that the underwriter has been hired to provide services to the Commonwealth.

SECTION 13. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

By January 1, 1995, the office shall promulgate administrative regulations to carry out the provisions of Sections 1 to 13 of this Act.

The Committee Substitute to **HB** 299 is as follows:

HB 299, AN ACT relating to state procurement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 13 of this Act, unless the context requires otherwise:

(1) "Bond counsel" means an attorney who provides legal counsel to a bond issuing agency with regard to bond issuance and provides an unqualified legal opinion to the agency with respect to validity and tax treatment;

(2) "Bond issuance" means the formulation, authorization, and issuance of bonds by a bond issuing agency;

(3) "Bond issuing agency" means the State Property and Buildings Commission, Turnpike Authority of Kentucky, Kentucky Housing Corporation, Kentucky Infrastructure Authority, Kentucky Higher Education Student Loan Corporation, Kentucky River Authority, Kentucky Agricultural Finance Corporation, Kentucky Local Correctional Facilities Construction Authority, School Facilities Construction Commission, Murray State University, Western Kentucky University, University of Louisville when it declines to exercise the authority granted under KRS 164A.585(1) and 164A.605, Northern Kentucky University, Kentucky State University, University of Kentucky when it declines to exercise the authority granted under KRS 164A.585(1) and 164A.605, Morehead State University, and

Eastern Kentucky University;

(4) "Bonds" means the revenue bonds, notes, or other debt obligations issued by a bond issuing agency;

(5) "Executive director" means the executive director of the Office of Financial Management and Economic Analysis;

(6) "Office" means the Office of Financial Management and Economic Analysis established by KRS 42.400;

(7) "Underwriter" means:

  (a) The financial institution which structures and underwrites the bond issuing agency's issuance of bonds; or

  (b) The financial advisor or fiscal agent which provides advice or services to the bond issuing agency with respect to the structure, timing, terms, or other matters concerning bond issuance;

(8) "Underwriter's counsel" means an attorney who provides legal counsel to an underwriter with respect to its work on behalf of a bond issuing agency.

SECTION 2. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) One (1) or more selection committees shall be created in the Office of Financial Management and Economic Analysis. Each selection committee shall have the authority to participate in the selection of both underwriters and bond counsel.

(2) Except as provided in Sections 9 and 10 of this Act, a selection committee shall participate in every instance of a bond issuing agency hiring an underwriter or bond counsel on behalf of a bond issuing agency.

(3) Except as provided in subsection (4) of this section, a selection committee created in the office shall consist of the following six (6) members selected in the manner specified within each paragraph:

  (a) Three (3) employees of the office other than the executive director. The executive director shall select the three (3) employees;

  (b) Two (2) employees of the bond issuing agency appointed by the head of that agency to participate in the hiring of an underwriter or a bond counsel for that agency; and

  (c) A merit employee of the Auditor of Public Accounts, appointed by the Auditor. The merit employee shall serve as a nonvoting member of the committee.

(4) When a selection committee created in the office is choosing underwriter and bond counsel finalists for the Turnpike Authority of Kentucky, Kentucky Agricultural Finance Corporation, or the Kentucky Local Correctional Facilities Construction Authority, the selection committee shall consist of the following four (4) members selected in the manner specified within each paragraph:

  (a) Two (2) employees of the office other than the executive director. The executive director shall select the two (2) employees;

  (b) One (1) employee of the bond issuing agency appointed by the head of that agency to participate in the hiring of an underwriter or bond counsel for that agency; and

  (c) A merit employee of the Auditor of Public Accounts, appointed by the Auditor. The merit employee shall serve as a nonvoting member of the committee.

(5) (a) All selection committee members shall have experience which qualifies them to serve on the committee.

  (b) Any individual appointed to serve by the executive director or the Auditor of Public Accounts shall serve an initial one (1) year term and may be reappointed to serve for additional successive one (1) year terms. He shall serve until his successor is appointed and qualified. A successor or a replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.

  (c) A selection committee member appointed by the head of a bond issuing agency shall serve for the duration of the selection committee's participation in the hiring of an underwriter and a bond counsel for his agency. A replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.

SECTION 3. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) Before a person joins a selection committee, he shall receive an orientation from the office. The orientation shall include, but not be limited to, an explanation of all statutes and administrative regulations pertaining to the person's service on the selection committee.

(2) For administrative purposes, a selection committee shall be attached to the office.

(3) The office shall provide a selection committee with:

  (a) Suitable quarters in Frankfort, Kentucky, in which to conduct its business;

  (b) Staff support necessary for the expeditious conduct of a selection committee's duties and responsibilities; and

  (c) Office supplies.

SECTION 4. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) (a) Pursuant to Sections 5 and 6 of this Act, one (1) underwriter and one (1) bond counsel shall be chosen for the State Property and Buildings Commission.

(b) The underwriter and the bond counsel chosen for the commission shall provide their services for all bonds issued in one (1) bond project.

(2) (a) Pursuant to Sections 5 and 6 of this Act, one (1) underwriter and one (1) bond counsel shall be chosen for each of the following agencies:

1. Turnpike Authority of Kentucky;

2. Kentucky Housing Corporation;

3. Kentucky Infrastructure Authority;

4. Kentucky Higher Education Student Loan Corporation.

5. Kentucky River Authority;

6. Kentucky Agricultural Finance Corporation; and

7. Kentucky Local Correctional Facilities Construction Authority;

(b) The underwriter and the bond counsel chosen for each agency shall provide their services for all bond issuance over a period of twelve (12) months from their selection. At the conclusion of the twelve (12) month period, the executive director may continue the employment of the underwriter or the bond counsel, on the same terms and conditions, until the end of the Commonwealth biennium. If the employment is not continued, the choosing of an underwriter or bond counsel, as appropriate, shall be conducted pursuant to Sections 5 and 6 of this Act.

(3) (a) Pursuant to Sections 5 and 6 of this Act, one (1) underwriter and one (1) bond counsel shall be chosen to provide their services for all of the following agencies:

1. School Facilities Construction Commission;

2. Murray State University;

3. Western Kentucky University;

4. University of Louisville when it declines to exercise the authority granted under KRS 164A.585(1) and 164A.605;

5. Northern Kentucky University;

6. Kentucky State University;

7. University of Kentucky when it declines to exercise the authority granted under KRS 164A.585(1) and 164A.605;

8. Morehead State University; and

9. Eastern Kentucky University.

(b) The underwriter and the bond counsel chosen for all of the agencies shall provide their services for all bond issuance of the agencies for a period of twelve (12) months from the underwriter's and the bond counsel's selection. At the conclusion of the twelve (12) month period, the executive director may continue the employment of the underwriter or the bond counsel, on the same terms and conditions, until the end of the Commonwealth biennium. If the employment is not continued, the choosing of an underwriter or bond counsel, as appropriate, shall be conducted pursuant to Sections 5 and 6 of this Act.

(4) The office may select national co-managing underwriters and Kentucky co-managing underwriters who shall provide national and local marketing expertise for bond issuances. The executive director shall recommend to the secretary of the Finance and Administration Cabinet the number of national and Kentucky co-managing underwriters, if any, to be utilized on each bond issuance. The executive director shall consider the following issues when making the recommendations:

(a) Principal amount of bonds being issued; and

(b) Structure of the bond issue; and

(c) Composition of expected buyers of the bonds.

Kentucky co-managing underwriters shall be selected pursuant to a request for proposals. National co-managing underwriters shall be selected pursuant to an administrative regulation promulgated by the office. Co-managing underwriters selected pursuant to this subsection shall provide their services to a bond issuing agency over the appropriate period of time stated in this section.

SECTION 5. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) (a) A firm shall not be considered for providing underwriting or bond counsel services unless the office has prequalified the firm prior to the advertised notice of the request for proposals.

(b) A firm's prequalification shall remain in effect for twelve (12) months from the date of prequalification.

(2) (a) The office shall consult with the bond issuing agency before arriving at a request for proposals. The request for proposals shall include, but not be limited to:

1. The deadline for posing written questions about the request for proposals to the selection committee chairman elected pursuant to subsection (7)(b) of this section. This deadline shall occur before the deadline for filing a written response to a request for proposals;

2. The deadline for filing a written response;

3. A description of the services sought;

4. A description of the skills required to perform the services;

5. The relative weight of evaluation factors; and

6. In the case of a request for proposals from underwriters, a statement as to whether the winning underwriter will be hired for a remarketing of the relevant bond issue.

(b) The office shall provide materials to the firms which have prequalified pursuant to subsection (1) of this section. The materials shall include, but not be limited to, the request for proposals and the evaluation sheet to be used by the relevant selection committee.

(3) Prior to the deadline for posing questions established in the request for proposals, a firm may pose written questions about the request for proposals to the selection committee chairman. The chairman, shall respond in writing. If, in the discretion of the chairman, an answer could have a material effect on other respondents' proposals, then both the question and the answer shall be distributed to all firms at the same time prior to the deadline for the filing of responses to the request for proposals.

(4) A firm shall file a written response to the request for proposals prior to the deadline for filing a written response established in the request for proposals. A firm which fails to meet the deadline shall be barred from the procurement process.

(5) The employees of the office and the members of the selection committee shall keep all responses to a request for proposals confidential until the contract to the winning firm has been awarded.

(6) The executive director of the office shall designate an office employee to determine which firms have prequalified pursuant to subsection (1) of this section and have filed, in a timely fashion, a written response to a request for proposals. He shall create a list of firms which have done so and certify the list.

(7) The office shall organize the selection committee's first meeting. At that meeting, each selection committee member shall sign a statement of confidentiality. Also, at that meeting, the selection committee shall:

(a) 1. In the case of a six (6) member selection committee, determine whether a majority of the voting members are merit employees of the Commonwealth. If a majority are not merit employees, the selection committee shall disband, and another selection committee shall be selected pursuant to Section 2 of this Act. A majority of its voting members shall be merit employees of the Commonwealth;

2. In the case of a four (4) member selection committee, the merit and non-merit composition shall be noted.

(b) Elect from among the voting members of the committee a chairman and vice chairman who shall hold their positions for the duration of the selection committee's involvement in the bond issuance;

(c) Be provided with:

1. The certified list created pursuant to subsection (6) of this section;

2. If applicable, an out-of-state firm's preference handicap created pursuant to subsection (1) of Section 11 of this Act;

3. Written questions and answers produced pursuant to subsection (3) of this section;

4. The firms' responses to the request for proposals;

5. The request for proposals; and

6. The selection evaluation sheets; and

(d) Discuss the future conduct of its affairs.

SECTION 6. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) A selection committee shall meet in executive session to:

(a) Evaluate the materials with which it has been provided;

(b) Select the three (3) to five (5) most qualified firms based upon the weighted evaluation factors in the request for proposals; and

(c) Rank the firms.

(2) In executive session, a selection committee, at its discretion by majority vote, shall determine whether not to interview and to leave the rankings in place, or to interview the three (3) to five (5) firms to arrive at new rankings. If the selection committee decides not to interview and to leave the rankings in place, the top three (3) ranked firms shall be made finalists. The winning firm shall be chosen pursuant to paragraph (a) or paragraph (b) of subsection (5) of this section, as appropriate.

(3) (a) If the selection committee decides to interview the three (3) to five (5) firms, it shall do so preferably on the same day. The firms shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the firm and members of the selection committee. Members of the selection committee shall keep confidential the substance of an interview until the contract to the winning firm is awarded.

(b) After the three (3) to five (5) firms have been interviewed, the selection committee shall meet in executive session to:

1. Rank the three (3) to five (5) firms based upon the weighted evaluation factors established in the request for proposals; and

2. Forward the rankings to the executive director.

(c) The top three (3) ranked firms shall be made finalists.

(d) The winning firms shall be awarded pursuant to paragraph (a) or paragraph (b) of subsection (5) of this section, as appropriate.

(4) The office shall send a letter to each firm which responded to the request for proposals, informing the firm of the three (3) finalists.

(5) (a) For underwriter services:

1. The name of the top-ranked underwriter firm shall be provided to the executive director. He shall state in writing to the secretary of the Finance and Administration Cabinet his reasons for agreeing or not agreeing with the selection. The secretary shall order that procurement proceed under subparagraph 2. of this paragraph, or he shall order that the procurement procedure start again from the beginning pursuant to Section 2 of this Act. The secretary shall state in writing the reasons for his actions.

2. The executive director of the office shall negotiate a contract with the top-ranked underwriter firm, as determined by the selection committee, at compensation which the executive director determines in writing to be fair and reasonable to the Commonwealth. In making this decision, he shall take into account the estimated value of the services to be rendered, and the scope, complexity, and professional nature thereof. Should the executive director be able to negotiate a satisfactory price, the top-ranked firm shall be awarded the contract. The executive director shall state in writing to the secretary of the Finance and Administration Cabinet his reasons for agreeing or not agreeing with the price.

3. Should the executive director be unable to negotiate a satisfactory contract with the top-ranking firm, at a price that he considers fair and reasonable to the Commonwealth, he shall formally terminate negotiations with the firm. The selection committee shall provide the executive director the name of the second-ranked firm. The executive director shall then undertake price negotiations with the second-ranked firm. Should the executive director be able to negotiate a satisfactory price, the second-ranked firm shall be awarded the contract. The executive director shall state in writing to the secretary of the Finance and Administration Cabinet his reasons for agreeing or not agreeing with the price.

4. Failing accord with the second-ranked firm, the executive director shall formally terminate negotiations. The selection committee shall provide the executive director the name of the third-ranked firm. The executive director shall then undertake price negotiations with the third-ranked firm. Should the executive director be able to negotiate a satisfactory price, the third-ranked firm shall be awarded the contract. The executive director shall state in writing to the secretary of the Finance and Administration Cabinet his reasons for agreeing or not agreeing with the price. Should the executive director be unable to negotiate a satisfactory contract with the third-ranked firm, he shall formally terminate negotiations, and the procurement procedure shall start again from the beginning pursuant to Section 2 of this Act.

(b) For bond counsel services:

1. When choosing the winning bond counsel firm, the office shall ask the three (3) finalists chosen pursuant to this section to submit a fee proposal on a per one thousand dollar ($1,000) bond basis with an estimated amount of expenses per bond that the firm would agree not to exceed for each bond *issue.*

2. The fee proposals shall have to be submitted by a deadline established by the office. A fee proposal submitted after the deadline shall not be considered.

3. The name of the firm which has submitted the lowest evaluated fee proposal shall be provided to the executive director. The executive director shall award the contract to the lowest evaluated fee proposal unless the firm's fee proposal is higher than the one submitted in its response to the request for proposal, if one was required. The executive director shall state in writing to the secretary of the Finance and Administration Cabinet his reasons for agreeing or not agreeing with the selection and the secretary shall order the hiring or not of the firm. The secretary shall state in writing his reasons for his actions.

4. However, if the firm's fee proposal is higher than the one submitted in its response to the request for proposals, if one is required, then that firm shall not be further considered, and the name of the second-ranked firm shall be submitted to the executive director. The executive director shall state in writing to the secretary of the Finance and Administration Cabinet his reasons for agreeing or not agreeing with the selection. The secretary shall order the hiring of the selected firm, or he shall order that the procurement procedure shall start again from the beginning pursuant to Section 2 of this Act. The secretary shall state in writing the reasons for his actions.

SECTION 7. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) After a winning underwriter or bond counsel contract has been awarded by the secretary of the Finance and Administration Cabinet pursuant to Sections 5 and 6 of this Act, the executive director shall supply the name of the firm to each member of the selection committee.

(2) The secretary of the Finance and Administration Cabinet, executive director, head of the relevant bond issuing agency, and each voting member of the selection committee shall sign separate certificates, devised by the office, which shall certify that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a willful violation of Sections 1 to 13 of this Act which has arisen in the procurement process.

(3) The representative of the Auditor of Public Accounts shall prepare and file a report with the Capital Projects and Bond Oversight Committee certifying that the applicable procedural provisions of Sections 1 to 13 of this Act were or were not met.

SECTION 8. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) A person shall not serve on an underwriter or bond counsel selection committee if that person, his spouse, either of his parents, any of his siblings, or any of his children is employed by a bond counsel or underwriter which has prequalified pursuant to subsection (1) of Section 5 of this Act or owns one percent (1%) or more of a bond counsel or underwriter firm which has prequalified pursuant to subsection (1) of Section 5 of this Act.

(2) If, in the course of an individual's service on a selection committee, he, his spouse, either of his parents, any of his siblings, or any of his children is employed by an underwriter or bond counsel which has prequalified pursuant to subsection (1) of Section 5 of this Act or owns one percent (1%) or more of an underwriter or bond counsel firm which has prequalified pursuant to subsection (1) of Section 5 of this Act, then his membership on the selection committee shall end and the vacancy shall be filled as prescribed in Section 2 of this Act.

(3) For a period of one (1) year after a person ends his service on a selection committee, the Commonwealth shall not consider employing an underwriter or a bond counsel if that person, his spouse, either of his parents, any of his siblings, or any of his children is employed by a firm which was awarded a contract by a selection committee on which he served or owns one percent (1%) or more of a firm which was awarded a contract by a selection committee on which he served.

SECTION 9. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding the other provisions of Sections 1 to 13 of this Act, this section shall govern the selection of an underwriter or a bond counsel in the case of a bona fide emergency.

(2) A bona fide emergency shall be deemed to exist only where the executive director has certified to the secretary of the Finance and Administration Cabinet that an emergency, threatening substantial interests of the Commonwealth, has arisen from:

(a) A change in the federal tax law; or

(b) A situation other than a change in the federal tax law, and the secretary of the Finance and Administration Cabinet has stated in writing that he has independently concluded that the situation constitutes an emergency which threatens substantial interests of the Commonwealth.

(3) (a) The cabinet secretary shall forward to the Capital Projects and Bond Oversight Committee the certificate created pursuant to subsection (2)(a) of this section or the certificate and the secretary's independent conclusion written pursuant to subsection (2)(b) of this section.

(b) The secretary shall also confer with the executive director to determine what measures should be taken to select an underwriter or a bond counsel.

(4) Within thirty (30) days of the selection of an underwriter or a bond counsel pursuant to this section, the executive director, or his designee, shall appear before the Capital Projects and Bond Oversight Committee to report on the emergency selection. The report shall include:

(a) The materials referred to in subsection 3(a) of this section;

(b) His own description of the bona fide emergency;

(c) The procedure used for selecting the underwriter or bond counsel;

(d) The nature of the services that the underwriter or bond counsel will provide;

(e) The length of time for which the firm will provide these services; and

(f) The costs connected with employing the underwriter or bond counsel.

SECTION 10. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding the other provisions of Sections 1 to 13 of this Act, this section shall govern the selection of an underwriter or a bond counsel to take advantage of an innovation developed by that firm.

(2) The executive director may discuss with an underwriter or a bond counsel an innovation which the firm has developed or is developing.

(3) If the executive director concludes that the Commonwealth will benefit from using the innovation, then the executive director shall negotiate with the firm for it to provide the innovation to the Commonwealth in exchange for the firm's employment on certain bond issues.

(4) After an agreement is reached, but before it is executed, the executive director shall seek the review and recommendation of the Capital Projects and Bond Oversight Committee.

(5) If the committee does not recommend the agreement, the agreement shall be referred to the secretary of the Finance and Administration Cabinet who shall:

(a) Revise the agreement in consideration of the committee's objections;

(b) Cancel the agreement; or

(c) Determine to enter into the agreement.

(6) Within thirty (30) days after the secretary reaches his decision, it shall be transmitted to the committee.

SECTION 11. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) (a) In the competition for Commonwealth bond counsel business or underwriter's counsel business awarded pursuant to Sections 1 to 13 of this Act, a firm with its principal place of business located in Kentucky shall receive a preference over a firm with its principal place of business located outside Kentucky. The preference, if any, shall be equal to the preference that the out-of-state firm receives in its state of origin when that firm as an in-state firm competes against out-of-state firms for state bond counsel or underwriter's counsel business.

(b) The office shall calculate the preference.

1. In the case of bond counsel, if the out-of-state firm should be completely barred from consideration, then the office shall not prequalify the firm. If the preference is less than absolute, then the office shall forward the out-of-state firm's name, along with its preference handicap, to a selection committee.

2. In the case of an underwriter's counsel, if the out-of-state firm should be completely barred from consideration, then the Office shall not prequalify the firm. If the preference is less than absolute, then the office shall apply the preference handicap in determining the winning firm pursuant to subsection (4) of Section 12 of this Act.

(2) (a) If a selection committee vote results in a tie between an underwriter or bond counsel with its principal place of business located in Kentucky and an underwriter or bond counsel with its principal place of business located outside Kentucky, then the in-state firm shall be ranked one place ahead of the out-of-state firm.

(b) If an underwriter's counsel with its principal place of business located in Kentucky and an underwriter's counsel with its principal place of business located outside Kentucky each submit a bid pursuant to subsection (4) of Section 12 of this Act and the bids tie, the office shall rank the in-state firm one place ahead of the out-of-state firm.

SECTION 12. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) (a) An underwriter shall not hire an underwriter's counsel unless the office has prequalified the firm.

(b) An underwriter's counsel's prequalification shall remain in effect for twelve (12) months from the date of

prequalification.

(2) ***The office shall submit the list of prequalified firms to the underwriter.***

(3) ***When the underwriter is hiring underwriter's counsel, the underwriter shall seek competitive bids from at least three (3) firms on the list.***

(4) ***The underwriter shall instruct the firms to submit their bids to the office by a deadline. Any bid which the office receives after the deadline shall not be considered. The office shall notify the underwriter of the lowest bid. The underwriter shall hire, at the bid price, the firm which submitted the lowest bid. The underwriter shall retain the firm for the length of time that the underwriter has been hired to provide services to the Commonwealth.***

SECTION 13. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

By January 1, 1995, the office shall promulgate administrative regulations to carry out the provisions of Sections 1 to 13 of this Act.

HB 325, AN ACT relating to administrative regulations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The following KRS sections are repealed:

13A.346 Quadrennial review of administrative regulations by LRC subcommittee -- Schedule.

13A.347 Assignment by LRC to subcommittee -- Public meeting -- Reports required -- Expiration of administrative regulations -- Enactment into statute -- Prohibition concerning promulgation.

HB 339, AN ACT relating to the court of justice and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 48 IS CREATED TO READ AS FOLLOWS:

The General Assembly shall set the salaries of the justices and judges of the Court of Justice in the judicial branch budget bill. The Chief Justice shall include in the judicial branch budget recommendation, the salaries of the justices and the judges. If the General Assembly concurs with the recommended judicial salaries contained in the judicial branch budget recommendation, then the judicial salaries shall be set in the judicial branch budget bill by incorporating by reference the judicial branch budget recommendation. If the General Assembly sets judicial salaries different from the judicial branch budget recommendation, then the salaries of the justices and judges or the incremental changes shall be set forth in the judicial branch budget bill. In every case the judicial salaries shall be set forth in the judicial branch budget memorandum as provided for in KRS 48.300.

SECTION 2. A NEW SECTION OF KRS CHAPTER 64 IS CREATED TO READ AS FOLLOWS:

Compensation of clerks of the circuit court shall be set in accordance with the judicial personnel system. The Chief Justice shall include anticipated salary increases for clerks of the Circuit Court in the judicial branch budget recommendation. The increases may be limited by the General Assembly in the judicial branch budget bill or in the judicial branch budget memorandum as provided in KRS 48.300.

Section 3. KRS 23A.200 is amended to read as follows:

(1) The ***Supreme Court shall by rule set the filing fees and miscellaneous costs for civil cases filed in the Circuit Court.*** ~~[filing fee for a civil case in Circuit Court shall be seventy-five dollars ($75); however, there shall be no filing fee for proceedings for a writ of habeas corpus, proceedings under RCr 11.42, and mental health proceedings under KRS Chapters 202B and 387. The filing fee shall be paid to the clerk at the time the case is filed.~~

~~(2) Additional fees shall be charged in Circuit Court civil cases as follows:~~

~~(a) Filing a third party complaint~~	~~$10.00~~
~~(b) Preparing a certification~~	~~1.00~~
~~(c) Providing a copy of a document (per page)~~	~~.25~~
~~(d) Issuing orders of attachment; executions; writ of possession after judgment~~	~~10.00~~
~~(e) Issuing garnishments~~	~~2.00~~

~~(3) The additional fees required by subsection (2) of this section shall be paid to the clerk at the time the service is requested.~~

~~(4) Jury fees shall be assessed as costs and shall be paid to the clerk at the disposition of the action by the party against whom the costs have been assessed as follows:~~

~~(a) For a jury of more than six (6) persons~~	~~$25.00~~

~~(b) For a jury of six (6) persons .... 12.50~~]

(2)[~~(5)~~] The following fee shall be paid directly to the sheriff or other officer serving the process by the party requesting the service, at the time of the request as follows:

Service of process (per process) $10.00

[~~(6) The cost incurred by the clerk in publishing a notice shall be paid by the party requesting the notice prior to the publication of the notice.~~

~~(7) The costs of an original deposition including appearance fees and mileage shall be assessed as costs.~~

~~(8) The court, in its discretion, may provide for the payment of additional costs in cases requiring extraordinary services.~~]

Section 4. KRS 23A.215 is amended to read as follows:

(1) ***Except as provided in subsections (2) and (3) of this section, all fees and costs collected pursuant KRS 23A.200(1) shall be deposited in the general fund of the State Treasury*** [~~The Circuit Court filing fee authorized by subsection (1) of KRS 23A.200 shall be placed in the general fund of the State Treasury and may be appropriated as provided by law.~~

~~(2) Additional fees in Circuit Court civil cases authorized by subsections (2)(a), (b), (c), (d), (e), (4)(a), and (b) and (8) of KRS 23A.200 shall be placed in the general fund of the State Treasury and may be appropriated as provided by law.~~

~~(3) The fees authorized by KRS 23A.210 shall be placed in the general fund of the State Treasury and may be appropriated as provided by law.~~

~~(4) Costs and additional costs authorized by subsections (1), (2), (3)(a), and (b) and (4) of KRS 23A.205 shall be placed in the general fund of the State Treasury and may be appropriated as provided by law~~].

(2)[~~(5)~~] ***Fees consisting of reimbursement for incidental direct outlays, including, but not limited to, postage and legal advertising, may be retained by the clerk and expended for these purposes in accordance with relevant directives of the administrative office of the courts.***

(3) The moneys authorized by subsection (5) of KRS 23A.205 shall be paid monthly to the sheriff for use by the sheriff for providing security services and related activities to the court as provided for in KRS 64.092.

(4)[~~(6)~~] Filing fees in civil actions shall be recoverable as costs.

Section 5. KRS 24A.170 is amended to read as follows:

(1) The ***Supreme Court shall by rule set the filing fees and miscellaneous costs for civil cases filed in the District Court.*** [~~filing fee for a civil case in District Court shall be paid to the clerk at the time the case is filed and shall be thirty dollars ($30), except as provided below:~~

~~(a) Where the amount in controversy is five hundred dollars ($500) or less, the fee shall be fifteen dollars ($15);~~

~~(b) Where the case involves the probate of an estate, the fee shall be ten dollars ($10);~~

~~(c) Where the case involves the appointment of guardians, conservators, and curators and is not related to a pending probate proceeding, the fee shall be ten dollars ($10) for each appointment;~~

~~(d) Where the matter involves a name change for a natural person, the fee shall be ten dollars ($10);~~

~~(e) Where the case involves a paternity determination under KRS Chapter 406, the fee shall be ten dollars ($10);~~

~~(f) Where the case involves mental health proceedings under KRS Chapter 202A, 202B or 387, there shall be no fee except as provided in paragraph (c) of this subsection;~~

~~(g) Where the case involves a hearing for a student pursuant to KRS 159.051, there shall be no fee; and~~

~~(h) Filing forcible detainer actions .... $10.00.~~

~~(2) Additional fees shall be charged in District Court civil cases as follows:~~

~~(a) Filing a third party complaint .... $10.00~~

~~(b) Preparing a certification .... $ 1.00~~

~~(c) Providing a copy of a document (per page) .... $ 0.15~~

~~(d) Issuing orders of attachment; executions; writ of possession after judgment .... $10.00~~

~~(e) Issuing garnishments .... $ 2.00~~

~~(3) The additional fees required by subsection (2) of this section shall be paid to the clerk at the time the service is requested.~~

~~(4) The jury fee shall be assessed as costs and shall be paid to the clerk by the party against whom the costs have been assessed as follows:~~

~~For a jury of six (6) persons .... $12.50~~]

(2)[~~(5)~~] The following fee shall be paid directly to the sheriff or other officer serving the process by the party requesting the service, at the time of the request:

Service of process (per process) $10.00

[~~(6) The cost incurred by the clerk in publishing a notice shall be paid by the party requesting the notice prior to the publication of the notice.~~

~~(7) The court, in its discretion, may provide for the payment of additional costs in cases requiring extraordinary services.~~

~~(8) The costs of an original deposition including appearance fees and mileage shall be assessed as costs.~~]

Section 6. KRS 24A.180 is amended to read as follows:

(1) ***Except as provided in subsection (2) of this section all fees and costs collected pursuant to KRS 24A.170 (1) shall be deposited in the general fund of the State Treasury*** [~~The District Court filing fee authorized by subsection (1) of KRS 24A.170 shall be placed in the general fund of the State Treasury and may be appropriated as provided by law~~].

(2) ***Fees consisting of reimbursement for incidental direct outlays, including, but not limited to, postage and legal advertising, may be retained by the clerk and expended for these purposes in accordance with relevant directives of the administrative office of the courts*** [~~The diminished filing fee in certain District Court matters as authorized by subdivisions (a), (b), (c), (d) and (e) of subsection (1) of KRS 24A.170 shall be placed in the general fund of the State Treasury and may be appropriated as provided by law.~~

~~(3) Additional costs in District Court civil cases authorized by subsections (2)(a), (b), (c), (d), and (e), and (4) of KRS 24A.170 shall be placed in the general fund of the State Treasury and may be appropriated as provided by law~~].

(3)[~~(4)~~] Additional costs in District Court civil cases authorized by subsection ***(2)***[~~(5)~~] of KRS 24A.170 shall be paid to the sheriff or other officer serving the process.

[~~(5) Costs authorized by subsection (3) of KRS 23A.200 shall be paid to the circuit clerk.~~]

(4)[~~(6)~~] Costs and additional costs authorized by subsections (1), (2), (3), (4), (5) and (6) of KRS 24A.175 shall be placed in the general fund of the State Treasury and may be appropriated as provided by law.

(5)[~~(7)~~] The moneys authorized by subsection (7) of KRS 24A.175 shall be paid monthly to the sheriff for use by the sheriff for providing security services and related activities to the court as provided for in KRS 64.092.

(6)[~~(8)~~] Filing fees in civil actions shall be recoverable as costs.

Section 7. KRS 64.486 is amended to read as follows:

In addition to the salary provided for in ***Section 1 of this Act*** [~~KRS 64.485~~] as adjusted by salary increments the General Assembly may from time to time provide, the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals, the chief regional Circuit Judges, and the chief regional District Judges shall receive the following salary supplements per annum establishing a total salary differential of: five thousand dollars ($5,000), Chief Justice, Supreme Court; three thousand dollars ($3,000), Chief Judge, Court of Appeals; and one thousand dollars ($1,000), chief regional Circuit and District Judges, over other justices and judges of their courts respectively.

Section 8. KRS 64.058 is amended to read as follows:

Each Circuit Court clerk shall receive an annual expense allowance of three thousand six hundred dollars ($3,600) per year. A lump-sum payment shall be made by the Administrative Office of the Courts to each Circuit Court clerk in the first month of each quarter as of July, 1984, in the amount of nine hundred dollars ($900) per quarter. ***The*** [~~Such~~] allowance shall be in addition to reimbursement for official travel and the regular compensation provided for by ***Section 2 of this Act*** [~~KRS 64.055~~].

Section 9. The following KRS sections are repealed:

23A.210 Fees for appeals from District Court or transfer of cases to Circuit Court.

64.055 Salary for circuit clerks -- Adjustment for changes in consumer price index -- Limits.

64.485 Salaries of Justices and Judges of Court of Justice -- Adjustments for changes in consumer price index -- Limits.

Section 10. Whereas the provisions of this Act apply to the 1994-96 biennial budget, an emergency is declared to exist and the provisions of Sections 1 and 2 of this Act shall become effective upon its passage and approval by the Governor. The provisions of Sections 3 to 9 of this Act shall be effective July 1, 1994.

HCR 19, A CONCURRENT RESOLUTION requesting reauthorization of the Tobacco Task Force.

WHEREAS, tobacco production is at the heart of Kentucky's economy; and

WHEREAS, loss of tobacco production or the tobacco program would have a devastating effect on Kentucky and its tobacco farmers; and

WHEREAS, such losses would cause failure of many farms and businesses, decreases in land values, the default of loans and the loss of state and local revenues; and

WHEREAS, the Tobacco Task Force was created by the Legislative Research Commission in 1984 to address problems which threaten the tobacco industry and the tobacco price support program; and

WHEREAS, the Task Force has been instrumental in helping resolve those problems; and

WHEREAS, the tobacco industry and tobacco farmers remain in jeopardy because of lowered quotas, increased imports, labor shortages, marginal prices, possible increases in excise taxes, and other problems;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the Kentucky Tobacco Task Force be reauthorized to help resolve the problems facing the tobacco industry and the tobacco program.

Section 2. Staff services to be utilized by the Task Force are estimated to cost $15,000 and are to be provided by the Commission from its regular budget, subject to the limitations and other research responsibilities of the Commission.

HR 20, A RESOLUTION recognizing and honoring playwright George C. Wolfe.

What a man does reveals to us what he is. Creativeness of the written word cannot be borrowed nor bought; it comes from within, blessed by God and written with one's blood.

WHEREAS, George C. Wolfe, a native of Frankfort, Franklin County, Kentucky was born on September 23, 1954, the loving son of Anna Mary and Costello Wolfe; and

WHEREAS, George C. Wolfe attended Rosenwald Laboratory Elementary School where his literary talent was stimulated, and graduated from Frankfort High School in 1972, where he was president of the Drama Club in his junior and senior years, co-edited the Literary Magazine, and edited the school newspaper; and

WHEREAS, George C. Wolfe attended Kentucky State University for a period of one year, then transferred to Claremont College in Claremont, California where he studied acting and directing and received his BA degree; and

WHEREAS, George C. Wolfe obtained an MFA in Dramatic Writing/Musical Theater from New York University; and

WHEREAS, as many others before him, he struggled for nearly a decade before his 1986 breakthrough Off-Broadway play, "The Colored Museum," a satirical look at the stereotypes of African-American life which pervade American culture, was shown at the Crossroads Theater in New Brunswick, New Jersey, bringing him deserved recognition by his peers and the public by presenting Mr. Wolfe a CBS/Foundation of the Dramatist Guild playwrighting award; and

WHEREAS, George C. Wolfe is a contributing author to The Living Theater, published by McGraw Hill, 1984, and is the recipient of a librettist/lyricist grant from the National Institute of Musical Theater, in conjunction with Playwrights Horizon; and

WHEREAS, George C. Wolfe has taught acting and guest directed at numerous theatrical institutions across the country, and was a writing intern on "Phyliss," an MTM production, by appointment of the Television Academy for Arts and Sciences; and

WHEREAS, the Houston Grand Opera and the Musical Theater Project co-commissioned him as a librettist and his musical, "Paradise!" for which he wrote the book and lyrics, received its world premier at the Cincinnati Playhouse-in-the-Park and a subsequent Off-Broadway production at Playwrights Horizon; and

WHEREAS, George C. Wolfe has received five Los Angeles area theater awards for writing and directing, and his play, "Return to Glutten," was recently performed in Sierra Leone, West Africa as part of a cultural exchange program sponsored by the State Department; and

WHEREAS, George C. Wolfe became the first African-American to create, write, and direct a Broadway musical, "Jelly's Last Jam," which was based on the life of jazz legend, Jelly Roll Morton; and

WHEREAS, Tony awards are presented by the American Theater Wing and the League of American Theaters and Producers; and "Jelly's Last Jam" was the recipient of three Tony awards; and

WHEREAS, George C. Wolfe received the 1993 Tony award for best director of the play, "Angels in America: Millennium Approaches," depicting the examination of the national psyche in the age of AIDS, which won a total of four Tony awards including best play; and

WHEREAS, in 1992, George C. Wolfe became the producer of the acclaimed New York Shakespeare Festival;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. That this honorable body proudly recognizes Kentucky's native son, George C. Wolfe, for his outstanding literary accomplishments and for his demonstration of extraordinary vision in increasing public awareness and awakening the soul of this great Commonwealth and America.

Section 2. That this honorable body hails and applauds Anna Mary and Costello Wolfe for the many parental contributions they have afforded and continue to afford their son throughout his life's journey.

Section 3. That this honorable body expresses its most sincere gratitude to George C. Wolfe for truly being an inspiration to the citizens of the Commonwealth of Kentucky, and wishes him continued success in all future endeavors.

Section 4. That when the House of Representatives adjourns this date, it does so in honor of and gratitude to playwright George C. Wolfe.

Section 5. That the Clerk of the House of Representatives is directed to transmit copies of this Resolution to Mr. George C. Wolfe, 52 King Street, New York City, New York 10014 and to Mr. and Mrs. Costello Wolfe, 12927 Avenida Vaquero, Houston, Texas 77077.

SB 44, AN ACT relating to state procurement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 56.491 is amended to read as follows:

(1) No state agency shall have power or authority to make plans and specifications, advertise for bids, let contracts, or incur any financing commitments, either in the way of a charge against public funds or in the way of negotiations for issuance of revenue bonds, for any capital construction projects involving the improvement of lands or the construction, alteration, reconstruction, or major repair of any building or other structure, or sewage disposal or water supply system, requiring the expenditure of more than one hundred ***and twenty-five*** thousand dollars ***($125,000)*** ~~[($100,000)]~~ without first securing the approval of the Finance and Administration Cabinet.

(2) The state agency seeking the approval shall submit to the Finance and Administration Cabinet a general description of the proposed project, with the detailed information the cabinet may require. Review of construction plans for conformance with the Uniform State Building Code shall be conducted by the Department of Housing, Buildings and Construction. The Finance and Administration Cabinet shall not approve any project requiring its approval in any instance if it finds that: the project is not needed; the proposed method of financing is not sound; the project will exceed the amount of the funds available therefor; the work contemplated will be insufficient to accomplish the purpose of the project; or after providing for the ordinary recurring expenses of government and debt service and for payments under existing allotments for extraordinary expenses and capital outlay, cash will not be available in the State Treasury to promptly pay for the work during the biennium, or except as provided in subsection (5) of this section, that the work is to be done by employees of the agency.

(3) The finding of the Finance and Administration Cabinet shall be final, except in cases where the issuance and sale of bonds is proposed, in which cases the cabinet shall submit its findings to the commission for final approval, modification, or disapproval.

(4) Any capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will exceed one hundred ***and twenty-five*** thousand dollars ***($125,000)*** ~~[($100,000)]~~, shall be contracted for on a competitive bid basis, and the execution of the contracts shall be approved and authorized by the cabinet. When a capital construction project has been approved as provided in this section, in whole or in part, the cabinet shall prepare the plans and specifications, advertise for bids, award the contracts, supervise the construction, and handle the financial negotiations on behalf of the requesting state agency; or with prior written approval, the cabinet may authorize a state agency to do so with delegated authority of the cabinet.

(5) A capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will not exceed one hundred ***and twenty-five*** thousand dollars ***($125,000)*** ~~[($100,000)]~~, may be performed by the employees of the requesting agency or by individuals hired specifically for the project who shall be exempt from the requirements of KRS Chapter 18A, if the project is approved and authorized by the cabinet. Necessary materials and supplies shall be procured in accordance with the standard purchasing procedures and policies of the cabinet as defined in KRS Chapter 45A.

(6) This section shall not apply to capital outlays to the Department of Highways for roads and bridges.

(7) This section shall not apply to capital outlays by the Justice Cabinet for repair, maintenance, improvement, or expansion of present correctional facilities on which projects inmates are used. Any capital construction project to be performed by the Justice Cabinet shall be approved and authorized by the Finance and Administration Cabinet.

HB 315, AN ACT relating to open meetings of public agencies.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 61.805 is amended to read as follows:

As used in KRS 61.805 to 61.850, unless the context otherwise requires:

(1) "Meeting" means all gatherings of every kind, ***including video teleconferences,*** regardless of where the meeting is held, and whether regular or special and informational or casual gatherings held in anticipation of or in conjunction with a regular or special meeting;

(2) "Public agency" means:

(a) Every state or local government board, commission, and authority;

(b) Every state or local legislative board, commission, and committee;

(c) Every county and city governing body, council, school district board, special district board, and municipal corporation;

(d) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;

(e) Any body created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act in the legislative or executive branch of government;

(f) Any entity when the majority of its governing body is appointed by a "public agency" as defined in paragraph (a), (b), (c), (d), (e), (g), or (h) of this subsection, a member or employee of a "public agency," a state or local officer, or any combination thereof;

(g) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff or a committee formed for the purpose of evaluating the qualifications of public agency employees, established, created, and controlled by a "public agency" as defined in paragraph (a), (b), (c), (d), (e), (f), or (h) of this subsection; and

(h) Any interagency body of two (2) or more public agencies where each "public agency" is defined in paragraph (a), (b), (c), (d), (e), (f), or (g) of this subsection;

(3) "Action taken" means a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body; and

(4) "Member" means a member of the governing body of the public agency and does not include employees or licensees of the agency.

(5) "Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment.

SECTION 2. A NEW SECTION OF KRS 61.800 TO 61.850 IS CREATED TO READ AS FOLLOWS:

(1) A video teleconference shall be a regular meeting of a public agency. No more than fifty percent (50%) of that public agency's annual regular meetings shall be video teleconferences. A video teleconference shall not be used for a closed session, special meeting, or emergency meeting.

(2) Notice of a video teleconference shall comply with the requirements of KRS 61.820. In addition, the notice of a video teleconference shall:

(a) Clearly state that the meeting will be a video teleconference; and

(b) Precisely identify the video teleconference locations as well as which, if any, location is primary.

(3) The same procedures with regard to participation, distribution of materials, and other matters shall apply in all video teleconference locations.

(4) Any interruption in the video or audio broadcast of a video teleconference at any location shall result in the suspension of the video teleconference until the broadcast is restored.

The Committee Amendment No. 1 to **HB 315** is as follows:

On page 2, line 16, by deleting "***No more***"; and

On page 2, by deleting line 17 in its entirety; and

On page 2, line 18, by deleting "***video teleconferences.***".

The Committee Amendment No. 2 to **HB 315** is as follows:

On page 2, line 19, by deleting "***, special meeting, or emergency meeting***".

The Committee on State Government reported **HR 15**, with Committee Title Amendment and Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HR 15, A RESOLUTION relating to state government's policies on the closing of state offices due to inclement weather.

WHEREAS, state offices were closed on December 28 and 29, 1993 under a snow emergency declared by the Adjutant General of the Commonwealth; and

WHEREAS, the estimated cost of paid leave for each day on which state offices are closed is $5 million; and

WHEREAS, the Commonwealth is facing a period when the adequate provision of basic state programs is threatened by budget shortfalls; and

WHEREAS, state government must, at all times, attempt to provide timely and adequate services to the citizens of Kentucky; and

WHEREAS, state managers and employees could be allowed to use greater discretion in determining whether weather conditions in their particular location restrict travel and warrant their use of annual or compensatory leave time;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. That the House of Representatives urges and requests that the Governor and Adjutant General review and evaluate the current policy relating to the closing of state offices because of inclement weather. The review and evaluation should include a comparison with the policies of other states and the private sector and an analysis of the comparative costs to Kentucky taxpayers of closing state offices versus alternatives, including, without being limited to, investing in additional road-clearing equipment and services.

Section 2. That the House of Representatives requests that the Governor and Adjutant General report the findings and recommendations of their review and evaluation to the Legislative Research Commission for distribution to the members of the General Assembly.

The Committee Title Amendment to **HR 15** is as follows:

By adding after "offices" the words "and highways".

The Committee Substitute to **HR 15** is as follows:

HR 15, A RESOLUTION relating to state government's policies on the closing of state offices due to inclement weather.

WHEREAS, state offices were closed on December 28 and 29, 1993 under a snow emergency declared by the Adjutant General of the Commonwealth; and

WHEREAS, the estimated cost of paid leave for each day on which state offices are closed is $5 million; and

WHEREAS, the Commonwealth is facing a period when the adequate provision of basic state programs is threatened by budget shortfalls; and

WHEREAS, state government must, at all times, attempt to provide timely and adequate services to the citizens of Kentucky; and

WHEREAS, state managers and employees could be allowed to use greater discretion in determining whether weather conditions in their particular location restrict travel and warrant their use of annual or compensatory leave time;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. That the House of Representatives urges and requests that the Governor, Secretary of the Transportation Cabinet, and Adjutant General review and evaluate the current policy relating to the closing of state offices, and the closing of state and interstate highways, because of inclement weather. The review and evaluation should include a comparison with the policies of other states and the private sector and an analysis of the comparative costs to Kentucky taxpayers of closing state offices versus alternatives, including, without being limited to, investing in additional road-clearing equipment and services.

Section 2. That the House of Representatives requests that the Governor and Adjutant General report the findings and recommendations of their review and evaluation to the Legislative Research Commission for distribution to the members of the General Assembly.

Floor Amendments (Continued)

Floor Amendment No. 2 to **HB 339**, by Representative Mullinix:

On page 1, line 3, by placing "*(1)*" at the beginning of line 3; and

On page 1, between lines 13 and 14, by adding the following:

"***(2) The Chief Justice shall include in the judicial branch budget recommendation:***

(a) The filing fees and costs, and any changes in the fees and costs, set under Section 3 or Section 5 of this Act

during the fiscal biennium immediately preceding the biennium for which the recommendation is submitted; and

(b) A statement of whether, and to what extent, the Supreme Court intends to raise or anticipates raising the fees and costs set under Section 3 or Section 5 of this Act during the biennium for which the recommendation is submitted."

Calendar

HB 205, HB 224, HB 231, HB 359, HB 2, HB 136, HB 341 and **HB 365** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Consent Calendar

HB 184 taken from the Consent Calendar and ordered read at length for the second time. Representative Stumbo moved that it be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Orders of the Day

HB 104, with Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 104** be returned to the Orders of the Day. Agreed.

HB 218, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative LeMaster moved the adoption of Committee Amendment No. 1 to **HB 218**. Agreed.

Representative LeMaster moved that **HB 218**, as amended, be passed.

On the roll call the vote was: Yeas 93, Nays 0. (See February 4, 1994 roll call on **HB 218** - Appendix)

HB 218, as amended, was passed and the title agreed to.

Representative LeMaster moved that the vote by which **HB 218**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 294 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lyne moved that **HB 294** be passed.

On the roll call the vote was: Yeas 94, Nays 1. (See February 4 , 1994 roll call on **HB 294** - Appendix)

HB 294 was passed and the title agreed to.

Representative Lyne moved that the vote by which **HB 294** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 243 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved that **HB 243** be passed.

On the roll call the vote was: Yeas 92, Nays 0. (See February 4 , 1994 roll call on **HB 243** - Appendix)

HB 243 was passed and the title agreed to.

Representative Long moved that the vote by which **HB 243** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 347 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative McElroy moved that **HB 347** be passed.

On the roll call the vote was: Yeas 94, Nays 1. (See February 4 , 1994 roll call on **HB 347** - Appendix)

HB 347 was passed and the title agreed to.

Representative McElroy moved that the vote by which **HB 347** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 348 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative McElroy moved that **HB 348** be passed.

On the roll call the vote was: Yeas 93, Nays 0. (See February 4 , 1994 roll call on **HB 348** - Appendix)

HB 348 was passed and the title agreed to.

Representative McElroy moved that the vote by which **HB 348** was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments

Floor Amendment No. 1 to **HB 339**, by Representative Morris:

On page 1, line 10, by inserting between "***the***" and "***salaries***" the words "***General Assembly shall set forth the***"; and

On page 1, line 11, by deleting "***shall be set forth***".

Orders of the Day (Continued)

HB 215, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lewis moved the adoption of the Committee Substitute to **HB 215**. Agreed.

Representative Little moved the adoption of Floor Amendment No. 2 to the Committee Substitute to **HB 215.**

Representative Long inquired if Floor Amendment No. 2 to the Committee Substitute to **HB 215** was germane.

The Speaker ruled that Floor Amendment No. 2 to the Committee Substitute to **HB 215** was not germane.

Representative Napier moved the adoption of Floor Amendment No. 4 to the Committee Substitute to **HB 215.**

On the roll call on the passage of Floor Amendment No. 4 to the Committee Substitute to **HB 215** the vote was **Yeas 37**--Adkins, Allen, Altman, Ballard, Bentley, Bruce, Bryant, Buis, P. Clark, Collins, Cyrus, Deskins, Farley, Ford, Fox, Gedling, Gee, Graham, Jensen, Johnson, Lindsay, Little, Lyne, Maggard, Maricle, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Reinhardt, Sanders, Todd, Treesh, Yates, Zimmerman. **Nays 55**--Adams, Arnold, Barrows, Bondurant, Bowling, Brown, Burch, Butler, Callahan, Cave, L. Clark, Clarke, Coleman, Crenshaw, Curd, Damron, DeWeese, Donnermeyer, Farrow, Geveden, Gray, Hampton, Harper, Heleringer, Kerr, Lear, Lee, LeMaster, Lewis, Lile, Long, Marzian, Mason, McElroy, Moberly, Northup, Nunn, Palumbo, Rapier, Rasche, Richards, Riggs, Riner, Scorsone, Scott, Shacklette, Simpson, B. Smith, Stacy, Stengel, Stumbo, Trapp, Turner, Walton, Wayne.

The motion to adopt Floor Amendment No. 4 to the Committee Substitute to **HB 215** was rejected.

Representative Little inquired if the adoption of Floor Title Amendment No. 1 to the Committee Substitute to **HB 215** would make Floor Amendment No. 2 to the Committee Substitute to **HB 215** germane.

The Speaker stated that he would rule germaneness of Floor Amendment No. 2 to the Committee Substitute to **HB 215** in relation to Floor Title Amendment No. 1 to the Committee Substitute to **HB 215** only after the latter has been adopted.

Representative Lindsay moved the adoption of Floor Amendment No. 6 to the Committee Substitute to **HB 215**.

On the roll call on the passage of Floor Amendment No. 6 to the Committee Substitute to **HB 215** the vote was **Yeas 38**--Adams, Adkins, Allen, Altman, Ballard, Bentley, Brown, Bruce, Bryant, Buis, P. Clark, Collins, Cyrus, Deskins, Farley, Ford, Gedling, Gee, Graham, Hampton, Johnson, Kerr, Lindsay, Little, Lyne, Maggard, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Reinhardt, Sanders, Todd, Treesh, Turner, Walton. **Nays 53**--Ackerson, Barrows, Bondurant, Bowling, Burch, Butler, Callahan, Cave, L. Clark, Clarke, Coleman, Crenshaw, Curd, Damron, DeWeese, Donnermeyer, Farrow, Fox, French, Geveden, Gray, Harper, Heleringer, Jensen, Lear, Lee, LeMaster, Lewis, Lile, Long, Maricle, Marzian, McElroy, Moberly, Northup, Nunn, Palumbo, Rapier, Rasche, Richards, Riggs, Riner, Scorsone, Scott, Shacklette, Simpson, B. Smith, Stacy, Stengel, Stumbo, Trapp, Wayne, Zimmerman.

The motion to adopt Floor Amendment No. 6 to the Committee Substitute to **HB 215** was rejected.

Representative Little moved the adoption of Floor Amendment No. 7 to the Committee Substitute to **HB 215.**

Representative Long inquired if Floor Amendment No. 7 to the Committee Substitute to **HB 215** was germane.

The Speaker ruled that Floor Amendment No. 7 to the Committee Substitute to **HB 215** was not germane.

Representative Lewis moved that **HB 215**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 66, Nays 29. (See February 4, 1994 roll call on **HB 215** - Appendix)

HB 215, by way of Committee Substitute, was passed and the title agreed to.

Representative Lewis moved that the vote by which **HB 215**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications (Continued)

Representative Stumbo moved that **HB 100** be recommitted to the Committee on Appropriations and Revenue. Agreed.

Representative Stumbo moved that the rules be suspended for the Introduction of Bills and Resolutions and Committee Reports. Agreed.

Introduction of Bills and Resolutions

HB 462, by Representative Palumbo: AN ACT relating to the Personal Care Assistance Program.

HB 463, by Representatives Palumbo, Trapp, Bowling, Lewis, Fox and McElroy: AN ACT relating to the use of school buses to transport senior citizens.

HB 464, by Representatives Morris and Bruce: AN ACT relating to a lien information system.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills have been posted for Committee consideration:

Natural Resources and Environment: **HB 368**

Banking and Insurance: **HB 426, HB 427**

Labor and Industry: **HB 360**

Motions, Petitions and Communications (Continued)

Representative Todd moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Todd moved that his vote be changed from "yea" to "nay" on **HB 46**. Agreed.

Representative Todd moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Todd moved that he be recorded as voting "yea" on **HB 191**. Agreed.

Representative Simpson moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Simpson moved that he be recorded as voting "yea" on **HB 218**. Agreed.

Representative Lile moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Lile moved that he be recorded as voting "yea" on **HB 191**. Agreed.

Representative Stumbo moved that **HB 100** be taken from the Clerk's Desk and recommitted to the Committee on Appropriations and Revenue. Agreed.

The following members filed requests to have their names added as co-sponsors to Bills: **HB 96, HB 115, HB 205, HB 223**, Representative Lile; **HB 97**, Representative Fox; **HB 187**, Representative Walton; **HB 215**, Representative Northup; **HB**

219, Representative French; **HB 220**, Representative Barrows; **HB 361**, Representative Coleman; **HB 368**, Representative Noland; **HB 450**, Representative Maggard.

Announcements

The Clerk announced the following meetings:

Budget Review Subcommittee on Human Resources, 9:a.m.

Committee on Rules, upon adjournment, Speaker's Office

Adjournment

Representative Stumbo moved that the House adjourn until 4:00 p.m., Monday, February 7, 1994.

On the roll call the vote was **Yeas 73**--Ackerson, Adams, Adkins, Altman, Arnold, Ballard, Bentley, Bondurant, Bowling, Brown, Bryant, Buis, Butler, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gee, Geveden, Graham, Gray, Hampton, Harper, Jensen, Kerr, Lear, Lee, Lindsay, Long, Lyne, Maggard, Marzian, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Noland, Northup, Nunn, Palumbo, Rasche, Reinhardt, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Wayne, Worthington, Zimmerman. **Nays 3**--Heleringer, LeMaster, Lile.

The motion to adjourn was adopted.

MONDAY, FEBRUARY 7, 1994

TWENTY-SECOND LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend David Hilton, First United Methodist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Allen, Deskins, Hatcher and R. Smith.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of February 4, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Introduction of Bills and Resolutions

HB 465, by Representative Geveden: AN ACT relating to sales and use tax.

HB 466, by Representative LeMaster: AN ACT relating to consent annexation.

Floor Amendments

Floor Amendment No. 1 to **HB 315**, by Representative Donnermeyer:

On page 2, line 21, after "***61.820*** " insert "***or 61.823 as appropriate***"

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Agriculture and Small Business: **HB 452**

Appropriations and Revenue: **HB 446, HB 455, HB 456**

Education: **HB 458**

Elections and Constitutional Amendments: **HB 454**

Health and Welfare: **HB 445, HB 457, HB 460, HB 462, HB 463**

Judiciary: **HB 451, HB 453, HB 461**

Labor and Industry: **HB 449**

State Government: **HB 450, HB 459, HB 464**

Transportation: **SB 11, SB 85, SB 106, SJR 13, SJR 27, HB 447, HB 448**

Report of Committees

The Committee on Rules reported the following Consent Bills have been posted for passage in the Regular Orders of the Day, February 8, 1994: **HB 184, HB 365**

The Committee on Rules reported that **HB 30, HB 34, HB 73, HB 154, HB 169, HB 211, HB 239, HB 136, HB 205** and **HB 359** have been posted for passage in the Orders of the Day for February 8, 1994.

Calendar

HB 175, HB 234, HB 269, HB 277, HB 295, HB 299, HB 325, HB 339, HCR 19, HR 20, SB 44 and **HB 315** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules

Consent Calendar

HR 15 taken from the Consent Calendar and ordered read at length for the second time. Representative Stumbo moved that it be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Orders of the Day

HB 96, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Damron moved the adoption of the Committee Substitute to **HB 96**. Agreed.

Representative Damron moved that **HB 96**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 85, Nays 0. (See February 7, 1994 roll call on **HB 96** - Appendix)

HB 96, by way of Committee Substitute, was passed and the title agreed to.

Representative Damron moved that the vote by which **HB 96**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 222 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Shacklette moved that **HB 222** be passed.

On the roll call the vote was: Yeas 93, Nays 0. (See February 7 , 1994 roll call on **HB 222** - Appendix)

HB 222 was passed and the title agreed to.

Representative Shacklette moved that the vote by which **HB 222** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 298 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved that **HB 298** be passed.

On the roll call the vote was: Yeas 85, Nays 0. (See February 7 , 1994 roll call on **HB 298** - Appendix)

HB 298 was passed and the title agreed to.

Representative Long moved that the vote by which **HB 298** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 307, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of Committee Amendment No. 1 to **HB 307**. Agreed.

Representative Long moved that **HB 307**, as amended, be passed.

On the roll call the vote was: Yeas 79, Nays 10. (See February 7, 1994 roll call on **HB 307** - Appendix)

HB 307, as amended, was passed and the title agreed to.

Representative Long moved that the vote by which **HB 307**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 309, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of the Committee Substitute to **HB 309**. Agreed.

Representative Long moved that **HB 309**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 49, Nays 42. (See February 7, 1994 roll call on **HB 309** - Appendix)

HB 309, by way of Committee Substitute, was passed and the title agreed to.

Representative Long moved that the vote by which **HB 309**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 351 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Cave moved that **HB 351** be passed.

On the roll call the vote was: Yeas 87, Nays 5. (See February 7 , 1994 roll call on **HB 351** - Appendix)

HB 351 was passed and the title agreed to.

Representative Cave moved that the vote by which **HB 351** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 310 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved that **HB 310** be passed.

On the roll call the vote was: Yeas 92, Nays 2. (See February 7 , 1994 roll call on **HB 310** - Appendix)

HB 310 was passed and the title agreed to.

Representative Long moved that the vote by which **HB 310** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 335, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Ridley moved the adoption of the Committee Substitute to **HB 335**. Agreed.

Representative Ridley moved that **HB 335**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 94, Nays 0. (See February 7, 1994 roll call on **HB 335** - Appendix)

HB 335, by way of Committee Substitute, was passed and the title agreed to.

Representative Ridley moved that the vote by which **HB 335**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions and Report of Committees. Agreed.

Introduction of Bills and Resolutions

HB 467, by Representatives Bowling and Long: AN ACT relating to prohibiting the discriminatory pricing of drugs.

HB 468, by Representative Bowling: AN ACT relating to superintendent screening committees.

HB 469, by Representative Bowling: AN ACT relating to business opportunities.

HB 470, by Representatives Cyrus and Nunn: AN ACT relating to workers' compensation and declaring an emergency.

HB 471, by Representative French: AN ACT relating to crimes and punishments.

HB 472, by Representatives Scorsone and Burch: AN ACT relating to child support.

HB 473, by Representative Maggard: AN ACT relating to crimes and punishments.

HB 474, by Representative Palumbo: AN ACT relating to charitable solicitations.

HB 475, by Representatives Lear, Gray, Northup and Lewis: AN ACT relating to workforce training for the encouragement of economic competitiveness, making an appropriation therefor, and declaring an emergency.

HB 476, by Representative Riggs: AN ACT relating to crimes and the victims thereof.

HB 477, by Representative Stengel: AN ACT relating to driving under the influence.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Judiciary: **HB 89, HB 22, HB 270, HB 278, HB 326, HB 363, HB 158**

Cities: **SB 91, SB 120, HB 401**

Motions, Petitions and Communications (Continued)

Representative Marzian moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Marzian moved the adoption of the following **Legislative Citation No. 46**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest condolences and expressions of sympathy to The Thelma L. Stovall Family on the passing of Thelma L. Stovall. The entire membership joins Representative Mary Lou Marzian on this somber occasion in memory of Thelma L. Stovall. Thelma Stovall was the first woman to be an elected Kentucky state official. She served in the General Assembly and was elected secretary of state, treasurer and lieutenant governor, serving a total of six terms-24 years-in statewide office. Mrs. Stovall was strongly dedicated to organized labor and the women's movement. Thelma L. Stovall dedicated her life to serving the people.

Representative Richards moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Richards moved the adoption of the following **Legislative Citation No. 45**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest condolences and expressions of sympathy to The Frank Miller Family on the passing of Frank Miller. Frank Miller, a former state senator from Bowling Green, Kentucky served the 32nd District which includes Warren and Logan counties, from 1974 to 1986. The entire membership joins Speaker Joe Clarke, and the constituents of Bowling Green, Kentucky in memory of Frank Miller.

Representative Kerr moved the adoption of the following **Legislative Citation No. 47**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to Bill Durr in recognition of being named Outstanding Fair Person of 1993. The entire membership joins Representative Thomas Kerr in congratulating Bill Durr for being the first person in Kenton County to win the Outstanding Fair Person of 1993 award. The time and energy Bill devotes to the success of the fairs is commendable. This prestigious body extends its very best wishes on this memorable occasion and expresses the hope for continued good fortune.

Representative Kerr moved the adoption of the following **Legislative Citation No. 48**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest condolences and expressions of sympathy to The Charles Petty Family on the passing of Charles Petty. Charles Petty was a state representative from the 64th District from 1977 to 1984 and was the former chairman of the Northern Kentucky Legislative Caucus. The entire membership joins Representative Thomas Kerr in memory of Charles Petty.

Representative Palumbo moved the adoption of the following **Legislative Citation No. 50**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to Roy Thomas Casey in recognition of his achievement as Eagle Scout. The integrity, determination and dedication to community service has earned you scouting's highest honor. The many admirable qualities you posses are exemplary of the leaders who will guide America in the Twenty-first Century. The entire membership joins Representative Ruth Ann Palumbo in congratulating Roy Thomas Casey.

Representative Gray moved the adoption of the following **Legislative Citation No. 49**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest thanks to Representative Paul Clark. The entire membership joins Speaker Joe Clarke in extending their thanks for the delicious barbecue Representative Paul Clark so generously provided this prestigious body during the 1994 Legislative Session.

The following members filed requests to have their names added as co-sponsors to Bills under rules previously suspended: **HB 205**, Representative Trapp; **HB 223, HB 289**, Representative Marzian; **HB 473**, Representatives Ford, Cyrus.

Representative Nesler moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Nesler moved that his vote be changed from "nay" to "yea" on **HB 351**. Agreed.

Representative Hancock moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Hancock moved that he be recorded as voting "yea" on **HB 191, HB 85, HB 157, HB 6, HB 218, HB 294, HB 347, HB 348** and **HB 215**. Agreed.

Representative Lear moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Lear moved that he be recorded as voting "yea" on **HB 96** and **HB 222**. Agreed.

Announcements

The Clerk announced the following meetings:

Agriculture and Small Business, 9:00 a.m., February 8, 1994, Room 125

Majority Caucus, February 8, 1994, upon adjournment

Banking and Insurance, 10:00 a.m., February 8, 1994, Room 131

Appropriations and Revenue, 10:00 a.m., February 8, 1994

Counties and Special Districts, 12 Noon, February 8, 1994

Committee on Rules, upon adjournment

Economic Development, canceled February 9, 1994

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Tuesday, February 8, 1994.

On the roll call the vote was **Yeas 87**--Ackerson, Adams, Adkins, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bruce, Bryant, Buis, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Graham, Gray, Hampton, Hancock, Harper, Jensen, Johnson, Keith, Kerr, Lear, Lee, Lindsay, Little, Lyne, Maggard, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, Stacy, Stengel, Todd, Trapp, Treesh, Turner, Walton, Worthington, Yates, Zimmerman. **Nays 3**--Heleringer, LeMaster, Lile.

The motion to adjourn was adopted.

TUESDAY, FEBRUARY 8, 1994

TWENTY-THIRD LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend Ron Camblin, Woodford Christian Church, Versailles.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Hatcher and Little.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of February 7, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Representative Collins moved that the rules be suspended to grant floor privileges to a special guest and to act upon a Legislative Citation. Agreed.

Representative Collins moved the adoption of the following **Legislative Citation No. 20**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds your effort and offers its sincerest congratulations to Coach Walter Brugh for your achievements during your athletic career with the Paintsville Tigers. Your winning career record of 274 wins, 130 losses and 5 ties, designates you as the winningest high school football coach in Kentucky. Your contributions have been outstanding, and your dedication to the students of Paintsville High School is to be commended. The House of Representatives joins with Representative Hubert Collins in honoring you on your many achievements and wishes you every success as you continue to impact your community through your commitment to assist the young people of Paintsville to achieve a brighter future.

Senate Message

Announcing passage of **SB 40, SB 53, SJR 10, SJR 36, SCR 44, HB 49, HB 65, HB 33** and **HB 68**.

Message received in regard to **HB 49** and **HB 65**: The Senate has passed **HB 49** with Senate Committee Amendments and **HB 65** with Senate Floor Amendment and respectfully requests concurrence of this Honorable body. (Time: 2:05 p.m.)

Representative Bondurant moved that the rules be suspended to introduce guests. Agreed.

Representative Richards moved that the rules be suspended to introduce guests. Agreed.

Representative B. Smith moved that the rules be suspended to introduce guests. Agreed.

Representative Mullinix moved that the rules be suspended to introduce guests. Agreed.

Representative Collins moved that the rules be suspended to introduce guests. Agreed.

Introduction of Bills and Resolutions

HB 478, by Representatives French, Donnermeyer and Callahan: AN ACT relating to elections for city officers.

HB 479, by Representatives Mason and Burch: AN ACT relating to the Kentucky Unified Juvenile Code.

HB 480, by Representatives Mason and Burch: AN ACT relating to the Kentucky Unified Juvenile Code.

HB 481, by Representatives Brown and Gedling: AN ACT relating to environmental protection.

HB 482, by Representatives Graham, Arnold, Adams and French: AN ACT relating to the sale and distribution of fertilizers.

HB 483, by Representatives Lear and Arnold: AN ACT relating to development of business and agriculture and making appropriations therefor.

HB 484, by Representatives Wayne, Marzian, L. Clark, Shacklette, Gray, P. Clark, Stengel, Yates, Burch, Riner, Heleringer, Butler, Riggs and Northup: AN ACT relating to air pollution control.

HB 485, by Representative LeMaster: AN ACT relating to ophthalmic dispensers.

HB 486, by Representative Bryant: AN ACT proposing to create Section 145A of the Constitution of Kentucky relating to a limitation on the number of consecutive terms that may be served by United States Senators and Representatives elected from Kentucky and members of the Kentucky General Assembly.

HB 487, by Representative Long: AN ACT relating to property taxation.

HB 488, by Representative Long: AN ACT relating to reorganization of the Revenue Cabinet, and declaring an emergency.

HB 489, by Representative B. Smith: AN ACT relating to health insurance.

HB 490, by Representative Northup: AN ACT relating to school athletics.

Floor Amendments

Floor Amendment No. 1 to **HB 220**, by Representative LeMaster:

On page 1, lines 11 through 14, delete lines 11 through 14 in their entirety and insert in lieu thereof:

"***(2) The legislative body of a city or urban-county government may adopt an ordinance to require a locomotive engine to ring a bell only between the hours of 11:00 p.m. and 7:00 a.m. within the jurisdictional limits of the city or urban-county government.***

(3) In any civil or criminal action concerning an accident at a crossing where the railroad company is prohibited from using a whistle by subsection (2) of this section, a railroad company's failure to use a whistle shall not constitute evidence or be admissible as evidence in any civil or criminal action and shall not be the basis for any liability on the part of the railroad company or its employees.

(4) Subsection (2) of this section shall not apply when the locomotive engineer or other similarly situated railroad employee, in his sole discretion, determines that an emergency exists and that use of a whistle is necessary to avoid personal injury or property damage."

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Appropriations and Revenue: **HB 465**

Business Organizations and Professions: **HB 474**

Cities: **HB 466**

Economic Development: **HB 475**

Education: **HB 468**

Health and Welfare: **HB 467**

Judiciary: **HB 471, HB 472, HB 473, HB 476, HB 477**

Labor and Industry: **HB 469, HB 470**

Report of Committees

The Committee on Rules reported the following Consent Bill has been posted for passage in the Regular Orders of the Day, February 9, 1994: **HR 15**

The Committee on Rules reported that **HB 231, HB 175, HB 234, HB 269, HB 277, HB 295, HB 299, HB 315, HB 325, HB 339, HCR 19** and **SB 44** have been posted for passage in the Orders of the Day for February 9, 1994.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Agriculture and Small Business: **HB 436, HB 452**

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 365**, by Representative Ford:

On page 2, line 17, after the word "*shall*" and before the word "*be*" insert: "*, within ninety (90) days of returning to the Commonwealth,*"; and

On page 2, line 18, after the period "*.*" insert: "*A citizen who does not renew his license within ninety (90) days of returning to the Commonwealth shall be required to comply with the provisions of this chapter governing renewal of a license that has expired.*"

Floor Amendment No. 1 to the Committee Substitute to **HB 30**, by Representative Geveden:

On page 1, line 4, after "*exceed*" by deleting "*eighteen thousand four*" and inserting in lieu thereof "*twenty thousand two*"; and

On page 1, line 5, after "*hundred*" by deleting "*twenty-seven*" and inserting in lieu thereof "*seventy*" and after "*dollars*" by deleting "*($18,427)*" and inserting in lieu thereof "*($20,270)*"; and

On page 1, line 8, after "*exceed*" by deleting "*forty-eight thousand four hundred ninety-one*" and inserting in lieu thereof "*fifty-three thousand three hundred forty*"; and

On page 1, line 9, by deleting "*($48,491)*" and inserting in lieu thereof "*($53,340)*".

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills and Resolutions have been posted for Committee consideration:

Judiciary: **HB 213**

Health and Welfare: **HB 352, HB 416, HB 417, HB 445, HB 457, HB 462, HB 440, HCR 30**

Appropriations and Revenue: **HB 455, HB 456**

Cities: **HB 466**

Report of Committees

The Committee on Agriculture and Small Business reported **HB 370** and **HB 395** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 370, AN ACT relating to the purchase of animals.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 261 IS CREATED TO READ AS FOLLOWS:

(1) No person, either on his own account or for others, shall buy poultry and poultry products, cattle, hogs, sheep, goats, horses, mules, or other livestock and fail or refuse to pay for them, or make way with or dispose of them before he has paid for them, unless credit is expressly extended, in writing, therefor.

(2) This section may be used in lieu of prosecution for a violation of KRS 514.040 or 514.070 if the conditions of subsection (1) apply.

Section 2. KRS 261.990 is amended to read as follows:

(1) Any person who violates any provision of KRS 261.240 shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100). Each failure to file the monthly report required by KRS 261.240 shall constitute a separate offense.

(2) Any person who violates the provisions of KRS 261.280 or who attempts by any means to induce a weighman to falsely report the weight of any animal shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one thousand dollars ($1,000) or by imprisonment for not more than one (1) year, or both.

(3) Any person who violates any provision of this chapter for which no other penalty is provided, or any rule or regulation made under the authority thereof, or who refuses to pay the fees herein required, shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or shall be imprisoned for not more than three (3) months, or both.

(4) *Any person who violates Section 1 of this Act is guilty of a Class A misdemeanor, unless the value of the property, as determined by the purchase price, is three hundred dollars ($300) or more, in which case it is a Class D felony* ~~{Any person or stockyard that violates any provision of KRS 261.350 shall be fined not less than $250 nor more than $500}~~.

Section 3. The following KRS section is repealed:

261.350 Payment for livestock purchased at auction -- Report of dishonored checks or drafts.

HB 395, AN ACT relating to an agricultural logo program.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 260.015 is amended to read as follows:

(1) The Commissioner shall establish, if an appropriation is made for the purpose, a logo or labeling statement for use in identifying agricultural products that have been grown, processed, or manufactured in this state. The Commissioner may develop labeling statements that apply to specific marketing or promotional needs. One (1) version of the labeling statement may identify food products certified by the department as organically grown in this state. The agriculture logo or labeling statement may be used on processed or manufactured products produced in this state.

(2) The logo or labeling statement shall not be used without a license from the commissioner, except that wholesalers and retailers may use the logo or labeling statement for displaying and advertising products that qualify for use of the logo or labeling statement.

(3) The logo or labeling statement shall not supersede or replace any federal or state label or grade statement that is required by law.

(4) ~~[In order to qualify for carrying the logo, a product shall contain at least:~~

~~(a) Fifty-one percent (51%) Kentucky-produced material for the first two (2) years of the program;~~

~~(b) Sixty-five percent (65%) Kentucky-produced material in the third and fourth years of the program; and~~

~~(c) Eighty percent (80%) Kentucky-produced material in the fifth year of the program and thereafter.~~

~~(5)~~] A person shall not use the agricultural logo or labeling statement without an annual license from the commissioner. The commissioner shall issue a license for a fee of five dollars ($5), and the commissioner may charge a late fee of ten dollars ($10) for renewal of a license that has expired thirty (30) days after the date of renewal. The logo fund account is established within the department. All license fees, receipts, and penalties collected under the provisions of this section shall be credited to the fund for use in implementing and enforcing this section and to advertise and promote the agriculture logo.

(5)[~~(6)~~] In order to accomplish the purposes of this section, the Commissioner may participate jointly with private persons in appropriate logo programs and projects and may enter into contracts necessary to carry out those programs and projects.

(6)[~~(7)~~] If the logo program is undertaken, the Department of Agriculture shall provide assistance to those persons or businesses that wish to use the Kentucky logo but are unable to find enough Kentucky materials to use in their products to qualify for use of the logo.

(7)[~~(8)~~] The Commissioner may promulgate administrative regulations as may be necessary to authorize the use and licensing of the agriculture logo or labeling statement.

(8)[~~(9)~~] It shall be the duty of the department, or upon the request of the Commissioner of Agriculture, of the Attorney General, to bring an action for the recovery of the penalties provided in this section, and to bring an action for an injunction against any person, corporation, enterprise, or business entity violating or threatening to violate any of the provisions of this section or the administrative regulations promulgated pursuant to this section.

(9)[~~(10)~~] A person who is required to have a license to use the Kentucky agricultural pride logo or labeling statement and uses the logo or labeling statement without a license after being notified by the Commissioner that a license is required shall be liable to a civil penalty not to exceed the sum of one hundred dollars ($100) for the violation, and an additional civil penalty not to exceed one hundred dollars ($100) for each day during which the violation continues. The penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the department, or upon the department's request, by the Attorney General.

The Committee on Appropriations and Revenue reported **HB 297** and **HB 400,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 297, AN ACT relating to revenue and taxation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 136.076 is amended to read as follows:

(1) As soon as practicable after each return is received, the cabinet shall examine and audit it. If the amount of tax computed by the cabinet is greater than the amount returned by the taxpayer, the ***additional tax*** [~~excess~~] shall be assessed ***and a notice of assessment mailed to the taxpayer*** by the cabinet within four (4) years from the date the return was filed, [~~except as provided in subsection (2) of this section, and~~] except that in the case of a failure to file a return, or of a fraudulent return, the ***additional tax*** [~~excess~~] may be assessed at any time. [~~A notice of such assessment shall be mailed to the taxpayer.~~] The time provided in this section may be extended by agreement between the taxpayer and the cabinet.

(2) For the purpose of subsection (1) of this section, a return filed before the last day prescribed by law for [~~the~~] filing ***the***

return thereof shall be considered as filed on ***the*** ~~[such]~~ last day. ***For taxable years beginning after December 31, 1993, any extension of time granted for filing the return shall also be considered as extending the last day prescribed by law for filing the return.***

Section 2. KRS 141.210 is amended to read as follows:

(1) ***As used in this section and KRS 141.235 unless the context requires otherwise:***

(a) "Conclusion of the federal audit" means the date that the adjustments made by the Internal Revenue Service to net income as reported on the taxpayer's federal income tax return become final and unappealable; and

(b) "Final determination of the federal audit" means the revenue agent's report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

(2) As soon as practicable after each return is received, the cabinet shall examine and audit it. If the amount of tax computed by the cabinet is greater than the amount returned by the taxpayer, the ***additional tax*** ~~[excess]~~ shall be assessed ***and a notice of assessment mailed to the taxpayer*** by the cabinet within four (4) years from the date the return was filed, except as ***otherwise*** ~~[hereinafter]~~ provided ***in this subsection***. ~~[A notice of the assessment shall be mailed to the taxpayer.]~~

(a) In the case of a failure to file a return or of a fraudulent return the ***additional tax*** ~~[excess]~~ may be assessed at any time***.***~~[;]~~

(b) In the case of a return where a taxpayer other than a corporation understates his net income or omits ~~[from net income]~~ an amount properly includable ***in net income*** ~~[therein]~~ or both which understatement or omission or both is in excess of twenty-five percent (25%) of the amount of net income stated in the return the ***additional tax*** ~~[excess]~~ may be assessed at any time within six (6) years after the return was filed***.***~~[;]~~

(c) In the case of a return ***where*** ~~[wherein]~~ a corporation understates its taxable net income or omits ~~[from taxable net income]~~ an amount properly includable ***in taxable net income*** ~~[therein]~~ or both***,*** which understatement or omission or both is in excess of twenty-five percent (25%) of the amount of taxable net income stated in the return, the ***additional tax*** ~~[excess]~~ may be assessed at any time within six (6) years after the return was filed.

(d) ***In the case of an assessment of additional tax relating directly to adjustments resulting from a final determination of a federal audit, the additional tax may be assessed before the expiration of the times provided in this subsection, or six months from the date the cabinet receives the final determination of the federal audit from the taxpayer, whichever is later.*** ~~[If any excess is assessed on account of any income which has been returned for taxation by any other taxpayer, the cabinet, with the consent of such other taxpayer, his personal representatives or heirs, shall reduce the amount of the excess assessed for each year by the amount of the income tax paid for that year by such other taxpayer on account of the income in question.]~~

(e) In the case of the assessment of additional tax resulting from a decrease of a net operating loss deduction or a capital loss deduction, resulting from the carryback of a loss which occurs in a taxable year beginning after December 31, 1993, the additional tax may be assessed at any time before the expiration of the times provided for in this subsection for assessing additional tax for the taxable year which resulted in the net operating loss or capital loss carryback.

The times provided in this subsection may be extended by agreement between the taxpayer and the cabinet. For the purposes of this subsection, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day. For taxable years beginning after December 31, 1993, any extension granted for filing the return shall also be considered as extending the last day prescribed by law for filing the return.

(3)~~[(2)]~~ ***If any additional tax is assessed on account of any income which has been returned for taxation by any other taxpayer, the cabinet, with the consent of the other taxpayer, his personal representatives or heirs, shall reduce the amount of the additional tax assessed for each year by the amount of the income tax paid for that year by the other taxpayer on account of the income in question*** ~~[For the purpose of subsection (1) of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. The times provided for in subsection (1) of this section may be extended by agreement between the taxpayer and the cabinet]~~.

(4)~~[(3)]~~ ~~[It shall be the duty of]~~ Every taxpayer ***shall*** ~~[to]~~:

(a) Notify the cabinet in writing of every ***audit of the taxpayer's*** ~~[examination of his books and records with respect to his net income as reported on his]~~ federal income tax return within thirty (30) days after ***the taxpayer*** ~~[he]~~ has or should have had knowledge of the beginning of ***the audit*** ~~[such examination]~~ by the Internal Revenue Service, and

(b) Submit a copy of the final determination of ***the*** ~~[such]~~ federal audit within thirty (30) days of ***the*** ~~[its]~~ conclusion ***of the federal audit***.

~~[Failure by a taxpayer to notify the cabinet within the time prescribed of a federal examination shall automatically suspend the limitations set forth in subsection (1) of this section for assessments directly related to the federal examination, until ninety (90) days after the cabinet receives notice in writing of the above actions from the taxpayer.~~

~~(4) (a) When any taxpayer extends by agreement the statute of limitations on deficiencies of federal income taxes as provided in Section 6501(c)(4) of the Internal Revenue Code, a copy of such extension shall be submitted to the cabinet within thirty (30) days from the date such agreement is signed by the taxpayer.~~

~~(b) Any extension by agreement of the statute of limitations on deficiencies of federal income taxes shall constitute an extension of the statute of limitations, for assessments under this section or overpayments under KRS 141.235, for a like period.~~

~~(c) Notwithstanding the provisions of (a) and (b) above, the cabinet shall have ninety (90) additional days to either make an assessment or authorize an overpayment after the cabinet is notified in writing by the taxpayer of the final determination of any federal audit.]~~

Section 3. KRS 141.235 is amended to read as follows:

(1) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by this chapter.

(2) Any tax collected pursuant to the provisions of KRS Chapter 141, may be refunded or credited ***in accordance with the provisions of*** ~~[in the manner provided]~~ in KRS 134.580, provided that the claim for refund or credit is ***filed*** ~~[made]~~ within four (4) years of the ***last day prescribed by law for the filing of the return*** ~~[due date of the return]~~ or the date the tax was paid, whichever is the later, except that***;***~~[,]~~

(a) In any case where the assessment period contained in KRS 141.210 has been extended by an agreement between the taxpayer and the cabinet, the limitation contained in this subsection shall be extended accordingly.

(b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the taxpayer shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.

(c) If the claim for refund or credit relates to an overpayment attributable to a net operating loss carryback or capital loss carryback, resulting from a loss which occurs in a taxable year beginning after December 31, 1993, the claim for refund or credit shall be filed within the times prescribed in this subsection for the taxable year of the net operating loss or capital loss which results in the carryback.

For the purposes of this subsection and subsection (3) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day. For taxable years beginning after December 31, 1993, any extension of time granted for filing the return shall also be considered as extending the last day prescribed by law for filing the return.

(3) Overpayments of taxes collected pursuant to KRS 141.300, 141.310, or 141.315 shall be refunded or credited with interest at the tax interest rate as defined in KRS 131.010(6). The interest shall not begin to accrue until ninety (90) days after the ***tax was paid*** ~~[overpayment is made]~~, the return ***was*** ~~[is]~~ filed, or the ***last day prescribed by law for filing*** ~~[due date of]~~ the return, whichever is later.

(4) Exclusive authority to refund or credit overpayments of taxes collected pursuant to this chapter is vested in the secretary or his authorized agent. Amounts directed to be refunded shall be paid out of the general fund.

Section 4. Unless otherwise provided, the provisions of paragraph (d) of subsection (2) of Section 2 of this Act and paragraph (b) of subsection (2) of Section 3 this Act shall apply for additional tax assessed and for claims for refunds or credit filed on or after the effective date of this Act.

HB 400, AN ACT relating to hospital taxing districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 216.317 is amended to read as follows:

(1) A hospital district may be created in accordance with the procedures of KRS 65.182 and 216.320.

(2) Upon the creation of a hospital district, as provided in KRS 65.182 and 216.320, the district shall constitute and be a taxing district within the meaning of Section 157 of the Constitution of Kentucky and the county shall be a participating county in the district. In no event shall the special ad valorem tax imposed for the maintenance and operation of the district exceed ten cents ($0.10) on each one hundred dollars ($100) of the assessed valuation of all property in the county. ***A hospital taxing district may be created with an ad valorem tax rate levy of zero cents ($0.00) on the assessed valuation of the property in the district.***

(3) All special ad valorem taxes authorized by KRS 216.310 to 216.360 shall be collected in the same manner as are other county ad valorem taxes in each county affected and shall be turned over to the board as the governing body of the district. The special ad valorem tax shall be in addition to all other ad valorem taxes.

SECTION 2. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of KRS 216.310 to 216.360 to the contrary, the board of a hospital district created after January 1, 1994, proposing to levy a tax rate, in which the initial tax rate levy was zero cents ($0.00), shall submit the proposed tax rate levy to the fiscal court in the district for that county's fiscal court approval.

The Committee Substitute to **HB 400** is as follows:

HB 400, AN ACT relating to hospital taxing districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 216.317 is amended to read as follows:

(1) A hospital district may be created in accordance with the procedures of KRS 65.182 and 216.320.

(2) Upon the creation of a hospital district, as provided in KRS 65.182 and 216.320, the district shall constitute and be a taxing district within the meaning of Section 157 of the Constitution of Kentucky and the county shall be a participating county in the district. In no event shall the special ad valorem tax imposed for the maintenance and operation of the district exceed ten cents ($0.10) on each one hundred dollars ($100) of the assessed valuation of all property in the county. ***A hospital taxing district may be created with an ad valorem tax rate levy of zero cents ($0.00) on the assessed valuation of the property in the district.***

(3) All special ad valorem taxes authorized by KRS 216.310 to 216.360 shall be collected in the same manner as are other county ad valorem taxes in each county affected and shall be turned over to the board as the governing body of the district. The special ad valorem tax shall be in addition to all other ad valorem taxes.

SECTION 2. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of KRS 216.310 to 216.360 to the contrary, the board of a hospital district created after January 1, 1994, proposing to levy a tax rate, in which the initial tax rate levy was zero cents ($0.00), shall submit the proposed tax rate levy to the fiscal court in the district for that county's fiscal court approval. Any tax rate change approved by the board or by the county fiscal court shall be subject to the provisions of KRS 132.023.

The Committee on Appropriations and Revenue reported **HB 206**, with Committee Substitute and Committee Amendment attached thereto, with the expression of opinion that the same should pass. Ordered referred to the Committee on Rules.

The Committee Amendment No. 1 to the Committee Substitute to **HB 206** is as follows:

On page 8, line 1, after the "***a***", by inserting the following language: "***state and national***"; and

On page 30, by deleting lines 17 through 24 in their entirety; and

On page 30, line 25, by deleting "22" and inserting in lieu thereof "21".

The Committee on Banking and Insurance reported **HB 361,** with Committee Amendments attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 361, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBTITLE 39 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS :

(1) Regardless of the number of motor vehicles involved, the number of persons covered or claims made, vehicles or premiums shown in the policy, premiums paid, or the number of policies, the limit of liability for any coverage shall not be added to or stacked upon limits for the coverage applying to other motor vehicles under the same or different policies to determine the amount of coverage available to an insured injured in any one (1) accident.

(2) Uninsured motorist coverage as provided in KRS 304.20-020, underinsured motorist coverage as provided in KRS 304.39-320, and added reparations benefits as provided in KRS 304.39-140 shall not apply to bodily injury, sickness, disease, or death of an insured while occupying a motor vehicle owned by, furnished to, or available for the regular use of the insured, the insured's resident spouse, or resident relative, if that motor vehicle is not described in the policy under which a claim is made.

The Committee Amendment No. 1 to **HB 361** is as follows:

On page 1, by deleting lines 9 to 15 in their entirety and inserting in lieu thereof:

"***(2) If a loss occurs when an insured person is occupying a vehicle not owned by the insured person, or the insured person is a pedestrian, and the insured person has more than one (1) policy providing uninsured motorist coverage as provided in KRS 304.20-020, underinsured motorist coverage as provided in KRS 304.39-320, or added reparations benefits as provided in KRS 304.39-140, the insured person may choose which policy is to apply.***".

The Committee Amendment No. 2 to **HB 361** is as follows:

On page 1, line 8, after ***accident*** and before the period by inserting: "***, unless the policy states that it permits such addition or stacking of coverages***";and

On page 1, line 15, after ***made*** and before the period by inserting: "***, unless the policy in which the motor vehicle is described and under which the claim is made states that it permits application of such coverages***"; and

On page 1, after line 15, by adding:

"***(3)*** ***All motor vehicle insurers shall offer and make available policies that allow the stacking of liability coverage, uninsured motorist coverage, underinsured motorist coverage, and added basic reparations benefits, or any one (1) or more of such coverages. Every motor vehicle insurance policy shall prominently state, in the manner and form prescribed by the commissioner by administrative regulation, whether the policy permits the stacking of coverages.***

(4) ***This section shall apply to all motor vehicle insurance policies issued, delivered, or renewed on or after January 1, 1995.***".

The Committee on Health and Welfare reported **HB 195, HB 223, HB 289, HB 353, HB 374** and **HB 407** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 195, AN ACT relating to limiting the access of local citizen review boards to the records for foster parents.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 620.250 is amended to read as follows:

(1) Each local citizen review board shall have access to all information and records of the cabinet pertinent to the parents or person exercising custodial control or supervision of the child assigned to the local board for review. Information and records shall include, but not be limited to, case permanency plans, case progress reports, and case records.

(2) Each local citizen review board shall have access to all information and records of the court, the cabinet, and public and private child-caring facilities when pertinent to the child assigned to the local board for review. Information and records shall include, but not be limited to, case permanency plans, case progress reports, and case records.

(3) All requested information or records, or both, not already before the local citizen review board at the time of the six (6) months review shall be submitted by the agency or organization in possession of the information or records, or both, no later than five (5) working days after the receipt of the request.

(4) ***For the purposes of subsections (1) to (3) of this section, local citizen review boards shall not have access to the foster parent records of the cabinet. Information pertaining to the foster parent that is included in the case record of a child shall be made available to the local citizen review boards.***

(5) If the local citizen review board is denied access to any public or private information or records, or both, it may request the court to hold a hearing, at which time the court may require the agency or organization in whose possession the information or records, or both, are held to show cause as to the reasons why the information or records, or both, shall not be ordered surrendered pursuant to its authority.

HB 223, AN ACT relating to investigation of child sexual abuse by multidisciplinary teams.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 431.600 is amended to read as follows:

(1) Each investigation of reported or suspected sexual abuse of a child ***shall*** {~~may~~} be conducted by a specialized multidisciplinary team composed***, at a minimum,*** of law enforcement officers ***and***{~~,~~} social workers ***from the Cabinet for Human Resources. Additional team members may include***{~~,~~} Commonwealth's and county attorneys, and other related professionals, as necessary, operating under protocols governing roles, responsibilities, and procedures developed jointly by the Attorney General, the Administrative Office of the Courts, the Cabinet for Human Resources and the Justice Cabinet and promulgated by the Justice Cabinet as administrative regulations.

(2) Local protocols ***shall*** {~~may~~} be developed in each county by the agencies and persons specified in subsection (1) of this section specifying how the state protocols ***shall*** {~~will~~} be followed within the county. These protocols shall be in accordance with, and approved by, the Attorney General, the Administrative Office of the Courts, the Cabinet for Human Resources and the Justice Cabinet.

(3) If adequate personnel are available, each Commonwealth's attorney's office and each county attorney's office shall have a child sexual abuse specialist.

(4) Commonwealth's attorneys and county attorneys, or their assistants, shall take an active part in interviewing and familiarizing the child alleged to have been abused, or who is testifying as a witness, with the proceedings throughout the case, beginning as early as practicable in the case.

(5) If adequate personnel are available, Commonwealth's attorneys and county attorneys shall provide for an arrangement which allows one (1) lead prosecutor to handle the case from inception to completion to reduce the number of persons involved with the child victim.

(6) Commonwealth's attorneys and county attorneys and the Cabinet for Human Resources shall minimize the involvement of the child in legal proceedings, avoiding appearances at preliminary hearings, grand jury hearings and other proceedings when possible.

(7) Commonwealth's attorneys and county attorneys shall make appropriate referrals for counseling, private legal services, and other appropriate services to ensure the future protection of the child when a decision is made not to prosecute the case. The Commonwealth's attorney or county attorney shall explain the decision not to prosecute to the family or guardian, as appropriate, and to the child victim.

HB 289, AN ACT relating to medical treatment of children.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

(1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian or other person exercising custodial control or supervision of the child: inflicts or allows to be inflicted upon the child physical or emotional injury by other than accidental means; creates or allows to be created a risk of physical or emotional injury to the child by other than accidental means; commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child; creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child; abandons or exploits such child; does not provide the child with adequate care, supervision, food, clothing, shelter and education or medical care necessary for the child's well-being. ~~[A parent or other person exercising custodial control or supervision of the child legitimately practicing his religious beliefs shall not be considered a negligent parent solely because he fails to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child]~~;

(2) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the cabinet for the placement of children committed to the cabinet;

(3) "Cabinet" means the Cabinet for Human Resources;

(4) "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Justice Cabinet after consultation with the Cabinet for Human Resources and other appropriate state agencies;

(5) "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;

(6) "Child-caring facility" means any facility or group home other than a state facility, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption or marriage to the person maintaining the facility;

(7) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;

(8) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;

(9) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Human Resources or another facility or agency until the child attains the age of eighteen (18) unless the committing court terminates or extends the order;

(10) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;

(11) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;

(12) "Court" means the juvenile session of District Court;

(13) "Court designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into and supervising diversion agreements and performing such other functions as authorized by law or court order;

(14) "Department" means the Department for Social Services;

(15) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody,

control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

(16) "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, or a secure juvenile detention facility;

(17) "Diversion agreement" means an agreement entered into between a court designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;

(18) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;

(19) "Emotional harm" means harm to the mental or psychological capacity or emotional stability of a child as testified to by a qualified mental health professional. The age and development of the child shall be considered together with the child's culture or environment in the diagnosis and determination of emotional harm;

(20) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in his ability to function within a normal range of performance and behavior with due regard to his age, development, culture and environment;

(21) "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;

(22) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;

(23) "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;

(24) "Habitual truant" means any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period;

(25) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;

(26) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;

(27) "Informal adjustment" means an agreement reached among the parties after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;

(28) "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;

(29) "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;

(30) "Juvenile holding facility" means a physically secure setting, approved by the Justice Cabinet, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Justice Cabinet may supervise juvenile as well as adult prisoners;

(31) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; and is conducted at the suitable available facility closest to the child's place of residence;

(32) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;

(33) "Parent" means the biological or adoptive mother or father of a child;

(34) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

(35) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;

(36) "Physical injury" means substantial physical pain or any impairment of physical condition;

(37) "Public offense action" means an action brought in the interest of a child who is accused of committing a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a moving motor vehicle offense;

(38) "Qualified mental health professional" means:

(a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of his official duties;

(b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of his official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;

(d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or

(e) A certified clinical social worker licensed for the independent practice of clinical social work under the provisions of KRS Chapter 335, or a certified social worker licensed under the provisions of KRS Chapter 335 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work following certification and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(39) "Residential treatment facility" means a facility with more than eight (8) beds designated by the cabinet for the treatment of children;

(40) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court designated worker for the purpose of making preliminary inquiries;

(41) "School personnel" means those certified persons under the supervision of the local public or private education agency;

(42) "Secretary" means the secretary of the Cabinet for Human Resources;

(43) "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lock-up, intermittent holding facility, or any building which is a part of, or attached to, any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined;

(44) "Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;

(45) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ;

(46) "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions between a child and an adult in which the parent, guardian or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

(47) "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;

(48) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;

(49) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;

(50) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed; and

(51) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 640 and who is subsequently convicted in Circuit Court.

Section 2. KRS 610.310 is amended to read as follows:

(1) When the health or physical condition of any child before the juvenile court requires it, the court may order the child to

be placed in a public or private hospital or institution for treatment or care. In order to ascertain the physical condition of a child, the court may cause the child to be examined by a health officer or children's clinic or any reputable physician who will conduct the examination.

(2) The court may order or consent to necessary medical treatment, including surgical procedures, except for the purpose of abortion, electroshock therapy or psychosurgery as provided in KRS Chapter 645, or sterilization, after a hearing conducted to determine the necessity of ***the*** ~~[such]~~ treatment or procedure. ~~[In making the order, the court may take into consideration the religious beliefs and practices of the child and his parents or guardian.]~~ Reasonable notice, taking into account any emergency circumstances, shall be provided to the parents, guardian or person exercising custodial control or supervision of the child to enable them to attend the hearing.

HB 353, AN ACT relating to employer reporting of information on new employees.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 405.430 TO 405.520 IS CREATED TO READ AS FOLLOWS:

(1) An employer in the Commonwealth of Kentucky shall provide information to the Cabinet for Human Resources when that employer:

(a) Hires an employee who resides or works in this Commonwealth; or

(b) Rehires or permits the return to work of an employee who has been laid off, furloughed, separated, granted a leave without pay, or terminated from employment.

(2) The employer shall provide the information within fourteen (14) days of the hiring, rehiring, or return to work of the employee. The information shall include:

(a) The employee's name and Social Security number; and

(b) The employer's name, address, and, if the employer has been assigned one, state employer identification number.

(3) An employer shall report the required information by submitting a copy of the employee's W-4 form, a form provided by the cabinet, or any other hiring document acceptable to the cabinet according to standards set in administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A. The information shall be delivered by mail or by any other means authorized by the cabinet in administrative regulations promulgated in accordance with KRS Chapter 13A.

(4) (a) An employer shall not be required to report the information when the hiring, rehiring, or returning to work involves:

1. An employee to whom the employer pays wages of less than three hundred dollars ($300) each month; or

2. An employee under eighteen (18) years of age.

(b) The cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A to establish exemptions in addition to those provided in paragraph (a) of this subsection if the cabinet determines exemptions are needed to reduce unnecessary or burdensome reporting or are needed to facilitate cost-effective operation of the cabinet under this section.

(5) The cabinet shall use the information collected pursuant to this section for the location of noncustodial parents, the establishment and enforcement of child support, and any other matter related to paternity or child support.

(6) If the employer fails to report as required by this section, the cabinet shall give him written notice of the provisions of this section, including the penalty for failure to report.

(7) If the employer has not filed a report within fourteen (14) days from the date that the first written notice is sent to him, the cabinet shall send him a second written notice.

(8) If the employer has not filed a report within fourteen (14) days from the date that the second written notice is sent to him, the cabinet shall send him, by certified mail, return receipt requested, notice of an administrative fine. The fine shall be in the amount of two hundred and fifty dollars ($250) per calendar month per person for any violation occurring after the second notice has been given, and continuing until a report is received by the cabinet. No fine shall be imposed for any period of less than one (1) full calendar month.

(9) The employer shall have ten (10) days after receipt of the administrative fine notice to request a hearing before the cabinet on whether the administrative fine was properly assessed. If a timely request for a hearing is received, the cabinet shall schedule and conduct a hearing in accordance with administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A.

Section 2. This Act shall become effective on January 1, 1995.

HB 374, AN ACT relating to the accountability of local officials to the public for funds provided for administering the program of child support recovery.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 43.070 is amended to read as follows:

(1) To determine whether any unauthorized, illegal, irregular, or unsafe handling or expenditure of revenue or other improper practice of financial administration has occurred and to assure that all proper items have been duly charged, taxed, and reported, the Auditor shall audit annually:

(a) The funds contained in each county's budget; and

(b) The books, accounts, and papers of all ***county attorneys,*** county clerks***,*** and sheriffs.

(2) (a) The Auditor may audit the books, accounts and papers of all county judges/executive, [~~county attorneys,~~] coroners***,*** and constables; and

(b) The Auditor shall not conduct an audit pursuant to subsection (1)(a) or (b) of this section if the fiscal court or the elected official notifies the Auditor that a certified public accountant has been employed to audit the books, accounts and papers of the county or the fee office, in accordance with KRS 64.810.

(3) The county shall bear one-half (1/2) of the actual expense of the audit conducted pursuant to subsection (1)(a) of this section and shall bear the total actual expense of the audit conducted pursuant to subsections (1)(b) and (2) of this section. No county shall be required to bear the expense for more than one (1) audit of the same fund or office annually pursuant to subsection (1)(a) or (b) of this section except as provided for in KRS 64.810(4).

(4) Within a reasonable time after the completion and distribution of the audit reports authorized by subsection (1) of this section, the Auditor of Public Accounts shall bill the county for the expenses incurred pursuant to subsection (3) of this section. A copy of this bill shall be forwarded to the secretary of the Finance and Administration Cabinet. Should the fiscal court within sixty (60) days following receipt of said bill determine the charge to be excessive or otherwise improper it shall submit its objection to the secretary of the Finance and Administration Cabinet and to the State Treasurer for resolution of the controversy in accordance with subsection (5) of this section. If the amount billed has not been paid within sixty (60) days from date of billing, and no objection has been filed, the Auditor shall notify the secretary of the Finance and Administration Cabinet and the secretary of revenue who shall cause said amount to be deducted from the next payment or return of moneys provided by KRS 47.110 by the state to the county or counties. Deductions shall continue until the total amount due the Auditor's office has been paid. All moneys received pursuant to this section shall be credited to the trust and agency account of the Auditor of Public Accounts. When an objection to the bill has been filed with the secretary of the Finance and Administration Cabinet and the State Treasurer in accordance with subsection (5) of this section the amount found to be equitable and just shall become payable immediately upon the entry of the final decision.

(5) Any controversy over the amount of the bill for the actual expenses incurred shall be submitted by the fiscal court to the secretary of the Finance and Administration Cabinet and the State Treasurer for a decision as to the proper amount. In the event that these two (2) arbitrators fail to agree, then the controversy shall be submitted to the Attorney General, whose decision shall be final.

Section 2. KRS 69.210 is amended to read as follows:

(1) The county attorney shall attend the fiscal court and conduct all business in that court touching the rights or interests of the county, and when so directed by the fiscal court he shall institute, defend and conduct all civil actions in which the county is interested before any of the courts of the Commonwealth.

(2) The county attorney shall attend to the prosecution in the juvenile session of the District Court of all proceedings held pursuant to petitions filed under KRS Chapter 610 and over which the juvenile session of the District Court has jurisdiction pursuant to KRS Chapter 610.

(3) The county attorney shall give legal advice to the fiscal court and the several county officers in all matters concerning any county business within their jurisdiction. He shall oppose all unjust or illegally presented claims.

(4) ***The county attorney shall serve as the local designee of the Cabinet for Human Resources for the purposes of administering the program of child support recovery within a county pursuant to KRS 205.712, unless the county attorney has declined the designation or the Cabinet for Human Resources has taken action, with prior written notice, to terminate the program administration responsibility of the county attorney for failure to meet the terms and conditions of the program as set forth in administrative regulations promulgated by the cabinet.***

(5) A county attorney serving in a county or urban county which is part of a judicial circuit described by KRS 69.010(2), in addition to the duties in subsections (1) and (2) of this section, shall have the following duties:

(a) He shall attend all civil cases and proceedings in his county in which the Commonwealth is interested; and

(b) He shall advise the collector of money due the Commonwealth in the county in regard to motions against delinquent collecting officers for failing to return executions, and shall prosecute the motions. In no case shall the county attorney take a fee or act as counsel in any case in opposition to the interest of the county.

Section 3. KRS 205.712 is amended to read as follows:

(1) The Division of Child Support Enforcement is established in the Cabinet for Human Resources.

(2) The duties of the division of child support, or its designee, shall include:

(a) Serve as state agency authorized to administer Part D of Title IV of the Social Security Act, 42 U.S.C. 651 to 667;

(b) Serve as the information agency as provided in the Uniform Reciprocal Enforcement of Support Act, KRS Chapter 407;

(c) Serve as collector of all court-ordered or administratively ordered child support payments pursuant to Part D of Title IV of the Social Security Act; and

(d) Enforce Kentucky child support laws, including collection of court-ordered child support arrearages and prosecution of persons who fail to pay child support.

(3) The cabinet shall establish a system to receive and process all child support payments. The system shall include compatible computer systems to record the payments. After the establishment of the compatible computer child support collection system, the cabinet or its designee, shall serve as collector of all court-ordered or administratively-ordered child support payments pursuant to Part D of Title IV of the Social Security Act.

(4) ~~[Where establishment of paternity and enforcement and collection of child support is by law the responsibility of local officials, the cabinet shall refer cases to the appropriate official for such action. The cabinet may enter into cooperative arrangements with appropriate courts and law enforcement officials to assist the cabinet in administering the program of child support recovery, including the entering into of financial arrangements with such courts and officials as provided for under the provisions of federal law and regulations.]~~ The local county attorney shall be considered the designee of the cabinet for purposes of administering the program of child support recovery within a county, ***unless the county attorney has declined the designation or the cabinet has taken action, with prior written notice, to terminate the program administration responsibility of the county attorney for failure to meet the terms and conditions of the program as set forth in administrative regulations promulgated by the cabinet. If the county attorney is not considered the designee of the cabinet pursuant to this section, the cabinet may enter into a program administration contract with another entity to serve as the designee for the purposes of administering the program of child support recovery.***

(5) The local designee of the cabinet for the child support recovery program shall maintain an accurate and separate account of all funds received for administering the program of child support recovery including federal incentive payments. Within sixty (60) days of the effective date of this Act, the cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A to set forth the responsibility and accountability of the designees, including, but not limited to, the following:

(a) Confidentiality and security for safeguarding information;

(b) Allowable direct and indirect costs;

(c) Allowable rates for administrative, direct personal services, and direct nonpersonal service costs;

(d) Documentation requirements for costs;

(e) Method of reimbursement;

(f) Reporting requirements;

(g) Performance standards;

(h) Auditing requirements; and

(i) Other subjects deemed appropriate by the cabinet.

(6) Pursuant to the requirements of federal law and regulations and KRS Chapter 13A, the cabinet shall promulgate administrative regulations to set forth the standard methodology for passing through an appropriate share of the federal incentive payments for the child support recovery program to the designees of the cabinet ~~[subject to the option of the county attorney to decline such designation. Nothing in this section shall prevent the secretary from taking such action, with prior written notice, as appropriate if the terms and conditions of the cooperative agreement are not met]~~.

HB 407, AN ACT relating to public health.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 211.760 is amended to read as follows:

(1) No person shall engage in, offer to engage in, or carry on any business of tattooing ***or application of permanent makeup on*** ~~[of]~~ humans ~~[by nonmedical personnel for remuneration]~~ within the Commonwealth of Kentucky without first registering with the local health department in the district or county in which the person is to perform tattooing ***or permanent makeup application***. ~~[Registrations shall be valid for one (1) year.]~~ Applicants for registration shall pay a fee of twenty dollars ($20) to the local or district health department.

(2) The Cabinet for Human Resources shall promulgate administrative regulations ***as provided under KRS Chapter 13A*** relating to:

(a) Health and cleanliness of places of business in which tattooing ***or permanent makeup application*** is conducted;

(b) Sterilization of tattooing apparatus;

(c) Procedures to prevent the spread of disease or infection during or relating to tattooing ***or permanent makeup application*** procedures;

(d) Procedures to prevent the tattooing ***or permanent makeup application*** of minors without the consent of one (1) parent or guardian;

(e) ***Procedures for testing and qualification for registration of tattoo and permanent makeup artists;***

(f) Such other administrative regulations as may be necessary to protect public health or properly administer the program requirements of this section.

(3) Representatives of the cabinet or local or district health departments may ***inspect places of business in which tattooing or permanent makeup application is conducted*** [~~visit tattooing facilities~~] at any time during business hours to ensure compliance with the requirements of this section. Representatives of local or district health departments shall ***inspect*** [~~visit~~] each registered tattooing ***or permanent makeup application place of business*** [~~facility~~] in their county or district not less than twice each year.

[~~(4) The provisions of this section shall not apply to a person who engages in the application of permanent make-up.~~]

The Committee on Counties and Special Districts reported **HB 45,** with Committee Substitute attached thereto, **HB 229 HB 275**, with Committee Amendment attached thereto, and **HB 92**, with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 45, AN ACT relating to donations for free public libraries.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 173 IS CREATED TO READ AS FOLLOWS:

In a county where the county and a city of the first class have in effect a compact under KRS 79.310 to 79.330 and have created a joint city/county library department, the county clerk, when he receives fees pursuant to KRS 64.012, or an application for vehicle registration pursuant to KRS 186.030, shall present the person paying the fee or making the application an opportunity to make a voluntary contribution for the support of the free public library. The clerk shall present the fee payer or applicant with a form by which a donation can be made. If the fee payer or applicant chooses to donate to the library, he or she shall include the donation in the fee. The clerk shall pay the donations to the library department in the same fashion as taxes are paid pursuant to KRS 134.815, and shall be entitled to the same commission as that payable on county taxes pursuant to KRS 134.805. The clerk shall prepare the donation form in consultation with the library department. The form shall state clearly in all capital letters that donations are voluntary. The form shall offer the applicant two (2) choices, either to make or to decline to make a donation, and shall require the signature of the applicant. The clerk shall make completed forms available for inspection by the director of the library.

The Committee Substitute to **HB 45** is as follows:

HB 45, AN ACT relating to donations for free public libraries.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 173 IS CREATED TO READ AS FOLLOWS:

In a county where the county and a city of the first class have in effect a compact under KRS 79.310 to 79.330 and have created a joint city/county library department, the county clerk, when he receives an application for vehicle registration pursuant to KRS 186.030, shall present the person making the application an opportunity to make a voluntary contribution for the support of the free public library. If the applicant chooses to donate to the library, he or she shall include the donation in the fee. The clerk shall pay the donations to the library department in the same fashion as taxes are paid pursuant to KRS 134.815, and shall be entitled to the same commission as that payable on county taxes pursuant to KRS 134.805.

HB 229, AN ACT relating to retirement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 78.530 is amended to read as follows:

(1) Each county and school board, as defined in KRS 78.510, ***may, and each county, narrowly defined as one (1) of***

Kentucky's one hundred twenty (120) counties, the provisions of KRS 78.510(3) notwithstanding, shall ~~{will}~~ participate in the system by appropriate order authorizing such participation which has been entered and duly recorded in the records of the governing body of the county or school board. ~~{In cases where general purpose county government does not participate, but the sheriff and his employees or the county clerk and his employees do, the sheriff or the clerk shall retain the order in his office.}~~ The authority to issue and properly record ***the*** ~~{such}~~ order of participation being hereby granted, permits ***the*** ~~{such}~~ county to participate in the system. The effective date of ~~{such}~~ participation shall be fixed in the order. ***The provisions of this subsection shall not be construed to interfere with the operation of pension systems created pursuant to KRS 67A.320, 67A.340, or 67A.370.***

(2) Once a county or school board participates, it shall thereafter continue to participate, except as provided in KRS 78.535.

(3) (a) Concurrent with the adoption of the appropriate resolution to participate in the system, a county may elect the alternate participation plan which will require the county to purchase on behalf of each employee electing coverage, at the time the county elected to participate in the system as provided under KRS 78.540(2), current service credit for employment in regular full-time positions between July 1, 1958, and the participation date of the county. Cities which participate in the system pursuant to subsection (7) of this section, KRS 79.080, 90.400, 90.410, 95.520, 95.621, 95.761, 95.768, 95.852, or 96.180 shall be required to purchase on behalf of each employee electing coverage only as much service credit as the employee has accumulated in the city-administered plan, up to the participation date of the city. Accumulated service shall include service for which an employee received a refund pursuant to KRS 95.620 or 95.866, if ***the*** ~~{such}~~ refund has been repaid. If the employee has not yet repaid the refund, he may make payment to the system by any method acceptable to the system, and the requirement of five (5) years of continuous reemployment prior to repayment of refunds shall not apply. Upon the employee's repayment, the city shall purchase the associated service credit for the employee. Cost of ***the*** ~~{such}~~ service credit ***in excess of*** ~~{over and above}~~ that which would be funded within the existing employer contribution rate shall be determined by the board's consulting actuary. The expense of ***the*** ~~{such}~~ actuarial service shall be paid by the county;

(b) The county shall establish a payment schedule subject to approval by the board for payment of the cost of ***the*** ~~{such}~~ service over and above that which would be funded within the existing employer contribution rate. The maximum period allowed in a payment schedule shall be thirty (30) years, with interest at the rate actuarially assumed by the board. A shorter period is desirable and the board may approve any payment schedule provided it is not longer than a thirty (30) year period, except that cities which participate in the system pursuant to subsection (7) of this section, KRS 79.080, 90.400, 90.410, 95.520, 95.621, 95.761, 95.768, 95.852, or 96.180 may, at their option, extend the payment schedule to a maximum of thirty (30) years, may choose to make level payments at the interest rate actuarially assumed by the board over the life of the payment schedule chosen, and may retain employer contributions and the earnings thereon attributable to employees electing coverage;

(c) A city entering the system under the alternate participation plan, may, by ordinance, levy a special property tax to pay for current service credit purchased for the period between July 1, 1958, and the participation date of the city. The special tax shall be to pay, within a period of no more than fifteen (15) years, for the cost of ***the*** ~~{such}~~ service credit over that which would be funded within the existing employer contribution rate, as determined by the board's consulting actuary. The reason for levying the special tax and the disposition of the proceeds shall be part of the ordinance levying the tax. The special tax shall be rescinded when the unfunded prior service liability has been amortized, and shall not be subject to the provisions of KRS 132.017 or 132.027. In addition, the city may maintain any tax, the proceeds of which had been devoted to funding pension obligations under the locally administered plan prior to participation in the system, for the purpose of funding current service costs incurred after the date of participation. The city may increase the tax to pay current service costs which exceed the local pension system costs to which the tax had been devoted, but the city shall not collect from the tax more revenues than are necessary to pay current service costs incurred after the date of participation. The city may continue the tax so long as it participates in the system, and the tax shall not be subject to the provisions of KRS 132.017 or 132.027. The city shall not collect either tax authorized by this paragraph if its participation has been terminated pursuant to KRS 78.535;

(d) The county may at a later date purchase current service credit from July 1, 1958, to the participation date of the county by alternate participation plan for those employees who rejected membership in the system at the time the county first participated. In addition, the employer shall pay the employer contributions on the creditable compensation of the employees who later elect membership from the participation date of the county to the date the member elects participation. The employee shall pay the employee contributions on his creditable compensation from the participation date of the county to the date he elects membership plus interest at the current actuarial rate compounded annually on the employee and employer contributions. Cost of the service credit ***in excess of*** ~~{over and above}~~ that which would be funded within the existing employer contribution rate shall be determined by the board's consulting actuary. The expense of the actuarial service shall be paid by the county. The county shall pay the cost of the service by lump sum or by adding it to the existing payment schedule established under paragraph (b) of this subsection;

(e) A county which did not participate by alternate participation may, until July 1, 1991, purchase current service credit for those employees who rejected membership in the system at the time the county first participated. The employer shall pay the employer contributions on the creditable compensation of the employees who later elect membership from the participation date of the county to the date the member elects participation. The employee shall pay the employee contributions on his creditable compensation from the participation date of the county to the date he elects membership plus interest at the current actuarial rate compounded annually on the employee and employer contributions. The county shall pay the cost of the service credit by lump sum or by establishing a payment schedule under paragraph (b) of this subsection; and

(f) A county which participated in the system but did not elect the alternate participation plan may at a later date elect the alternate participation plan. In this case, the county shall purchase on behalf of each employee participating in the system current service credit for employment in regular full-time positions between July 1, 1958, or a later date selected by the county government, and the participation date of the county. The county shall also purchase, for employees who decide to participate when the county elects the alternate participation plan, current service credit for employment in regular full-time positions between July 1, 1958, or the later date selected by the county government, and the participation date of the county. In addition, the county shall pay the employer contributions on the creditable compensation of the employees who later elect membership from the participation date of the county to the date the member elects participation. The employee shall pay the employee contributions on his creditable compensation from the participation date of the county to the date he elects membership plus interest at the current actuarial rate compounded annually on the employee and employer contributions. Cost of the service credit over that which would be funded within the existing employer contribution rate shall be determined by the board's consulting actuary. The expense of the actuarial service shall be paid by the county. The county shall pay the cost of the service by lump sum or by a payment schedule established under paragraph (b) of this subsection.

(4) Every school board not participating on June 21, 1974, shall enact a resolution of participation no later than July 1, 1976.

(5) The order of the governing body of a county, as provided for in subsection (1) of this section, may exclude from participation in the system hospitals and any other semiindependent agency. Each [~~such~~] excluded agency shall be identified in the order authorizing participation and ***the*** [~~such~~] excluded agency may participate in the system as a separate agency.

(6) An agency whose participation in the County Employees Retirement System has been terminated by the board of trustees in accordance with KRS 78.535 may at a later date request participation in the retirement system by the adoption of an appropriate order as authorized by subsection (1) of this section. The board may accept the participation of ***the*** [~~such~~] agency ***if*** [~~provided~~] it is determined that ***the*** [~~such~~] participation is in the best interest of the agency, the employees thereof, and the County Employees Retirement System.

(7) After August 1, 1988, except as permitted by KRS 65.156, no local government retirement system shall be created pursuant to KRS 70.580 to 70.598 and any local government retirement systems created pursuant to KRS 79.080, 90.400, 90.410, 95.768, and KRS Chapter 96 shall be closed to new members. New employees who would have been granted membership in such retirement systems shall instead be granted membership in the County Employees Retirement System. Employees who would have been granted membership in retirement systems created pursuant to KRS 95.768, or any other policemen or firefighters who would have been granted membership in retirement systems created pursuant to KRS 79.080, 90.400, or 90.410, or any such policemen or firefighter members employed on or prior to August 1, 1988, who transfer to the County Employees Retirement System, shall be certified by their employers as working in hazardous positions. Each city participating in the County Employees Retirement System pursuant to this subsection shall execute the appropriate order authorizing ***the*** [~~such~~] participation, shall select the alternate participation plan as described in subsection (3) of this section, and shall pay for the actuarial services necessary to determine the additional costs of alternate participation. Cities which closed their local pension systems to new members and participated in the system prior to July 15, 1988, whose employees at the time of transition were given the option to join the system shall not be required to offer ***the*** [~~said~~] employees a second option to join the system.

(8) Any city which closed a police and firefighter pension plan to new members between January 1, 1988, and July 15, 1988, and participated in the system under the alternate participation plan shall, if its police and firefighters were not covered by Social Security, or any city which operates a pension under KRS 90.400 or 90.410, shall be required to certify that its police and firefighters are working in hazardous positions, and shall offer its police and firefighters in service at the time of entry a second option to participate under hazardous duty coverage if they were not offered hazardous duty coverage at the time of their first option. The provisions of subsection (3)(b) of this section notwithstanding, a city affected by this subsection may, at its option, extend its payment schedule to the County Employees Retirement System for alternate participation to thirty (30) years at the rate actuarially assumed by the board.

Section 2. KRS 78.510 is amended to read as follows:

As used in KRS 78.520 to 78.852, unless the context otherwise requires:

(1) "System" means the County Employees Retirement System;

(2) "Board" means the board of trustees of the system as provided in KRS 78.780;

(3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, ~~[sheriff and his employees, county clerk and his employees,]~~ or political subdivision or instrumentality, including school boards, charter county government, or urban-county government participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency, organization, or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;

(4) "School board" means any board of education participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;

(5) "Examiner" means the medical examiners as provided in KRS 61.665;

(6) "Employee" means every regular full-time appointed or elective officer or employee of a participating county and the coroner of a participating county, whether or not he qualifies as a regular full-time officer. The term shall not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 78.520 to 78.852;

(7) "Employer" means a county, as defined in subsection (3) of this section, the elected officials of a county, or any authority of the county having the power to appoint or elect an employee to office or employment in the county;

(8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;

(9) "Service" means the total of current service and prior service as defined herein;

(10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1958, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided in KRS 61.552(7), 61.555 and 78.530;

(11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1958, for which creditable compensation was paid. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work. Twelve (12) months of current service in the system shall be required to validate prior service;

(12) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4), together with interest credited on the amounts, and any other amounts the member shall have contributed thereto, including interest credited thereon;

(13) "Creditable compensation" means all salary, wages, and fees paid to the employee as a result of services performed for the employer, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). If compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Creditable compensation shall also include amounts that are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;

(14) "Final compensation" of a member means the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;

(15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, and shall include employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: nineteen hundred fifty (1950) hours, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;

(16) "Retirement allowance" means the retirement payments to which a member is entitled;

(17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables as are from time to time adopted by the board, except in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;

(18) "Normal retirement date" means the sixty-fifth (65th) birthday of a member unless otherwise provided in KRS 78.520 to 78.852;

(19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30;

(20) "Agency reporting official" means the person designated by the participating agency who shall be responsible for forwarding all employer and employee contributions and a record of the contributions to the system and for performing

other administrative duties pursuant to the provisions of KRS 78.520 to 78.852;

(21) "Regular full-time positions," as used in subsection (6) of this section, shall mean all positions that average one hundred (100) or more hours per month, unless otherwise specified, except:

(a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and that may recur regularly from year to year, in which case the period of time shall not exceed six (6) months in any event;

(b) Emergency positions that are positions that do not exceed thirty (30) working days and are nonrenewable;

(c) Temporary positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable; or

(d) Part-time positions that are positions that may be permanent in duration, but that require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty, except in case of noncertified employees of school boards, the school term average shall be eighty (80) hours of work per month, determined by using the number of months actually worked within the school term, in the performance of duty;

(22) "Alternate participation plan" means a method of participation in the system as provided for by KRS 78.530(3);

(23) "Retired member" means any former member receiving a retirement allowance or any former member who has on file at the retirement office the necessary documents for retirement benefits and is no longer contributing to the system;

(24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;

(25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any benefits in the event of the member's death. As used in KRS 61.702, beneficiary shall not mean an estate, trust, or trustee;

(26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance;

(27) "Person" means a natural person;

(28) "School term or year" means the twelve (12) months from July 1 through the following June 30; and

(29) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort.

Section 3. Any sheriff and his employees and any county clerk and his employees who participated in the system prior to the effective date of this Act, in a county which did not participate in the system, shall continue participation separately until the participation of the county takes effect. When the participation of the county takes effect, they shall participate as county employees. If the sheriff and his employees had hazardous duty coverage when covered separately, the county as employer shall continue their hazardous duty coverage.

HB 275, AN ACT relating to survivors of persons killed in the line of duty.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 61.315 is amended to read as follows:

(1) As used in this section, "police officer" means every paid police officer, sheriff, or deputy sheriff, ***constable,*** any auxiliary police officer appointed pursuant to KRS 95.445, or any citation or safety officer appointed pursuant to KRS 83A.087 and 83A.088, elected to office, or employed by any county, airport board created pursuant to KRS Chapter 183, city, or by the state; "firefighter" means every paid firefighter or volunteer firefighter who is employed by or volunteers his services to the state, airport board created pursuant to KRS Chapter 183, any county, city, fire district, or any other organized fire department recognized, pursuant to KRS 95A.262, as a fire department operated and maintained on a nonprofit basis in the interest of the health and safety of the inhabitants of the Commonwealth. If death benefits are paid under KRS 61.316 to eligible survivors of a volunteer firefighter, then no benefits shall be paid to those survivors under this section.

(2) The spouse of any police officer, sheriff, deputy sheriff, ***constable,*** any auxiliary police officer appointed pursuant to KRS 95.445, or any citation or safety officer appointed pursuant to KRS 83A.087 and 83A.088, firefighter, or member of the Kentucky National Guard on state active duty pursuant to KRS 38.030, whose death occurs on or after July 1, 1991, as a direct result of an act in the line of duty shall receive a lump-sum payment of fifty thousand dollars ($50,000) if there are no surviving children, which sum shall be paid by the State Treasurer from the general expenditure fund of the State Treasury. If there are surviving children and a surviving spouse, the payment shall be apportioned equally among the surviving children and the spouse. If there is no surviving spouse, the payment shall be made to the surviving children, eighteen (18) or more years of age. For surviving children less than eighteen (18) years of age, the State Treasurer shall:

(a) Pay twenty thousand dollars ($20,000) to the surviving children; and

(b) Hold thirty thousand dollars ($30,000) in trust divided into equal accounts at appropriate interest rates for each surviving child until the child reaches the age of eighteen (18) years.

If a child dies before reaching the age of eighteen (18) years, his account shall be paid to his estate. If there are no surviving children, the payment shall be made to any parents of the deceased.

(3) The Commission on Fire Protection Personnel Standards and Education shall be authorized to promulgate administrative regulations establishing criteria and procedures applicable to the administration of this section as it pertains to both paid and volunteer firefighters, including, but not limited to, defining when a firefighter has died in line of duty.

(4) The Justice Cabinet may promulgate administrative regulations establishing criteria and procedures applicable to the administration of this section as it pertains to police officers, including, but not limited to, defining when a police officer has died in line of duty.

(5) The benefits payable under this section shall be in addition to any benefits now or hereafter prescribed under any police, sheriff, firefighter's, or National Guard retirement or benefit fund established by the federal government or by any state, county, or any municipality.

(6) Any funds appropriated for the purpose of paying the death benefits described in subsection (2) of this section shall be allotted to a self-insuring account. These funds shall not be used for the purpose of purchasing insurance.

The Committee Amendment No. 1 to **HB 275** is as follows:

On page 1, line 3, by adding after "***constable,***" the following:

"***corrections officer with the power of a peace officer pursuant to KRS 196.037,***";

And on page 1, line 14, by adding after "***constable,***" the following:

"***corrections officer with the power of a peace officer pursuant to KRS 196.037,***".

HB 92, AN ACT relating to fire departments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

(1) As used in Sections 1 to 4 of this Act, "fire department" means a fire department organized by a city under KRS Chapter 95, by a county under KRS Chapter 67, by an airport board under KRS Chapter 183, or by the state under KRS Chapter 149, as well as a fire department recognized under KRS 95A.262 to be operated and maintained on a nonprofit basis in the interest of the health, safety, prosperity, and security of the inhabitants of the Commonwealth.

(2) Firefighting and other emergency services performed by a fire department shall not be considered the making of a promise or the undertaking of a special duty toward any person regarding these services or the manner in which they are performed. Providing or failing to provide these services shall not create a special relationship or duty toward any person on which an action in negligence or other tort may be founded.

(3) Failure to respond to a fire or other emergency, to undertake inspections, or to maintain a particular level of personnel, equipment, or facilities shall not be a breach of duty on the part of a fire department toward any person affected by a fire or other emergency.

(4) When a fire department responds to a fire or other emergency, failure to provide the level of service, manner of service, or allocation of resources that could be provided shall not be a breach of duty toward any person affected by the fire or other emergency.

(5) A fire department shall not have or assume a duty toward any person to adopt or avoid any strategy or tactic in responding to a fire or other emergency.

(6) When a fire department undertakes fire prevention activities, including inspections, or when it responds to a fire or other emergency, it shall not be assuming voluntarily any special duty with respect to risks that it did not create, or with respect to risks that might have existed in the absence of the activity or response. No person shall have the right to rely on such an assumption of duty.

SECTION 2. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

Any firefighter, paid or volunteer, who is acting in an official capacity under the direction or supervision of the chief of a city or county fire department, or who is participating in a fire department activity sanctioned by a city or county, shall be an agent of the city or county, enjoying the same privileges and immunities as the city or county and the employees of the city or county.

SECTION 3. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

A decision of the chief of a fire department or the chief's subordinate concerning the allocation and assignment of firefighters and equipment and the strategies and tactics used in responding to a fire or other emergency shall be

considered an exercise of discretion for which neither the officer nor any agency of government with which the fire department is associated shall be held liable in the absence of malice or bad faith.

SECTION 4. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 3 of this Act shall not be construed to affect the application of common law immunities or of other statutes relating to the liability of governmental agencies or firefighters.

The Committee Amendment No. 1 to **HB 92** is as follows:

On page 1, line 15, by deleting "*to respond to a fire or other emergency,*"; and

On page 2, by deleting lines 7 through 11, and by substituting therefor the following:

"*Any firefighter, paid or volunteer, who is acting in an official capacity under the direction or supervision of the chief of a city, county, or fire district fire department, or who is participating in a fire department activity sanctioned by a city, county, or fire district shall be an agent of the city, county, or fire district enjoying the same privileges and immunities as the city, county, or fire district and the employees of the city, county, or fire district.*".

Orders of the Day

HB 211, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bentley moved the adoption of the Committee Substitute to **HB 211**. Agreed.

Representative Bentley moved that **HB 211**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 68, Nays 23. (See February 8, 1994 roll call on **HB 211** - Appendix)

HB 211, by way of Committee Substitute, was passed and the title agreed to.

Representative Bentley moved that the vote by which **HB 211**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 165, with Committee Amendment and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Geveden moved the adoption of Committee Amendment No. 1 to **HB 165**. Agreed.

Representative Farrow moved the adoption of Floor Amendment No. 1 to **HB 165**. Agreed.

Representative Farrow moved the adoption of Floor Amendment No. 2 to **HB 165**. Rejected.

Representative Geveden moved that **HB 165**, as amended, be passed.

On the roll call the vote was: Yeas 77, Nays 14. (See February 8, 1994 roll call on **HB 165** - Appendix)

HB 165, as amended, was passed and the title agreed to.

Representative Geveden moved that the vote by which **HB 165**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 184 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative McElroy moved that **HB 184** be passed.

On the roll call the vote was: Yeas 92, Nays 5. (See February 8 , 1994 roll call on **HB 184** - Appendix)

HB 184 was passed and the title agreed to.

Representative Stumbo moved that the vote by which **HB 184** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 154, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Curd moved the adoption of Committee Amendment No. 1 to **HB 154**. Agreed.

Representative Curd moved that **HB 154**, as amended, be passed.

On the roll call the vote was: Yeas 88, Nays 8. (See February 8, 1994 roll call on **HB 154** - Appendix)

HB 154, as amended, was passed and the title agreed to.

Representative Curd moved that the vote by which **HB 154**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to the Committee Substitute to **HB 73**, by Representative Wayne:

On page 2, between lines 23 and 24, by inserting and underlining:

"***(16) Evaluate the current building code enforcement efforts being conducted within the Commonwealth.***"; and

On page 3, line 19, by deleting the words, "***Two (2) members***", and inserting and underlining in lieu thereof, "***One (1) members***"; and

On page 3, lines 24 and 25, by deleting the words, "***The Kentucky State Building Trades Council,***"; and

On page 4, after line 5, by inserting and underlining:

> "***4. The Kentucky State Building Trades Council, the Kentucky Association of Plumbing, Heating and Cooling Contractors, the Mechanical Contractors Association, the Heating and Cooling Contracting Association, and the National Electrical Contractors Association.***"; and

On page 2, line 14, to delete "***and***"; and

On page 2, line 18, to delete the period "***.***" and to insert a semi-colon "***;***"; and

On page 2, line 23, to delete the period "***.***" and to insert a semi-colon "***; and***".

Floor Amendment No. 1 to **HB 289**, by Representative Heleringer:

On page 9, line 7, after "procedure." by removing the brackets and strike throughs from the material through line 9.

Orders of the Day (Continued)

HB 239, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Donnermeyer moved the adoption of the Committee Substitute to **HB 239**. Agreed.

Representative Donnermeyer moved that **HB 239**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 95, Nays 0. (See February 8, 1994 roll call on **HB 239** - Appendix)

HB 239, by way of Committee Substitute, was passed and the title agreed to.

Representative Donnermeyer moved that the vote by which **HB 239**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 205 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Geveden moved that **HB 205** be passed.

On the roll call the vote was: Yeas 94, Nays 0. (See February 8 , 1994 roll call on **HB 205** - Appendix)

HB 205 was passed and the title agreed to.

Representative Geveden moved that the vote by which **HB 205** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 359 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 33** and **HB 68** have been examined and found correctly enrolled . Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time - 2:40 p.m.)

HB 33 and **HB 68** delivered to the Senate and signed by the President. Delivered to the Governor on February 8 at 3:00 p.m.

Orders of the Day (Continued)

Representative Stumbo moved that **HB 359** be passed.

On the roll call the vote was: Yeas 93, Nays 0. (See February 8 , 1994 roll call on **HB 359** - Appendix)

HB 359 was passed and the title agreed to.

Representative Stumbo moved that the vote by which **HB 359** was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Wayne moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Wayne moved that he be recorded as voting "yea" on **HB 165**. Agreed.

Representative Deskins moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Deskins moved that he be recorded as voting "yea" on **HB 239, HB 96, HB 222, HB 298, HB 307, HB 309, HB 310, HB 335** and **HB 351**. Agreed.

Representative L. Clark moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative L. Clark moved that he be recorded as voting "yea" on **HB 205**. Agreed.

Representative Fox moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Fox moved that he be recorded as voting "yea" on **HB 96** and **335**. Agreed.

Representative Fox moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Fox moved that his vote be changed from "nay" to "yea" on **HB 351**. Agreed.

Representative Stumbo moved the adoption of the following **Legislative Citation No. 51**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors The Singing Sammons and from this day forth proclaim this family who has opened eyes, ears and hearts across this great county to Kentucky heritage and culture to be designated the Commonwealth's "Goodwill Ambassadors of Gospel Music".

Representative Lyne moved the adoption of the following **Legislative Citation No. 35**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby pays special tribute to Brother Joe Carrico of Post Oak Baptist Church in recognition of his retirement upon the occasion of his retirement after forty years of service to the Post Oak Baptist Church of Russellville. This prestigious body expresses its admiration of Joe Carrico for his dedication to the spiritual and temporal needs of his congregation, his town, and the larger community. We salute him for his extra efforts to minister to nearby Fort Campbell, for his willingness to be counselor and friend to anyone in need, and for his tireless humanitarian works.

Introduction of Bills and Resolutions (Continued)

HB 491, by Representative Morris: AN ACT relating to cosmetology.

HB 492, by Representatives Hancock, Little, Bowling and Worthington: AN ACT relating to highways.

HB 493, by Representatives Lewis and Harper: AN ACT relating to motor vehicles.

HB 494, by Representative Burch: AN ACT relating to the Kentucky Unified Juvenile Code.

HB 495, by Representative Reinhardt: AN ACT relating to revenue and taxation.

HB 496, by Representative Palumbo: AN ACT relating to arson and related offenses.

HB 497, by Representative Palumbo: AN ACT relating to the regulation of dietitians and nutritionists.

HB 498, by Representative Reinhardt: AN ACT relating to revenue and taxation.

HB 499, by Representative R. Smith: AN ACT relating to the primary program.

HB 500, by Representative R. Smith: AN ACT relating to natural gas pipeline safety.

HB 501, by Representative R. Smith: AN ACT relating to demand-side management.

HJR 31, by Representative Curd: A JOINT RESOLUTION establishing the Deaf and Hard of Hearing Students' Bill of Rights.

HJR 32, by Representatives Scorsone, Palumbo, Trapp and Crenshaw: A JOINT RESOLUTION designating the University of Kentucky--Lexington-Fayette County Arboretum Park the official state publicly owned arboretum of the Commonwealth of Kentucky.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills and Resolution have been posted for Committee consideration:

State Government: **HJR 26, HB 355, HB 357, SB 27, SB 60, HB 437**

Transportation: **HB 201, HB 293, HB 340, HB 394, HB 447**

Motions, Petitions and Communications (Continued)

The following members filed requests to have their names added as co-sponsors to Bills under rules previously suspended: **HB 127, HB 408**, Representative Marzian; **HB 359**, Representatives Donnermeyer, Farrow, Lile; **HB 394**, Representative Lile; **HB 368**, Representative Jensen; **HB 388**, Representative Crenshaw; **HB 479, HB 480**, Representative Maggard.

Announcements

The Clerk announced the following meetings:

Majority Caucus, upon adjournment, Room 327

Cities, 9:00 a.m., February 9, 1994, Room 131

Tourism Development and Energy, upon adjournment of Majority Caucus

Committee on Rules, upon adjournment, Speaker's Office

Natural Resources and Environment, upon adjournment, canceled

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Wednesday, February 9, 1994.

On the roll call the vote was **Yeas 88**--Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bruce, Bryant, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, Deskins, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Jensen, Keith, Kerr, Lear, Lee, Lewis, Lindsay, Long, Lyne, Marzian, Mason, McElroy, Moberly, Morris, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riggs, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, R. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 5**--Buis, Heleringer, LeMaster, Lile, Maggard.

The motion to adjourn was adopted.

WEDNESDAY, FEBRUARY 9, 1994

TWENTY-FOURTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend David Hilton, First United Methodist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Butler, Hatcher, Northup and Yates.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of February 8, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 22, SB 74, SB 75, SB 86, SB 87, SB 89, SB 119, SB 128, SB 140, HB 3, HB 72, HB 81, HB 103, HB 106, HB 121** and **HB 122**.

Message received in regard to **HB 52**: The Senate has passed **HB 52** with Senate Committee Amendment and respectively requests concurrence of this Honorable Body. (Time 2:05 p.m.)

Introduction of Bills and Resolutions

HB 502, by Representatives French and Cyrus: AN ACT relating to excavations by public utilities.

HB 503, by Representative Deskins: AN ACT relating to forfeited mining reclamation bonds.

HB 504, by Representative Bowling: AN ACT relating to retirement benefits in cities of the third class.

HB 505, by Representatives Callahan and Donnermeyer: AN ACT relating to retirement.

HB 506, by Representative Kerr: AN ACT relating to education.

HB 507, by Representative Trapp: AN ACT relating to motor vehicles.

HCR 33, by Representative Clarke: A CONCURRENT RESOLUTION confirming the appointment of Robert T. McCowan to the Board of the Kentucky Long-Term Policy Research Center.

HCR 34, by Representative Clarke: A CONCURRENT RESOLUTION confirming the appointment of Vic Hellard, Jr. to the Board of the Kentucky Long-Term Policy Research Center.

HCR 35, by Representative Clarke: A CONCURRENT RESOLUTION confirming the appointment of Betty Sue Griffin to the Board of the Kentucky Long-Term Policy Research Center.

HCR 36, by Representative Clarke: A CONCURRENT RESOLUTION confirming the appointment of Joan Riehm to the Board of the Kentucky Long-Term Policy Research Center.

HCR 37, by Representative Clarke: A CONCURRENT RESOLUTION confirming the appointment of Dr. Samuel Robinson to the State Board for Elementary and Secondary Education.

HCR 38, by Representative Clarke: A CONCURRENT RESOLUTION confirming the appointment of Charles Beach, III to the Board of the Kentucky Long-Term Policy Research Center.

HCR 39, by Representative Clarke: A CONCURRENT RESOLUTION confirming the appointment of Paul B. Cook to the Board of the Kentucky Long-Term Policy Research Center.

HCR 40, by Representative Clarke: A CONCURRENT RESOLUTION confirming the appointment of Penny M. Miller to the Board of the Kentucky Long-Term Policy Research Center.

HCR 41, by Representative Clarke: A CONCURRENT RESOLUTION confirming the appointment of Robert F. Sexton to the Board of the Kentucky Long-Term Policy Research Center.

HCR 42, by Representative Clarke: A CONCURRENT RESOLUTION consenting to the appointment of Barry Bingham, Jr., to the Governor's Higher Education Nominating Committee.

HCR 43, by Representative Clarke: A CONCURRENT RESOLUTION confirming the appointment of Forrest Wayne Callico, M.D., to the Board of the Kentucky Long-Term Policy Research Center.

HCR 44, by Representative Scorsone: A CONCURRENT RESOLUTION requesting local school districts in the Commonwealth of Kentucky to make gender equity a priority while implementing the Kentucky Education Reform Act of 1990.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Agriculture and Small Business: **HB 482**

Appropriations and Revenue: **HB 487, HB 495**

Business Organizations and Professions: **HB 491**

Cities: **HB 478**

Economic Development: **HB 483**

Education: **SB 40, SB 53, SJR 10, SJR 36, HB 490, HB 499, HJR 31**

Elections and Constitutional Amendments: **HB 486**

Health and Welfare: **HB 485, HB 497**

Judiciary: **HB 479, HB 480, HB 494, HB 496**

Natural Resources and Environment: **HB 481, HB 484**

State Government: **SCR 44, HB 488, HB 489, HJR 32**

Tourism Development and Energy: **HB 500, HB 501**

Transportation: **HB 492, HB 493, HB 498**

Report of Committees

The Committee on Rules reported that **HB 220, HR 20** and **HB 206** have been posted for passage in the Orders of the Day for February 10, 1994.

The Committee on Rules reported that the following Bills have been recommitted:

Appropriations and Revenue: **HB 341, HB 2, HB 224**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Health and Welfare: **HB 463**

Economic Development: **HB 475, HB 420**

Report of Committees (Continued)

The Committee on Cities reported **SB 4,** with House Committee Substitute attached thereto, **SB 91,** with Committee Amendment attached thereto, and **SB 120** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

SB 4, AN ACT relating to the jurisdiction of police officers in cities of the fourth class.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 95.740 is amended to read as follows:

(1) The chief of police and every member of the police force in cities of the fourth and fifth classes may, whether directed to

them or not, execute warrants of arrest; processes, subpoenas, and attachments for witnesses. They may arrest as prescribed by law for offenses against ordinances or municipal regulations of the city, and shall have the same power of arrest for offenses against the state as a sheriff.

(2) The chief of police and members of the police force shall be entitled to the same fees, and the same remedies for collecting them, that are allowed by law to sheriffs and other officers for similar services, but the city legislative body may, by ordinance, direct that the fees be paid into the city treasury when the chief of police and members of the police force are employed on a salary.

(3) The chief and members of the police force in cities of the fourth class may make arrests anywhere in the county in which the city is located but shall not be required to police any territory outside the city limits.

The House Committee Substitute to **SB 4** is as follows:

SB 4, AN ACT relating to the jurisdiction of police officers in cities of the fourth class.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 95 IS CREATED TO READ AS FOLLOWS:

(1) The chief of police and all members of the police force in cities of the first through fifth classes shall possess all of the common law and statutory powers of constables and sheriffs. They may exercise those powers, including the power of arrest for offenses against the state, anywhere in the county in which the city is located, but shall not be required to police any territory outside of the city limits.

(2) The chief of police and all members of the police force in cities of the sixth class shall possess all of the common law and statutory powers of constables and sheriffs. They may exercise those powers, including the power of arrest for offenses against the state, only within the corporate boundaries of the city and within the boundaries of any real property owned by the city which is located outside of its corporate boundaries.

(3) The chief of police and all members of the police force in all cities shall be entitled to the same fees, and the same remedies for collecting them, that are allowed to sheriffs and other officers for similar services, but all fees shall be paid into the city treasury.

Section 2. KRS 95.010 is amended to read as follows:

(1) As used in KRS ***95.160*** ~~[95.150]~~ to 95.290 and in KRS ***95.787*** ~~[95.786]~~ to 95.850, unless the context requires otherwise:

- (a) "Dismissal" means the discharge of an employee by the division or department head, civil service board, or other lawful authority.
- (b) "Eligible list" means a list of names of persons who have been found qualified through suitable competitive examinations for positions or classes of positions.
- (c) "Fire department" means the officers, firefighters and clerical or maintenance employees, including the chief of the fire department.
- (d) "Member" means any person in the police or fire department, other than the chief or assistant chief of the department.
- (e) "Police department" means the officers, policemen and clerical or maintenance employees, including the chief of police.
- (f) "Police force" means the officers and policemen of the police department, other than the chief of police.
- (g) "Policeman" means a member of the police department below the rank of officer, other than a clerical or maintenance employee.
- (h) "Salary" means any compensation received for services.
- (i) "Suspension" means the separation of an employee from the service for a temporary or fixed period of time, by his appointing authority, as a disciplinary measure.

(2) As used in KRS 95.440 to 95.630, the following words and terms shall have the following meaning, unless the context requires otherwise:

- (a) "Dismissal" means the discharge of an employee by the division or department head, civil service board, or other lawful authority.
- (b) "Eligible list" means a list of names of persons who have been found qualified through suitable competitive examinations for positions or classes of positions.
- (c) "Fire department" means and includes all officers, firefighters, and clerical or maintenance employees of the fire department.
- (d) "Police department" means and includes all officers, policemen, and clerical or maintenance employees of the police department.

(e) "Member" means any and all officers, firefighters, policemen, clerical or maintenance employees in the police or fire department, except ~~[that]~~ as used in subsections (1) and (3) of KRS 95.440, and KRS 95.450, 95.460, 95.470, 95.550, 95.560, 95.565, 95.570 and 95.580 it shall not include the chief of police in a city of the second class operating under the commission form of government or in an urban-county government.

(f) "Police force" means and includes all officers and policemen in the police department.

(g) "Policeman" means a member of the police department below the rank of officer, other than a clerical or maintenance employee.

(h) "Firefighter" means a member of the fire department below the rank of officer, other than a clerical or maintenance employee.

(i) "Salary" means any compensation received for services.

(j) "Suspension" means the separation of an employee from the service for a temporary or fixed period of time, by his appointing authority, as a disciplinary measure.

(k) "Pension fund" shall mean the moneys derived from the members of the police and fire departments' salary or salaries and appropriations by the legislative body, or any other means derived from whatever source by gift or otherwise to be used for the retirement of members of the police and fire departments after the prescribed number of years of service, and for the benefit of disabled members of police and fire departments, and for the benefit of surviving spouses and dependent children or dependent fathers or mothers in the case of death of any member of the police or fire department within the scope of his employment.

(3) As used in KRS 95.761 to 95.785 the following words and terms shall have the following meaning:

(a) "Regular police department." For the purpose of KRS 95.761 to 95.785, a "regular police department" is defined as one (1) having a fixed headquarters, where police equipment is maintained and where a policeman or policemen are in constant and uninterrupted attendance to receive and answer police calls, and execute regular police patrol duties.

(b) "Regular fire department." For the purpose of KRS 95.761 to 95.785, a "regular fire department" is defined as one (1) having a fixed headquarters where firefighting apparatus and equipment are maintained, and where firefighters are in constant and uninterrupted attendance to receive and answer fire alarms.

(c) "Legislative body." Wherever in KRS 95.761 to 95.785 the term "body" or "legislative body" is employed, it shall be construed to mean the legislative branch of the city government or urban-county government.

(d) "Commission." The word "commission" shall mean the board of civil service commissioners, as established under the terms of KRS 95.761 to 95.785.

(e) "Trustees." The word "trustees" shall mean the board of pension fund trustees, as established under the terms of KRS 95.761 to 95.785.

(f) "Pension fund." The term "pension fund" shall mean the moneys derived from the policeman or policemen and firefighter or firefighters salary or salaries, and appropriations by the legislative body, or any other sums derived from whatever source by gifts or otherwise to be used for the retirement of policeman or policemen and firefighter or firefighters after the prescribed number of years of service and for the benefit of disabled policeman or policemen and firefighter or firefighters, and for the benefit of surviving spouses and dependent children or dependent fathers or mothers in the case of death of a policeman or firefighter within the scope of his employment, according to the terms of KRS 95.761 to 95.785.

Section 3. KRS 243.230 is amended to read as follows:

(1) Licenses to sell distilled spirits and wine by the drink for consumption on the premises may be issued only for premises located within cities of the first, second, or third class, or elsewhere in counties containing a city of the first, second, or third class if those counties maintain an adequate police force under KRS 70.540 and 70.150 to 70.170.

(2) Notwithstanding any other provision of law, a special license to sell distilled spirits and wine by the drink for consumption on the premises may be issued for premises located within a city of the fourth class in which the majority of votes cast in the most recent election held pursuant to KRS 242.127 and 242.129 were in favor of the proposition voted upon provided the city has an adequate police force under KRS 95.710 and ***95.760*** ~~[95.740]~~ to 95.787.

(3) Licenses to sell distilled spirits or wine by the package may be issued only for premises located within incorporated cities, or elsewhere in counties containing a city of the first, second, or third class if those counties maintain an adequate police force under KRS 70.540 and 70.150 to 70.170.

(4) Notwithstanding subsection (3) of this section, the board may, after a field investigation, issue a license to sell distilled spirits and wine by the package at premises not located within any city if:

(a) Substantial aggregations of population would otherwise not have reasonable access to a licensed vendor;

(b) The premises to be licensed under this subsection shall be used exclusively for the sale of distilled spirits and wine by the package and malt beverages, if ***the*** ~~[such]~~ premises are licensed to sell malt beverages at retail and shall not be used in any manner, in connection with a dance hall, roadhouse, restaurant, store, or any other commercial enterprise, except as a drug store in which a registered pharmacist is employed.

(5) No retail package or drink license for the sale of distilled spirits or wine shall be issued for any premises used as or in connection with the operation of any business in which a substantial part of the commercial transaction consists of selling at retail staple groceries or gasoline and lubricating oil.

Section 4. The following KRS sections are repealed:

95.150 Police, powers.

95.510 Powers of police -- Cities of third class.

95.515 Powers of police in cities of second class.

95.740 Powers of chief of police and policemen -- Fees -- Deputies -- Special police.

95.786 Territorial authority of police in cities of fifth class.

SB 91, AN ACT relating to retirement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 95.859 is amended to read as follows:

(1) The rate of retirement annuity shall be two and one-half percent (2.5%) of average salary, as defined in KRS 95.851(13), for each year of total service up to and including thirty (30) years, subject to a maximum of seventy-five percent (75%) of average salary. Fractional periods of service shall be considered in the calculation of such annuities according to the aforesaid rate.

(2) Any member who retired prior to June 21, 1974, shall receive an increase of ten dollars ($10) per month for each year or part thereof of retirement prior to June 21, 1974, with a maximum increase of one hundred and seventy dollars ($170) per month. No surviving widow of a retiree shall receive a pension of less than one hundred and fifty dollars ($150) per month. ***The board may increase the minimum benefit to no more than four hundred dollars ($400) per month if the increase can be supported on an actuarially sound basis by the fund.*** When Social Security benefits are increased, the surviving widows' minimum shall be increased by a like percentage, but the pension increase shall not exceed five percent (5%).

(3) Within six (6) months after the performance of the actuarial study required by KRS 95.872(6), the rate of retirement annuity of each annuitant shall be increased annually by an amount determined by the study to reflect so much of the annual increase in the cost of living of the annuitant as may be supported on an actuarially sound basis by the fund. So long as the same is published, such studies shall rely on the "All Items Index" of the United States Department of Labor's Consumer Price Indexes, but no increase in the cost of living shall exceed five percent (5%) or the actual increase in the cost of living, whichever is lower. The increases shall be payable only after the member has been retired for a period of three (3) full years, and all increases granted on July 15, 1990, or thereafter shall be compounded.

(4) A surviving spouse who does not receive a pension increase pursuant to subsection (2) of this section shall receive the same increase an annuitant receives pursuant to subsection (3) of this section.

Section 2. KRS 95.860 is amended to read as follows:

(1) Upon death of a member due to occupational causes, regardless of length of service, his surviving widow shall be entitled immediately upon cessation of salary or annuity, as the case may be, to an annuity equal to fifty percent (50%) of the member's last rate of salary. This annuity shall be payable until she dies or remarries. No surviving widow shall receive an annuity of less than one hundred and fifty dollars ($150) per month. ***The board may increase the minimum benefit to no more than four hundred dollars ($400) per month if the increase can be supported on an actuarially sound basis by the fund.*** When Social Security benefits are increased, the minimum shall be increased by a like percentage, provided the increase shall not exceed five percent (5%). In addition, if minor children, under age eighteen (18), survive the member, the widow shall receive twenty-five percent (25%) of the member's last rate of salary until the last child attains age eighteen (18). The combined payments to a widow and minor children, excluding cost-of-living increases, shall not exceed seventy-five percent (75%) of his final rate of salary.

(2) If a widow does not survive the member, or if she remarries, and minor children under age eighteen (18) exist, the children shall be entitled to the benefits provided in KRS 95.861(3).

(3) If neither a widow nor minor children, eligible for benefits survive the member, each dependent parent shall be entitled to an annuity equal to twenty-five percent (25%) of the member's last rate of salary, or fifty percent (50%) to both parents.

(4) If a widow would receive from a combination of: (a) survivor benefits pursuant to this section, excluding benefits for minor children, and (b) workers' compensation benefits, excluding dependent children's allowances or payments for medical expenses or legal fees related to the workers' compensation claim, an amount greater than one hundred percent (100%) of the deceased member's last rate of salary, then the pension system survivor benefits shall be reduced to the point that the combined payments equal one hundred percent (100%) of the last rate of salary. The survivor benefit shall not be reduced, however, below an amount equal to two and one-half percent (2-1/2%) of average salary for each year of

the deceased member's service. Any reduction in the survivor payment shall be based upon workers' compensation benefits applicable at the time the survivor payment is granted, and not upon subsequent increases in either benefit. If workers' compensation benefits are reduced at a subsequent time, the surviving spouse shall inform the board, and the board shall increase the survivor's benefit by the amount of the reductions, but not by more than an amount which would increase the survivor's benefit to fifty percent (50%) of last rate of salary, excluding cost-of-living increases. The board of trustees may pay estimated benefits to a surviving spouse, upon qualification for the benefits, based upon an estimate of workers' compensation benefits until such amounts are actually determined, at which time a final calculation of the spouse's actual benefits shall be determined and the account corrected retroactive to the effective date of the survivor benefit. If workers' compensation benefits are paid in lump sums, the board shall reduce the survivor benefit on a monthly rather than a lump-sum basis. The amount of the monthly reduction shall be based upon the life expectancy of the survivor. The board may request the assistance of the general manager of Kentucky retirement systems to calculate the reduction in survivor benefits when lump-sum payments are involved, and the general manager shall provide such assistance upon request.

(5) A surviving child or parent receiving benefits pursuant to this section shall receive the same cost-of-living increase granted to retirees pursuant to KRS 95.859(3). A surviving spouse who does not receive an increase pursuant to subsection (1) of this section shall receive the same increase an annuitant receives pursuant to KRS 95.859(3).

Section 3. KRS 95.861 is amended to read as follows:

(1) Upon death of a member occurring while in service, arising from any cause other than in the performance of duty, provided the member has had at least three (3) years of total service, his widow shall receive an annuity equal to one and one-half percent (1-1/2%) of average salary for each year of total service, credited to the member, subject to a maximum payment, excluding cost-of-living increases, to the widow of fifty percent (50%). If the member has had at least ten (10) years of total service, the widow shall receive an annuity of no less than one hundred and fifty dollars ($150) per month***.*** ***The board may increase the minimum benefit to no more than four hundred dollars ($400) per month if the increase can be supported on an actuarially sound basis by the fund.*** ~~[, and]~~ When Social Security benefits are increased, the minimum shall be increased by a like percentage, but the increase shall not exceed five percent (5%). Payment of the annuity shall be subject to the following conditions:

(a) The widow had been married to the member at least one (1) year prior to his death;

(b) The widow is at least forty-five (45) years of age, otherwise payment will be deferred until she attains such age, except that if she is or becomes totally disabled before age forty-five (45), or has a minor child or children by the member in her care under age eighteen (18), (including adopted children provided the proceedings for adoption were initiated at least one (1) year prior to death of member) payment of the widow's annuity will begin immediately together with an additional allowance on account of the child or children;

(c) The widow's annuity will terminate in any event when the widow remarries. The annuity of each child or children shall continue until each child attains age eighteen (18).

(2) If the widow has minor children under age of eighteen (18), the annuity to the widow shall be increased one-half (1/2) on account of the first child and one-fourth (1/4) on account of each additional child, subject to a maximum combined payment, excluding cost-of-living increases, to the widow and children of seventy-five percent (75%) of the average salary as defined in KRS 95.851(13).

(3) If the pensioner is not survived by a widow and there are minor children the following benefits shall be paid: (a) one (1) minor child, fifty percent (50%), (b) two (2) minor children, fifteen percent (15%) additional, (c) three (3) or more minor children, ten percent (10%) additional, subject to a maximum combined payment, excluding cost-of-living increases, of seventy-five percent (75%) of the average salary as defined in KRS 95.851(13). The annuity of each child or children shall continue until each child attains age eighteen (18), or, in the case of a child regularly employed in full-time educational activities the age of twenty-three (23). The annuity payments shall be reduced in reverse order.

(4) These benefits shall also be payable upon death of the member while on retirement, provided marriage was in effect for at least one (1) year before death.

(5) A surviving child receiving benefits pursuant to this section shall receive the same cost-of-living increases granted to retirees pursuant to KRS 95.859(3). A surviving spouse who does not receive an increase pursuant to subsection (1) of this section shall receive the same increase an annuitant receives pursuant to KRS 95.859(3).

The Committee Amendment No. 1 to **SB 91** is as follows:

On page 5, line 21, by adding thereafter the following:

"Section 4. KRS 95.550 is amended to read as follows:

(1) The pensions or benefits paid for disability or death from the policemen's and firefighters' pension fund in cities of the third class shall be as follows:

(a) If any member of the police or fire department becomes temporarily totally disabled, physically or mentally, while in the performance of duty and by reason of service in the department, the board of trustees of the pension fund shall order paid to him monthly, during his disability but not longer than one (1) year, a sum of not more than sixty dollars ($60) per month, the amount to be determined by the board. This provision shall not apply if a salary is paid during the same period. Provided, however, that the provisions of this paragraph shall not apply unless the disabled firefighter or policeman has served from one (1) day to ten (10) years consecutively in his department, such period of service to be fixed by the board of trustees.

(b) If any member of the police or fire department becomes permanently disabled, physically or mentally, while in the performance of duty and by reason of service in the department, so as to render necessary his retirement from service in the department, the board of trustees shall retire him from service and order paid to him monthly fifty percent (50%) of his monthly salary at the time of his retirement. Provided, however, that the provisions of this paragraph shall not apply unless the disabled firefighter or policeman has served from one (1) day to ten (10) years consecutively in his department, such period of service to be fixed by the board.

(c) If any member of the police or fire department is killed or dies as the result of an injury received in the performance of duty, or dies of any disease contracted by reason of his occupation, or dies while in the service from any cause as a result of his service in the department, or dies in service or while on the retired list from any cause after fifteen (15) consecutive years of service in the department, and leaves a widow, widower or a child under eighteen (18) years of age the board of trustees shall order a pension paid to the widow, widower or child. There shall be paid monthly to the widow or widower, while unmarried, a pension of not less than thirty dollars ($30), or not more than fifty percent (50%) of the deceased's monthly salary at the time of retirement or death and for each child until it reaches the age of eighteen (18) years, not less than six dollars ($6) or not more than ten percent (10%) of the deceased's monthly salary, such amount to be determined by the board of trustees. ***The board may provide a minimum benefit of no more than four hundred dollars ($400) per month, initially, to the surviving spouse if the benefit can be supported on an actuarially sound basis by the pension fund. The board may increase the minimum benefit pursuant to the provisions of KRS 95.560.*** If the deceased member was unmarried and childless, a pension shall be paid to his dependent father and mother of not less than thirty dollars ($30) or not more than twenty percent (20%) of the deceased's monthly salary. If one (1) parent is dead, the other shall receive the entire amount, and if both are living, each shall receive one-half (1/2) the amount, such amount to be determined by the board of trustees.

(2) No person shall receive a pension from the policemen's and firefighters' pension fund except as provided in this section.

Section 5. KRS 95.624 is amended to read as follows:

(1) In cities of the third class, any member of the police or fire department having served twenty (20) years or longer in the police or fire department may petition the board of trustees for retirement; and if his petition is granted, the board may order paid to him monthly fifty percent (50%) of his monthly salary at the time of retirement. If this petition for retirement is denied, any policeman or firefighter has the right of appeal in accordance with the Rules of Civil Procedure.

(2) The pension payable for periods of service between twenty (20) and twenty-five (25) years shall be fifty percent (50%) of salary plus two percent (2%) of salary for each year in excess of twenty (20). The pension payable for twenty-five (25) years of service shall be sixty percent (60%) of salary. The pension payable for periods of service between twenty-five (25) and thirty (30) years shall be sixty percent (60%) of salary plus three percent (3%) of salary for each year in excess of twenty-five (25). The pension payable for thirty (30) years of service shall be seventy-five percent (75%) of salary.

(3) The pensions or benefits paid for disability or death from the policemen's and firefighter's pension fund in cities of the third class shall be as follows:

(a) If any member of the police and fire department becomes temporarily totally disabled, physically or mentally, the board of trustees of the pension fund shall order paid to him monthly, during his disability, until he has recovered and returned to active duty, a sum of not more than one-half (1/2) his salary per month, the amount to be determined by the board. This provision shall not apply if a salary is paid during the same period.

(b) If any member of the police or fire department becomes permanently disabled, physically or mentally, so as to render necessary his retirement from service in the department, the board of trustees shall retire him from service and order paid to him monthly fifty percent (50%) of his monthly salary at the time of his retirement.

(c) If any member of the police or fire department is killed or dies as the result of an injury received in the performance of duty, or dies of any disease contracted by reason of his occupation, or dies while in the service from any cause as a result of his service in the department, or dies in service or while on the retired list from any cause after one (1) year of service in the department and leaves a widow or a child under eighteen (18) years of age, the board of trustees shall order a pension paid to the widow, while unmarried, of one-half (1/2) of salary per month and for each child until it reaches the age of eighteen (18) years, twenty-four dollars ($24) per month. ***The board may provide a minimum benefit of no more than four hundred dollars ($400) per month, initially, to the surviving spouse if the benefit can be supported on an actuarially sound basis by the fund. The board may increase the minimum benefit pursuant to the terms of subsection (4) of this section.*** If the deceased member was unmarried and childless, a pension shall be paid to his dependent father and mother of one-fourth (1/4) of salary per month. If one (1) parent is dead, the other shall receive the entire one-fourth (1/4) salary.

(4) In order to adjust retirement benefits to the purchasing power of the dollar, the board may annually order an increase in benefits paid pursuant to this section. The board may order an increase in benefits by any amount up to the increase in the consumer price index calculated pursuant to KRS 64.527, but in no case shall the annual increase exceed five percent (5%). The board may grant the first increase in 1990.

Section 6. KRS 95.773 is amended to read as follows:

If any member of the police or fire department, while in the performance of his duty, becomes temporarily, totally disabled, physically or mentally, for services by reason of service in such departments, the board of trustees shall order the payment to such disabled member, monthly during such disability, not to exceed one (1) year, from such pension fund, not exceeding sixty dollars ($60) per month, the said amount to be determined by the board of trustees, provided such member, during the same period, is paid no salary as such member. If any member of the police or fire departments, while in the performance of his duty, becomes mentally or physically permanently disabled by reason of service in either of said departments so as to render necessary his retirement from service in either of said departments, said board of trustees shall retire such disabled member from service in either of said departments, provided no such retirement on account of disability shall occur unless said member has contracted said disability while on duty in the service of said police or fire department, and upon such retirement the board of trustees shall order the payment to such disabled member of such police or fire department, monthly, from such pension fund, a sum equal to one-half (1/2) of the monthly salary such member was receiving at the date of his retirement, provided such member has had twelve (12) or more years' constant service in either of said departments. Any member of the said police or fire departments who has less than twelve (12) years of constant service in the said department and becomes disabled for service and eligible for retirement under this section shall receive monthly such sum from such pension fund fixed by the board of said trustees any amount not to exceed one-half (1/2) of the amount which such member of the police or fire department was receiving in monthly salary at the date of his retirement. If any member of said police or fire department shall, while in the performance of his duty, be killed or die as a result of an injury received in the line of his duty, or of any disease contracted by reason of his occupation, or shall die from any cause whatsoever as a result of his services in either of said departments, and while in said service, or after having served continuously for twelve (12) years shall die while in the service or on the retired list from any cause, and shall leave a widow, or child or children under the age of fourteen (14) years, said board of trustees shall direct the payment from said pension fund, monthly, to such widow, while unmarried, a sum equal to one-half (1/2) of the monthly salary or pension payment such member was receiving at the date of his death, and for each child until it reaches the age of fourteen (14) years, six dollars ($6), and to the dependent father and mother to be paid as follows: If the father be dead, the mother shall receive thirty dollars ($30), and if the mother be dead, the father shall receive thirty dollars ($30), and if both be living, each shall receive fifteen dollars ($15). ***The board may provide a minimum benefit of no more than four hundred dollars ($400) per month, initially, to the surviving spouse if the benefit can be supported on an actuarially sound basis by the pension fund. When Social Security benefits are increased, the board may increase the surviving spouse's minimum by a like percentage, but the increase shall not exceed five percent (5%).***".

SB 120, AN ACT changing the classification of the City of Indian Hills-Cherokee, in Jefferson County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Indian Hills-Cherokee, in Jefferson County, is such as to justify its being classified as a city of the fifth class;

NOW, THEREFORE;

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The City of Indian Hills-Cherokee, in Jefferson County, is transferred from the sixth to the fifth class of cities.

The Committee on Education reported **HB 91,** with Committee Substitute attached thereto, **HB 97,** with Committee Substitute attached thereto, **HB 115,** with Committee Substitute attached thereto, **HB 256, HB 304,** with Committee Amendment attached thereto, **HB 327,** with Committee Amendments attached thereto, **HB 328, HB 329,** with Committee Substitute attached thereto, **HR 18** and **HJR 23** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 91, AN ACT relating to school councils.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.132 is amended to read as follows:

As used in this section, except subsection (1), "public school officer" means a person who previously served as a superintendent of schools or board member during which time charges were brought against him under this section.

(1) The chief state school officer shall recommend, by written charges to the proper school authorities having immediate jurisdiction, the removal of any superintendent of schools, principal, teacher, ***parent member of a school council,*** or other public school officer ~~[as to]~~ whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance. ***In the case of parent members of a school council, the written***

charges shall be provided to the local board of education.

(2) The chief state school officer shall recommend by written charges the suspension by the State Board for Elementary and Secondary Education of any district board member, superintendent of schools, or other public school officer ~~{as to}~~ whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, nonfeasance, or who shall be removed pursuant to KRS 158.6455(7). The State Board for Elementary and Secondary Education shall, after a summary hearing as provided by administrative regulations, suspend any district board of education member, superintendent of schools, or other public school officer, who in the opinion of the majority of the State Board for Elementary and Secondary Education is guilty of immorality, misconduct in office, incompetence, willful neglect of duty, nonfeasance, or who shall be removed pursuant to KRS 158.6455(7). The action by the State Board for Elementary and Secondary Education may be taken upon a recommendation of the chief state school officer, or the action may be taken by a majority vote of the State Board for Elementary and Secondary Education without recommendation from the chief state school officer.

(3) The State Board for Elementary and Secondary Education may suspend a district superintendent of schools or other public school officer under subsection (2) of this section or remove him pursuant to subsection (5) of this section only if after thirty (30) days of receipt of the written charges specified in subsection (1) of this section, the ***proper school authorities having immediate jurisdiction, either the superintendent or the*** district board of education, has refused to act, has acted in bad faith, arbitrarily, or capriciously, or if a recommendation to the district board would have been futile.

(4) Any officer suspended by the State Board for Elementary and Secondary Education under subsection (2) of this section shall be furnished with a written statement, specifying in detail the reasons for suspension and naming a date and place at which the officer may appear before the State Board for Elementary and Secondary Education to answer the charges. The date shall be not less than thirty (30) nor more than forty (40) days after the service of the charges upon the officer. Within twenty (20) days after receipt of the charges, the officer may notify the State Board for Elementary and Secondary Education of his intention to appear and answer ***the*** ~~{such}~~ charges. If the officer fails to notify the board of his intention to appear and answer ***the*** ~~{such}~~ charges, the State Board for Elementary and Secondary Education may remove the officer by a majority vote and the dismissal shall be final.

(5) As an alternative to first seeking suspension, the chief state school officer may recommend by written charges the removal by the State Board for Elementary and Secondary Education of any district board member, superintendent of schools, or other public school officer whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance, or who shall be removed pursuant to KRS 158.6455(7). The officer against whom the written charges are issued by the chief state school officer shall be furnished with the written charges and notice of the date and place at which the officer may appear before the state board to answer the charges. The date shall be not less than thirty (30) nor more than forty (40) days after the service of the charges upon the officer. Within twenty (20) days after receipt of the charges, the officer may notify the State Board for Elementary and Secondary Education of his intention to appear and answer the charges. If the officer fails to notify the board of his intention to appear and answer the charges, the State Board for Elementary and Secondary Education may remove the officer by a majority vote and the dismissal shall be final.

(6) Upon receipt of the officer's notice of intention to appear and answer the charges, the State Board for Elementary and Secondary Education shall issue subpoenas necessary for the determination of the issues involved. The issues shall be heard at the time and place set and the hearing shall be public or private at the discretion of the accused former or current superintendent and shall be public when testimony is taken for board members. Both parties may be represented by counsel and may require the presence of witnesses upon subpoena. Each witness shall be required to take oath before an officer of the board. The State Board for Elementary and Secondary Education shall provide for a stenographic report of the proceedings and furnish the officer with a copy.

(7) Upon completion of both sides of the case, but within ninety (90) days from the date the officer was suspended if applicable, the State Board for Elementary and Secondary Education may meet in closed session to consider the evidence and may by a majority vote remove the officer. If the board votes to remove the officer, the board shall prepare written findings specifying which charge or charges it found to be the basis for removal. If within ninety (90) days from the date of suspension if applicable, the state board has not removed the officer, or has dismissed the charges, the suspended officer shall be reinstated and shall be paid his full salary for the period of suspension.

(8) The officer shall have a right to appeal on the record to the Circuit Court located in the county of the school district. If the appeal is not made within thirty (30) days after removal, ~~{then}~~ the decision of the State Board for Elementary and Secondary Education shall be final. The appeal shall be an original action in court and shall be commenced by the filing of a petition against the State Board for Elementary and Secondary Education, in which petition the facts shall be alleged upon which the officer relies for a reversal or modification of the order of removal. Upon service or waiver of summons in the appeal, the State Board for Elementary and Secondary Education shall forthwith transmit to the clerk of the court for filing a transcript of the original notice of charges and a transcript of all evidence considered at the hearing, where the cause shall be at issue without further pleading and shall be advanced and heard without delay. The court shall examine the transcript and record of the hearing before the State Board for Elementary and Secondary Education to determine whether the decision of the state board was arbitrary and capricious. The court shall grant or deny the relief asked for in

the petition. Either the officer or the State Board for Elementary and Secondary Education may appeal the action of the court to the Court of Appeals. If the decision of the court is against removal, the officer shall be paid his full salary from the date of suspension. The payment shall be made from funds appropriated to the State Department of Education.

The Committee Substitute to **HB 91** is as follows:

HB 91, AN ACT relating to school councils.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.132 is amended to read as follows:

As used in this section, except subsection (1), "public school officer" means a person who previously served as a superintendent of schools or board member during which time charges were brought against him under this section.

(1) The chief state school officer shall recommend, by written charges to the proper school authorities having immediate jurisdiction, the removal of any superintendent of schools, principal, teacher, ***member of a school council,*** or other public school officer ~~[as to]~~ whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance. ***In the case of a member of a school council, the written charges shall be provided to the local board of education.***

(2) The chief state school officer shall recommend by written charges the suspension by the State Board for Elementary and Secondary Education of any district board member, superintendent of schools, or other public school officer ~~[as to]~~ whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, nonfeasance, or who shall be removed pursuant to KRS 158.6455(7). The State Board for Elementary and Secondary Education shall, after a summary hearing as provided by administrative regulations, suspend any district board of education member, superintendent of schools, or other public school officer, who in the opinion of the majority of the State Board for Elementary and Secondary Education is guilty of immorality, misconduct in office, incompetence, willful neglect of duty, nonfeasance, or who shall be removed pursuant to KRS 158.6455(7). The action by the State Board for Elementary and Secondary Education may be taken upon a recommendation of the chief state school officer, or the action may be taken by a majority vote of the State Board for Elementary and Secondary Education without recommendation from the chief state school officer.

(3) The State Board for Elementary and Secondary Education may suspend a district superintendent of schools or other public school officer under subsection (2) of this section or remove him pursuant to subsection (5) of this section only if after thirty (30) days of receipt of the written charges specified in subsection (1) of this section, the ***proper school authorities having immediate jurisdiction, either the superintendent or the*** district board of education***,*** has refused to act, has acted in bad faith, arbitrarily, or capriciously, or if a recommendation to the district board would have been futile.

(4) Any officer suspended by the State Board for Elementary and Secondary Education under subsection (2) of this section shall be furnished with a written statement, specifying in detail the reasons for suspension and naming a date and place at which the officer may appear before the State Board for Elementary and Secondary Education to answer the charges. The date shall be not less than thirty (30) nor more than forty (40) days after the service of the charges upon the officer. Within twenty (20) days after receipt of the charges, the officer may notify the State Board for Elementary and Secondary Education of his intention to appear and answer ***the*** ~~[such]~~ charges. If the officer fails to notify the board of his intention to appear and answer ***the*** ~~[such]~~ charges, the State Board for Elementary and Secondary Education may remove the officer by a majority vote and the dismissal shall be final.

(5) As an alternative to first seeking suspension, the chief state school officer may recommend by written charges the removal by the State Board for Elementary and Secondary Education of any district board member, superintendent of schools, or other public school officer whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance, or who shall be removed pursuant to KRS 158.6455(7). The officer against whom the written charges are issued by the chief state school officer shall be furnished with the written charges and notice of the date and place at which the officer may appear before the state board to answer the charges. The date shall be not less than thirty (30) nor more than forty (40) days after the service of the charges upon the officer. Within twenty (20) days after receipt of the charges, the officer may notify the State Board for Elementary and Secondary Education of his intention to appear and answer the charges. If the officer fails to notify the board of his intention to appear and answer the charges, the State Board for Elementary and Secondary Education may remove the officer by a majority vote and the dismissal shall be final.

(6) Upon receipt of the officer's notice of intention to appear and answer the charges, the State Board for Elementary and Secondary Education shall issue subpoenas necessary for the determination of the issues involved. The issues shall be heard at the time and place set and the hearing shall be public or private at the discretion of the accused former or current superintendent and shall be public when testimony is taken for board members. Both parties may be represented by counsel and may require the presence of witnesses upon subpoena. Each witness shall be required to take oath before an officer of the board. The State Board for Elementary and Secondary Education shall provide for a stenographic report of the proceedings and furnish the officer with a copy.

(7) Upon completion of both sides of the case, but within ninety (90) days from the date the officer was suspended if applicable, the State Board for Elementary and Secondary Education may meet in closed session to consider the evidence and may by a majority vote remove the officer. If the board votes to remove the officer, the board shall prepare written findings specifying which charge or charges it found to be the basis for removal. If within ninety (90) days from the date of suspension if applicable, the state board has not removed the officer, or has dismissed the charges, the suspended officer shall be reinstated and shall be paid his full salary for the period of suspension.

(8) The officer shall have a right to appeal on the record to the Circuit Court located in the county of the school district. If the appeal is not made within thirty (30) days after removal, ~~[then]~~ the decision of the State Board for Elementary and Secondary Education shall be final. The appeal shall be an original action in court and shall be commenced by the filing of a petition against the State Board for Elementary and Secondary Education, in which petition the facts shall be alleged upon which the officer relies for a reversal or modification of the order of removal. Upon service or waiver of summons in the appeal, the State Board for Elementary and Secondary Education shall forthwith transmit to the clerk of the court for filing a transcript of the original notice of charges and a transcript of all evidence considered at the hearing, where the cause shall be at issue without further pleading and shall be advanced and heard without delay. The court shall examine the transcript and record of the hearing before the State Board for Elementary and Secondary Education to determine whether the decision of the state board was arbitrary and capricious. The court shall grant or deny the relief asked for in the petition. Either the officer or the State Board for Elementary and Secondary Education may appeal the action of the court to the Court of Appeals. If the decision of the court is against removal, the officer shall be paid his full salary from the date of suspension. The payment shall be made from funds appropriated to the State Department of Education.

SECTION 2. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

A member of a school council may be removed from the council for cause, after an opportunity for hearing before the local board, by a vote of four-fifths (4/5) of the membership of a board of education after the recommendation of the chief state school officer pursuant to Section 1 of this Act. Written notices setting out the charges for removal shall be spread on the minutes of the board and given to the member of the school council.

Section 3. KRS 160.345 is amended to read as follows:

(1) The term "teacher" for the purpose of this section means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.

(2) By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy shall also address and comply with the following:

(a) Each participating school shall form a school council which shall be composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. The parent representatives on the council shall not be employees of the district or employees' relatives, nor shall they be a local board member or his spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees. By July 1, 1993, the State Board for Elementary and Secondary Education shall submit recommendations to the Legislative Research Commission relating to policies and procedures to insure minority representation on school councils.

(b) The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent representatives shall be selected for one (1) year terms. The parent members shall be elected by the parent members of the parent teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. The principal or head teacher shall be the chair of the school council.

(c) The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.

(d) All certified staff at a school may be participants in the school-based decision making. The staff may divide into committees according to their areas of interest, such as, but not limited to, grouped grade levels, subject areas, and special programs. Each committee shall elect by a majority of the committee a chair, who shall serve for a term of one (1) year. The committee shall submit its recommendations to the school council for consideration.

(e) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.

(f) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.

(g) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.

(h) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council.

(i) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.

(j) The school council shall adopt a policy to be implemented by the principal in the following additional areas:

1. Determination of curriculum, including needs assessment and curriculum development;
2. Assignment of all instructional and noninstructional staff time;
3. Assignment of students to classes and programs within the school;
4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
5. Determination of use of school space during the school day;
6. Planning and resolution of issues regarding instructional practices;
7. Selection and implementation of discipline and classroom management techniques, including responsibilities of the student, parent, teacher, counselor, and principal;
8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision; and
9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal.

(3) The policy adopted by the local board to implement school-based decision making shall also address the following:

(a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;

(b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;

(c) School improvement plans, including the form and function of strategic planning and its relationship to district planning;

(d) Professional development plans developed pursuant to KRS 156.095 and 156.0951;

(e) Parent, citizen, and community participation including the relationship of the council with other groups;

(f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;

(g) Requirements for waiver of district policies;

(h) Requirements for record keeping by the school council; and

(i) A process for appealing a decision made by a school council.

(4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

(5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon a favorable vote of a majority of the faculty at the school, a school performing above its threshold level requirement as determined by the Department of Education pursuant to KRS 158.6455 may apply to the State Board for Elementary and Secondary Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. Notwithstanding the provisions

of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

(6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making.

(7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the State Board for Elementary and Secondary Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.

(8) The State Board for Elementary and Secondary Education, upon recommendation of the chief state school officer, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council.

(9) (a) No board member, superintendent of schools, [~~or~~] district employee***, or member of a school council*** shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (j) of subsection (2) of this section.

(b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the State Board for Elementary and Secondary Education.

(c) The State Board for Elementary and Secondary Education shall establish by administrative regulation a hearing process for complaints referred by the Office of Education Accountability.

(d) If the State Board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent***, a member of a school council,*** or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

HB 97, AN ACT relating to the Commissioner of Education.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.148 is amended to read as follows:

(1) Effective January 1, 1991, the commissioner of education shall be the chief state school officer. He shall possess the professional qualifications determined by the State Board for Elementary and Secondary Education as appropriate for the office.

(2) The commissioner shall be appointed by the State Board for Elementary and Secondary Education ***and confirmed by the Senate and the House of Representatives of the General Assembly in accordance with KRS 11.160 to serve for a contract period not to exceed two (2) years and***[~~, serve~~] at the pleasure of the board, and receive compensation as set by the board, the provisions of KRS 64.640 notwithstanding. ***An individual may be reappointed commissioner of education, but each subsequent appointment shall be subject to confirmation by the Senate and the House of Representatives.***

(3) The commissioner of education shall be the executive and administrative officer of the State Board for Elementary and Secondary Education in its administration of all educational matters and functions placed under its management and control. He shall carry out all duties assigned to him by law; shall execute under the direction of the state board the educational policies, orders, directives, and administrative functions of the board; and shall direct the work of all persons employed in the Department of Education.

(4) The commissioner of education shall be reimbursed for all actual and necessary traveling expenses incurred by him in the performance of his duties.

The Committee Substitute to **HB 97** is as follows:

HB 97, AN ACT relating to the Commissioner of Education.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.148 is amended to read as follows:

(1) Effective January 1, 1991, the commissioner of education shall be the chief state school officer. He shall possess the professional qualifications determined by the State Board for Elementary and Secondary Education as appropriate for the office.

(2) The commissioner shall be appointed by the State Board for Elementary and Secondary Education, serve at the pleasure of the board, and receive compensation as set by the board, the provisions of KRS 64.640 notwithstanding. *The first time an individual is appointed commissioner of education, he shall be confirmed by the Senate in accordance with KRS 11.160 to serve for a period not to exceed two (2) years. If the state board subsequently extends the confirmed commissioner's contract or issues a new contract so that he has more than two (2) years left to serve, the appointment shall again be subject to confirmation as provided in this subsection.*

(3) The commissioner of education shall be the executive and administrative officer of the State Board for Elementary and Secondary Education in its administration of all educational matters and functions placed under its management and control. He shall carry out all duties assigned to him by law; shall execute under the direction of the state board the educational policies, orders, directives, and administrative functions of the board; and shall direct the work of all persons employed in the Department of Education.

(4) The commissioner of education shall be reimbursed for all actual and necessary traveling expenses incurred by him in the performance of his duties.

HB 115, AN ACT relating to sexual misconduct by professionals.

WHEREAS, child and adult survivors of sexual abuse are in need of health and mental health services as a result of the experience of victimization; and

WHEREAS, too often the experience of abuse and exploitation follows the victim or survivor of sexual abuse into the professional relationship with those to whom she or he turns for help; and

WHEREAS, sixty-five percent of therapists report having worked with clients who have had sexual contact with a previous therapist, and the single best predictor of being victimized by a therapist is a history of childhood sexual abuse; and

WHEREAS, a recent study of media accounts of sexual abuse by persons in positions of special trust revealed that the most significant percentage of these cases involve professionals within the educational system; and

WHEREAS, written testimony to the Attorney General's Task Force on Child Sexual Abuse described victimization by health professionals who exploited patients under the guise of providing appropriate health care; and

WHEREAS, boards which license and certify professionals must be empowered to stringently investigate and punish sexual misconduct in order to prevent further victimization and increase the accountability of the system which responds to child and adult survivors;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 161.028 is amended to read as follows:

(1) Beginning July 15, 1990, there shall be an Education Professional Standards Board, with the authority and responsibility to:

(a) Establish standards and requirements for obtaining and maintaining a teaching certificate;

(b) Set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel;

(c) Issue, renew, suspend, and revoke teaching certificates;

(d) *Develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by an employee certified by the Education Professional Standards Board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure the process does not revictimize the alleged victim or cause harm if an employee is falsely accused;*

(e) Receive, along with investigators hired by the Education Professional Standards Board, training on the dynamics of professional sexual misconduct, including the nature of this type of victimization, the characteristics of the offender, the impact on the victim, investigative procedures in sex offense cases, and effective intervention with victims and offenders;

(f) Maintain data and submit reports to the Governor and the Legislative Research Commission concerning employment trends and performance of certificated personnel and the quality of professional preparation programs. The board shall study the problem of the declining pool of minority teachers in the Commonwealth and submit recommendations for increasing the number of minority teachers to the 1992 Regular Session of the General Assembly;

(g)[~~(e)~~]Reduce and streamline the credential system to allow greater flexibility in staffing local schools while maintaining standards for teacher competence; and

(h)[~~(f)~~] Develop a professional code of ethics.

(2) (a) The board shall be composed of fifteen (15) members. The chief state school officer and the executive director of

the Council on Higher Education shall serve as ex officio voting members. The Governor shall make the following thirteen (13) appointments:

1. Eight (8) members who shall be teachers representative of elementary, middle or junior high, secondary, special education, and secondary vocational classrooms;
2. Two (2) members who shall be school administrators, one (1) of whom shall be a school principal;
3. One (1) member representative of local boards of education; and
4. Two (2) members representative of deans of colleges of education.

(b) For the initial appointments, the Governor shall designate four (4) members to serve a term of four (4) years; three (3) members to serve a term of three (3) years; three (3) members to serve a term of two (2) years; three (3) members to serve a term of one (1) year.

(c) A vacancy on the board shall be filled in the same manner as the original appointment within sixty (60) days after it occurs. A member shall continue to serve until his successor is named. Any member who, through change of employment status or residence, or for other reasons, no longer meets the criteria for the position to which he was appointed shall no longer be eligible to serve in that position.

(d) Members of the board shall serve without compensation, but shall be permitted to attend board meetings and perform other board business without loss of income or other benefits.

(e) A state agency or any political subdivision of the state, including a school district, required to hire a substitute for a member of the board who is absent from his employment while performing board business shall be reimbursed by the board for the actual amount of any costs incurred.

(f) At the first meeting held after July 1 of each year, a chairman shall be elected by and from the membership. A member shall be eligible to serve no more than three (3) one (1) year terms in succession as chairman. The executive secretary appointed by the chief state school officer from the Department of Education staff shall keep records of proceedings. Regular meetings shall be held at least semiannually on call of the chairman. The Department of Education shall provide staff and support for the board.

(g) To carry out the functions relating to its duties and responsibilities, the board is empowered to receive donations and grants of funds; to appoint consultants as needed; and to sponsor studies, conduct conferences, and publish information.

(3) The Education Professional Standards Board shall be the successor to the State Board for Elementary and Secondary Education for purposes of performing the duties authorized in KRS 161.027, 161.028, 161.030, 161.042, 161.044, 161.046, 161.048, 161.049, 161.100, 161.115, 161.120, 161.124, and 161.126. Rules, administrative regulations and procedures relating to these duties shall not lapse and shall continue in effect until repealed or amended by the Education Professional Standards Board.

Section 2. KRS 161.120 is amended to read as follows:

(1) (a) Any certificate issued under KRS 161.010 to 161.100, or any certificate or license issued under any previous law to superintendents, principals, teachers, supervisors, directors of pupil personnel, or other administrative, supervisory, or instructional employees may be revoked by the Education Professional Standards Board for immorality, misconduct in office, incompetency, violation of the school laws of the state or administrative regulations adopted by the State Board for Elementary and Secondary Education, willful neglect of duty, ***conviction of an offense under KRS Chapter 510, KRS 530.020, 530.064, or 531.310, being found by the Education Professional Standards Board to have had sexual contact as defined in KRS 510.010(7) with a student,*** or upon the determination that a certificate applicant presented or declared false information toward obtaining the issuance or renewal of any type of teacher certification.

(b) The board may revoke an individual's certificate if his certificate was revoked or voluntarily surrendered in another state on the same or similar grounds provided in this subsection. Such revocation by the board shall be in accordance with the procedures outlined in subsection (2).

(2) (a) The superintendent of each local school district shall report in writing to the Education Professional Standards Board the name, Social Security number, position name, and position code of any certified school employee in his district whose contract is terminated or not renewed, for cause; who resigns from, or otherwise leaves, a position under threat of contract termination, or nonrenewal, for cause; who is convicted in a criminal prosecution; or who is otherwise known to have engaged in such actions or conduct as might reasonably be expected to warrant consideration for certificate revocation. The duty to report shall exist without regard to any disciplinary action, or lack thereof, by the superintendent, and the required report shall be submitted within thirty (30) days of the event giving rise to the duty to report.

(b) The district superintendent shall inform the Education Professional Standards Board in writing of the full facts and circumstances leading to the contract termination or nonrenewal, resignation, or other absence, conviction, or otherwise reported actions or conduct of the certified employee, which are based on immorality, misconduct in office, incompetency, violation of school law or administrative regulation adopted by the State Board for

Elementary and Secondary Education, willful neglect of duty, or falsification of certification credentials, and shall forward copies of all relevant documents and records in his possession.

(c) The certified school employee shall be given a copy of any report provided to the Education Professional Standards Board by the district superintendent and shall have the right to file a written rebuttal which shall be attached to the district superintendent's report.

(3) (a) Upon taking action to initiate proceedings to revoke a certificate, the Education Professional Standards Board shall provide the certified employee a written statement specifying in detail the charge against him and setting a time and date for a hearing. The hearing shall take place no less than twenty (20) days nor more than forty-five (45) days after the certified employee receives the statement of charges. A continuance of the hearing may be granted in accordance with administrative regulations promulgated by the board.

(b) The hearing may be public or private at the discretion of the certified employee. The certified employee may be represented by counsel. The presence of witnesses may be required upon subpoenas issued by the chief state school officer at the request of the chairman of the Education Professional Standards Board or the certified employee. Each witness shall be required to take an oath or affirmation prior to testimony.

(c) The hearing shall be conducted by the full board or a person appointed as hearing officer by the board.

(d) If the hearing is conducted by a hearing officer, the officer shall submit written findings and a recommended order to the board for its consideration and action upon completion of the hearing.

(4) *If the Education Professional Standards Board substantiates that sexual conduct occurred between a certified employee and a student, the employee's certificate may be revoked or suspended with mandatory treatment of the employee as prescribed by the Education Professional Standards Board. The Education Professional Standards Board may require the employee to pay a specified amount for mental health services for the student which are needed as a result of the misconduct.*

(5) In all cases where the Education Professional Standards Board is unable, after reasonable diligence, to notify a certified individual of a scheduled hearing on pending charges, the hearing shall be continued generally until the individual can be notified or presents himself for hearing. The charges shall not be dropped in the interim, and the fact of pending revocation charges shall be appropriately noted in the individual's certification file.

(6){~~(5)~~} Any individual whose certificate is revoked may apply for reissuance of his certificate when he believes he can demonstrate himself suitable for reissuance, unless the Education Professional Standards Board's order of revocation sets forth a specific minimum period of revocation.

Section 3. KRS 311.565 is amended to read as follows:

(1) The board may:

(a){~~(1)~~} Exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy which shall include, but not be limited to, promulgation of reasonable regulations enabling the board to regulate the conduct of its licensees;

(b){~~(2)~~} Promulgate reasonable regulations establishing moral, physical, intellectual, educational, scientific, technical, and professional qualifications of applicants for licenses and permits that may be issued by the board;

(c){~~(3)~~}Issue, deny, suspend, limit, restrict, and revoke any licenses or permits that may be issued by the board, and to reprimand or to place licensees on probation, in compliance with the provisions of KRS 311.530 to 311.620;

(d){~~(4)~~} Appoint an executive director and assistant executive directors and fix their compensation. The executive director shall oversee the work of the board, shall be authorized to discharge the duties of the secretary, as provided by KRS 311.530 to 311.620, and shall carry out the duties of the executive director as set forth elsewhere in this chapter;

(e){~~(5)~~}Appoint a general counsel and assistant general counsel and fix their compensation;

(f){~~(6)~~} Appoint investigatory personnel and fix their compensation;

(g){~~(7)~~} Appoint one (1) or more hearing officers, who need not be members of the board, and fix their compensation. Every hearing officer shall be vested with the full and complete power and authority of the board to schedule and conduct hearings on behalf of and in the name of the board on all matters referred for hearing by the board or secretary thereof, including, among other things, proceedings for placing licensees on probation and for limitation, suspension, and revocation of licenses, and shall cause to be prepared and furnished to the board, for decision thereon by the board, a complete written transcript of the record of the hearing which shall contain all evidence introduced at the hearing and all pleas, motions, and objections and all rulings of the hearing officer. Every hearing officer shall be authorized to administer oaths and issue summonses, notices, and subpoenas, but shall not be empowered to place any licensee on probation or to issue, refuse, suspend, limit, or revoke any license;

(h){~~(8)~~} Appoint committees of licensees, who need not be board members, to review issues of public or medical interest before the board and to make recommendations to the board on the issues;

(i)[~~(9)~~] Promulgate regulations to promote the efficient and fair conduct of disciplinary proceedings;

(j)[~~(10)~~] Promulgate a code of conduct governing the practice of medicine and osteopathy, which shall be based upon generally recognized principles of professional ethical conduct;

(k)[~~(11)~~] Utilize the services and facilities of professional organizations, and procure and receive the assistance and recommendations of professional organizations in administering KRS 311.530 to 311.620;

(l)[~~(12)~~] Make its personnel and facilities available to other governmental entities under mutually agreeable terms and conditions;

(m)[~~(13)~~] Issue regular licenses without further testing by endorsement from another state having qualifications and standards at least as high as those of this state or by endorsement from the National Board of Medical Examiners, the National Board of Examiners for Osteopathic Physicians and Surgeons, the National Gaint Committee of Preregistration Physician Training Programs, or any approved successors thereof;

(n)[~~(14)~~] Issue and renew regular licenses to practice medicine or osteopathy in accordance with KRS 311.530 to 311.620 and any reasonable regulations of the board;

(o)[~~(15)~~] Issue and renew, or refuse to issue or renew, or cancel and terminate limited licenses pursuant to rules and regulations prescribed by the board; provided however, no person who held a limited license for institutional practice or general practice as of September 1, 1972, shall be denied the renewal of that limited license for non-disciplinary reasons;

(p)[~~(16)~~] Appoint examiners, who need not be members of the board, and employ or contract with the Federation of State Medical Boards of the United States, Inc., or the National Board of Medical Examiners or other organizations, agencies, or individuals to prepare examination questions and grade examination papers;

(q)[~~(17)~~] Determine the schools, colleges, universities, institutions, and training acceptable in connection with licensure under KRS 311.530 to 311.620;

(r)[~~(18)~~] Prescribe the time, place, method, manner, scope and content of examinations; provided, however, that at least two (2) examinations shall be held annually;

(s)[~~(19)~~] Prescribe all forms which it considers appropriate, and require the submission of photographs, fingerprints, and personal history data;

(t)[~~(20)~~] Prescribe and collect reasonable fees and charges for examinations, directories, and the issuance and renewal of licenses and permits;

(u)[~~(21)~~] Impose fines of not greater than five thousand dollars ($5,000) per violation upon a finding pursuant to disciplinary proceedings that the licensee has violated any provision of KRS 311.595 to 311.597 or duly promulgated disciplinary regulation of the board; and

(v)[~~(22)~~] Exercise all the administrative functions of the state in regard to the regulation of physician assistants. In promulgating these regulations under the provisions of KRS Chapter 13A, the board shall address:

1.[~~(a)~~] The professional qualifications of physician assistants;

2.[~~(b)~~] The supervision of physician assistants by licensed physicians;

3.[~~(c)~~] The review and discipline of physician assistants and their supervising physicians;

4.[~~(d)~~] The scope of practice allowed physician assistants;

5.[~~(e)~~] The facilities in which physician assistants may practice; and

6.[~~(f)~~] The delegation of responsibilities from physicians to physician assistants.

The board may establish qualifications that the physician assistants shall attain before the board grants the right to practice in this state. At a minimum, these qualifications shall include the passage of a written examination approved by the board and satisfactory completion of a clinical training program approved by the board. The board may establish an advisory committee to aid the board in the regulation of physician assistants, who shall be considered adjuncts to supervising physicians and not independent practitioners of any healing art.

(2) The board shall develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by a physician licensed by the board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a physician is falsely accused.

(3) The board, the hearing officer, and investigators hired by the board shall receive training on the dynamics of professional sexual misconduct, including the nature of this type of victimization, the characteristics of the offender, the impact on the victim, investigative procedure in sex offense cases, and effective intervention with victims and offenders.

Section 4. KRS 311.591 is amended to read as follows:

(1) The president of the board shall divide the membership of the board, excluding himself, into two (2) panels of five (5) members each. Each panel shall have the power to act as an inquiry or a hearing panel. The president shall not be a

member of either panel, but shall have the power to render the deciding vote whenever a tie vote is rendered by either panel.

(2) Grievances may be submitted by an individual (including board members), organization or entity. Each grievance shall be investigated as necessary and the executive director shall assign each grievance to an inquiry panel. All inquiry panels and the executive director shall have the power to issue investigatory subpoenas for the appearance of any person or production of any record, document or other item within the jurisdiction of the Commonwealth. The panel or executive director may seek enforcement of investigatory subpoenas in the courts of the Commonwealth as may be necessary.

(3) Upon completion of its inquiry, the inquiry panel shall make a finding that:

(a) The grievance is without merit and no further action is necessary;

(b) The grievance discloses an instance of misconduct which does not warrant the issuance of a complaint; in such instances, the panel may admonish the physician for his misconduct; or

(c) The grievance discloses one (1) or more violations of the provisions of this chapter which warrant the issuance of a complaint; in such instances, the panel shall cause a complaint to be prepared, signed by the presiding officer, which shall contain sufficient information to apprise the named physician of the general nature of the charges.

(4) The inquiry panel shall cause a complaint to be served on the charged physician by personal delivery or by certified mail to the physician's last address of which the board has record. The physician shall submit a response within thirty (30) days after service. Failure to submit a timely response or willful avoidance of service may be taken by the board as an admission of the charges.

(5) Upon the issuance of the complaint, the executive director shall assign the matter for hearing and decision by a hearing panel. No member who served on the inquiry panel may also serve as a member of the hearing panel. The hearing panel or the hearing officer on behalf of the panel shall preside over all proceedings pursuant to the issuance of a complaint. All board members, the executive director and hearing officer shall have the authority to administer oaths and issue summonses, subpoenas and other process. During or after any proceeding, the board or the hearing officer may petition the courts of the Commonwealth to punish as contempt the failure of a person or entity to obey a subpoena or other process, or contemptuous conduct directed to the board or the hearing officer.

(6) All proceedings pursuant to the issuance of a complaint shall be in accordance with the rules and regulations established by the board to promote the fair, orderly and efficient conduct of the proceedings. The board may establish regulations regarding the informal disposition of any complaint and such disposition may be made at any stage of the proceeding.

(7) Upon completion of the hearing process, the hearing officer shall prepare proposed findings of fact and conclusions of law. The parties shall have the opportunity to file objections or other comments regarding the proposed findings and conclusions. The hearing panel may adopt the proposed findings and conclusions, in whole or in part, or may make its own in addition to or substitution of the proposed ones. If a hearing officer is not used or the hearing officer fails to prepare findings and conclusions, the hearing panel shall prepare its own findings and conclusions and may then issue its final order.

(8) Upon completion of the disciplinary proceedings, the hearing panel shall issue an order that:

(a) Dismisses the complaint upon a conclusion that the provisions of this chapter have not been violated;

(b) Finds a violation of the provisions of this chapter, but does not impose discipline because the panel does not believe discipline to be necessary under the circumstances; or

(c) Imposes discipline upon the licensee; in such instances, the panel may revoke, suspend, restrict, deny, or limit a license, or may reprimand or place a licensee on probation under terms the panel may establish to protect the licensee, his patients or the general public. The hearing panel may impose a fine whenever it finds that a violation of this chapter has occurred. ***If the board substantiates that sexual misconduct occurred between the physician and the patient while the patient was under the care of or in a professional relationship with the physician, the physician's license may be revoked or suspended with mandatory treatment of the physician as prescribed by the board. The board may require the physician to pay a specified amount for mental health services for the patient which are needed as a result of the misconduct.*** The hearing panel's order shall be considered the final order of the board regarding the matter.

(9) Regardless of the restrictions on public disclosure of information established in subsection (10) of this section, the board may order information derived from any investigation or inquiry be released to the physician licensure authority of another state or to any health care ***or mental health care*** facility licensed and regulated by the Commonwealth of Kentucky upon a showing that the information is necessary to determine the propriety of a physician practicing in a particular state or facility.

(10) The presiding officer at any proceeding held pursuant to a complaint or show cause order shall take whatever measures are necessary to protect the privacy interests of individuals other than the charged physician upon a showing that evidence is to be introduced, the public disclosure of which would constitute a clear invasion of personal privacy. It is the general policy of the Commonwealth that administrative proceedings should be open to the public. Therefore, in applying this subsection the presiding officer shall balance the competing interests and employ the least restrictive

measures available to protect the privacy interests involved.

Section 5. KRS 311.595 is amended to read as follows:

If the power has not been transferred by statute to some other board, commission**,** or agency of this state, the board may deny an application for a license; place a licensee on probation for a period not to exceed five (5) years; suspend a license for a period not to exceed five (5) years; limit or restrict a license for an indefinite period; or revoke any license heretofore or hereafter issued by the board, upon proof that the licensee has:

(1) Knowingly made or presented, or caused to be made or presented, any false, fraudulent, or forged statement, writing, certificate, diploma or other thing, in connection with an application for a license or permit***;***[~~.~~]

(2) Practiced, or aided or abetted in the practice of fraud, forgery, deception, collusion, or conspiracy in connection with an examination for a license***;***[~~.~~]

(3) Committed, procured or aided in the procurement of an unlawful abortion***;***[~~.~~]

(4) Entered a guilty or nolo contendere plea, or been convicted, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be a felony under the laws of the Commonwealth of Kentucky, or of the United States, or of any crime involving moral turpitude which is a misdemeanor, under the laws***;***[~~.~~]

(5) ***Been convicted of an offense under KRS Chapter 510, KRS 530.020, 530.064, or 531.310, or been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the physician;***

(6) Become addicted to a controlled substance***;***[~~.~~]

(7)[~~(6)~~] Become a chronic or persistent alcoholic***;***[~~.~~]

(8)[~~(7)~~] Developed a physical or mental disability, or other condition, that continued practice is dangerous to patients or to the public***;***[~~.~~]

(9)[~~(8)~~] Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof***;***[~~.~~]

(10)[~~(9)~~] Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his profession***;***[~~.~~]

(11)[~~(10)~~] Employed, as a practitioner of medicine or osteopathy in the practice of his profession in this state, any person not duly licensed or otherwise aided, assisted or abetted the unlawful practice of medicine or osteopathy or any other healing art***;***[~~.~~]

(12)[~~(11)~~] Violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of any medical practice act, including but not limited to the code of conduct promulgated by the board under KRS 311.601 or any other valid regulation of the board***;***[~~.~~]

(13)[~~(12)~~] Violated any order of suspension, or the terms or conditions of any order of probation, issued by the board***;***[~~.~~]

(14)[~~(13)~~] Engaged in or attempted to engage in the practice of medicine or osteopathy under a false or assumed name, or impersonated another practitioner of a like, similar or different name***;***[~~.~~]

(15)[~~(14)~~] Obtained a fee or other thing of value on the fraudulent representation that a manifestly incurable condition could be cured***;***[~~.~~]

(16)[~~(15)~~] Willfully violated a confidential communication***;***[~~.~~]

(17)[~~(16)~~] Had his license to practice medicine or osteopathy in any other state, territory or foreign nation revoked, suspended, restricted, or limited or has been subjected to other disciplinary action by the licensing authority thereof***;***[~~.~~]

(18)[~~(17)~~] Failed or refused, without legal justification, to practice medicine in a rural area of this state in violation of a valid medical scholarship loan contract with the trustees of the rural Kentucky medical scholarship fund***;***[~~.~~]

(19)[~~(18)~~] Given or received, directly or indirectly, from any person, firm, or corporation, any fee, commission, rebate, or other form of compensation for sending, referring or otherwise inducing a person to communicate with a person licensed under KRS 311.530 to 311.620 in his professional capacity or for any professional services not actually and personally rendered; provided, however, that nothing contained in this subsection shall prohibit persons holding valid and current licenses under KRS 311.530 to 311.620 from practicing medicine in partnership or association or in a professional service corporation authorized by KRS Chapter 274, as now or hereinafter amended, or from pooling, sharing, dividing, or apportioning the fees and moneys received by them or by the partnership, corporation or association in accordance with the partnership agreement or the policies of the board of directors of the corporation or association. Nothing contained in this subsection shall abrogate the right of two (2) or more persons holding valid and current licenses under KRS 311.530 to 311.620 to receive adequate compensation for concurrently rendering professional care to a single patient and divide a fee, if the patient has full knowledge of this division and if the division is made in proportion to the services performed and responsibility assumed by each***;***[~~.~~]

(20)[~~(19)~~] Been removed, suspended, or expelled by any professional medical association or society when the action was based upon what the association or society found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provision of KRS Chapter 311*; or*~~[.]~~

(21)~~[(20)]~~ Been disciplined by a licensed hospital or medical staff of the hospital, including removal, suspension, limitation of hospital privileges, failing to renew privileges for cause, resignation of privileges under pressure or investigation, or other disciplinary action if the action was based upon what the hospital or medical staff found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provisions of KRS Chapter 311.

Section 6. KRS 314.091 is amended to read as follows:

(1) The board shall have power to deny, limit, revoke, probate, or suspend any license to practice nursing issued by the board or applied for in accordance with this chapter, or to otherwise discipline a licensee, or to deny admission to the licensure examination, or to require evidence of evaluation and therapy upon proof that the person:

(a) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;

(b) Has been convicted of a misdemeanor or felony which involved acts that bear directly on the qualifications or ability of the applicant or licensee to practice nursing;

(c) ***Has been convicted of an offense under KRS Chapter 510, KRS 530.020, 530.064, or 531.310, or has been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the nurse;***

(d) Has negligently or willfully acted in a manner inconsistent with the practice of nursing;

(e)~~[(d)]~~Is unfit or incompetent to practice nursing by reason of negligence or other causes, including but not limited to, being unable to practice nursing with reasonable skill or safety;

(f)~~[(e)]~~ Abuses use of controlled substances or has misused or misappropriated any drugs placed in the custody of the nurse for medication, or use of others;

(g)~~[(f)]~~ Has falsified or in a repeatedly negligent manner made incorrect entries or failed to make essential entries on essential records;

(h)~~[(g)]~~ Has a license to practice as a nurse denied, limited, suspended, probated, or revoked in another jurisdiction on grounds sufficient to cause a license to be denied, limited, suspended, probated, or revoked in this Commonwealth; or

(i)~~[(h)]~~ Has willfully or repeatedly violated any of the provisions of this chapter.

(2) In all hearings for denial, limitation, probation, suspension, or revocation of the license of a registered or practical nurse, the licensee shall be furnished with a copy of the charges and shall be given at least thirty (30) days to prepare defense, except in the case of temporary suspension as set out in KRS 314.089. The person charged shall be heard by the board or its designated hearing officer in person or by counsel, or both, as may be desired. The presiding officer of the hearing may administer the oath in any manner arising in the course of duties. In the hearing the board may take oral or written proof for or against the aggrieved person. A suspended or revoked license may be reinstated at the discretion of the board, and in accordance with regulations promulgated by the board.

(3) The executive director may issue subpoenas to compel the attendance of witnesses and the production of documents. Said subpoenas may be enforced by the Circuit Court as for contempt. Any order or subpoena of such court requiring the attendance and testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in this state.

(4) The board, or any member thereof, may administer oaths, take testimony, hear proof, and receive exhibits in evidence at the hearing.

(5) The board shall not be bound by technical rules of evidence.

(6) A stenographic record of the hearing shall be kept and a transcript thereof filed with the board.

(7) At all hearings on request of the board the Attorney General of this state or one (1) of his assistants designated by him shall appear and represent the board.

(8) The decision of the board shall be by majority vote thereof.

(9) Any person adversely affected by any order of the board may obtain a review thereof by filing a written petition for review with the Circuit Court of the county in which the board's offices are located within thirty (30) days after the entry of said order. The petition shall state the grounds upon which the review is asked and shall pray that the order of the board be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon the executive director of the board and thereupon the executive director shall certify and file in the court a transcript of the record upon which the order complained of was entered. No new or additional evidence shall be introduced in the court except as to fraud or misconduct affecting the outcome of the case, but the court shall otherwise hear the case upon the record as attested by the executive director of the nursing board, and shall in all respects dispose of the appeal in a summary manner. Its review shall be limited to determine whether or not:

(a) The board acted without or in excess of its power;

(b) The order appealed from was procured by fraud or misconduct;

(c) Substantial evidence supports the order appealed from;

(d) The board's decision is supported by the law. The court may affirm, modify, or set aside the board's order in whole or in part, or may remand the case to the board for further evidence, and may in its discretion, stay the effect of the board's order pending its determination of the case. The court's order shall have the force and effect of a decree in equity.

(10) If the board substantiates that sexual contact occurred between a nurse and a patient while the patient was under the care of or in a professional relationship with the nurse, the nurse's license may be revoked or suspended with mandatory treatment of the nurse as prescribed by the board. The board may require the nurse to pay a specified amount for mental health services for the patient which are needed as a result of the misconduct.

Section 7. KRS 314.131 is amended to read as follows:

(1) The board shall meet at least annually and shall elect from its members a president, a vice president, and a secretary. The election shall be held in June of each year. A majority of the board including one (1) officer shall constitute a quorum at any meeting. The board is authorized to adopt and revise regulations not inconsistent with the law, as may be necessary to enable it to carry into effect the provisions of this chapter. The board shall approve curricula and standards for schools of nursing and courses preparing persons for licensure and shall monitor standards for nurse competency under this chapter. It shall provide for surveys of such schools and courses at such time as may be necessary, approve such schools and courses as meet the requirements of this chapter and of the board, evaluate and approve courses for affiliation, and examine, license and renew the license of duly qualified applicants; determine notice of place and time of licensure examinations; approve providers of continuing education; administer continuing education requirements; issue advisory opinions dealing with the practice of nursing; register and designate those persons qualified to engage in advanced nursing practice; and it shall conduct hearings upon charges calling for discipline of a licensee on probation or suspension or revocation or limitation of a license, have power to issue subpoenas, and compel the attendance of witnesses, administer oaths to persons giving testimony at hearings, and cause the prosecution of all persons violating any provisions of this chapter. It shall keep a record of all its proceedings and make an annual report to the Governor.

(2) ***The board shall develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by a nurse licensed by the board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a nurse is falsely accused.***

(3) The board and investigators hired by the board shall receive training on the dynamics of professional sexual misconduct, including the nature of this type of victimization, the characteristics of the offender, the impact on the victim, investigative procedure in sex offense cases, and effective intervention with victims and offenders.

(4) The board shall employ a qualified person to serve as executive director to the board, and shall fix his compensation and define his duties. It may employ such other persons as may be necessary to carry on the work of the board.

(5)~~[(3)]~~ The executive director shall have at least the qualifications for board members, and a master's degree in nursing or equivalent and shall have had at least two (2) years of experience in nursing administration immediately preceding the time of his appointment.

(6)~~[(4)]~~ Each member of the board shall receive, in addition to traveling, hotel and other necessary expenses, one hundred dollars ($100) for each day he is actually engaged in the discharge of his official duties.

(7)~~[(5)]~~ The board may, in its discretion, purchase liability insurance for board and staff members against acts performed in good faith discharge of duties.

Section 8. KRS 319.032 is amended to read as follows:

(1) The board shall promulgate administrative regulations:

(a) Establishing requirements, standards, and tests to determine the moral, intellectual, educational, scientific, technical, and professional qualifications of applicants for licenses or certificates; defining areas of specialty within the field of psychology; and preparing or selecting and administering examinations on general psychological knowledge and on the appropriate psychological specialty or specialties of the applicant. Neither certified psychologists nor psychological associates may participate in the examination of applicants for licensures;

(b) Establishing and defining the scope of practice within each area of specialty within the field of psychology;

(c) Setting the requirements for issuing, denying, suspending, restricting, and revoking licenses and certificates, and placing licensees and certificate holders on probation;

(d) ***Developing specific guidelines to follow upon receipt of an allegation of sexual misconduct by a psychologist licensed or certified by the board. The guidelines shall include investigation, hearing officer, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a psychologist is falsely accused;***

(e) Requiring training for the board and investigators hired by the board on the dynamics of professional sexual

misconduct, including the nature of this type of victimization, the characteristics of the offender, the impact on the victim, investigative procedure in sex offense cases, and effective intervention with victims and offenders;

(f) Establishing requirements for continuing education not to exceed thirty (30) contact hours per three (3) year renewal period as a condition for renewal of licenses and certificates;

(g)[~~(e)~~]Establishing and collecting reasonable fees for directories, transcribing, transferring of records, and other services;

(h)[~~(f)~~] Conducting hearings or appointing hearing officers to conduct hearings on any matter under the jurisdiction of the board. Every hearing officer shall cause to be prepared and furnished to the board, for decision thereon by the board, a complete written transcript or mechanical recording of the hearing which shall contain all evidence introduced at the hearing and all pleas, motions, objections, and all rulings of the hearing officer;

(i)[~~(g)~~] Entering into reciprocal agreements with boards of examiners of psychology of other states having qualifications and standards at least as high as those of this state providing for reciprocal licensure or certification;

(j)[~~(h)~~] Employing personnel, including hearing officers which it considers necessary for the performance of its functions, determining the duties of personnel, and compensating them within the limits of funds available to the board;

(k)[~~(i)~~] Investigating complaints or suspected violations of this chapter and notifying proper law enforcement authorities. For the purpose of enforcing the provisions of this chapter, the board shall have the authority to administer oaths, receive evidence, interview persons, issue subpoenas, and require the productions of books, papers, documents, or other evidence;

(l)[~~(j)~~] Governing the supervision of certified psychologists and the supervision and employment of psychological associates and candidates for licensure; and

(m)[~~(k)~~] Notwithstanding the fee schedules specified in this chapter, increasing or decreasing fees as it deems appropriate***.***[~~;~~]

(2) The board shall have the authority to promulgate such other administrative regulations as it deems necessary for the proper administration of this chapter.

(3) The board, at its discretion, may use funds as necessary to purchase liability insurance for members and executive officers of the board, inspectors, examiners, investigators, and staff members exempt from classificated service of the state by KRS 18A.115.

Section 9. KRS 319.082 is amended to read as follows:

(1) The board may suspend, revoke, or refuse to issue or renew a license or certificate, or may accept an assurance of voluntary compliance, restrict, or place a licensee or certificate holder on probation, upon proof that the licensee or certificate holder has:

(a) Committed any act involving moral turpitude, dishonesty, or corruption, relating to the practice of psychology, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon conviction of such a crime, the judgment and sentence is presumptive evidence at the ensuing disciplinary hearing of the guilt of the licensee or applicant of the crime described in the indictment or information and of the person's violation of the statute on which it is based. For the purpose of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended;

(b) Misrepresented or concealed a material fact in obtaining a license or certificate, or in reinstatement thereof;

(c) Committed any unfair, false, misleading, or deceptive act or practice;

(d) Been incompetent or negligent in the practice of psychology;

(e) Practiced psychology while under the suspension, revocation, or restriction of the individual's license to practice by competent authority in any state, federal, or foreign jurisdiction;

(f) Violated any state statute or administrative regulation governing the practice of psychology;

(g) Unlawfully failed to cooperate with the board by:

    1. Not furnishing any papers or documents requested by the board;
    2. Not furnishing in writing a complete explanation covering the matter contained in the complaint filed with the board;
    3. Not appearing before the board at the time and place designated; or
    4. Not properly responding to subpoenas issued by the board;

(h) Failed to comply with an order issued by the board or an assurance of voluntary compliance;

(i) Aided or abetted an unlicensed person to practice when a license or certificate is required;

(j) Grossly overcharged for professional services;

(k) Practiced beyond the scope of practice defined in the specialty area of examination;

(l) Failed to provide adequate supervision for certified psychologists, psychological associates, applicants for licensure or certification, or other staff;

(m) Been convicted of any misdemeanor or felony relating to the practice of psychology. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended;

(n) Physically abused or had sexual contact with a patient, client, student, or supervisee;

(o) ***Been convicted of an offense under KRS Chapter 510, KRS 530.020, 530.064, or 531.310;***

(p) Improperly divulged confidential information;

(q)~~[(p)]~~ Exercised undue influence in such a manner as to exploit the client, patient, student, or supervisee for financial or other personal advantage to the practitioner or a third party;

(r)~~[(q)]~~ Showed an inability to practice psychology with reasonable skill and safety to patients or clients by reason of illness, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition; or

(s)~~[(r)]~~ Failed to comply with the requirements of the board for continuing education.

(2) No unlawful act or violation of any provision of this chapter by any certificate holder employed or supervised by a licensed psychologist shall be cause for the revocation of the supervisor's license, unless the board finds that the licensed psychologist had knowledge of it.

(3) Three (3) years from the date of a revocation, any person whose license or certificate has been revoked may petition the board for reinstatement. The board shall investigate his petition and may reinstate his license or certificate upon finding that the former holder has complied with the provisions of this chapter and administrative regulations promulgated by the board and is again able to engage in the practice of psychology with reasonable skill, competency and safety to the public.

(4) The board may, at its own discretion, reconsider, modify, or reverse its probations, suspensions, revocations, restrictions, or refusals to issue or renew licenses or certificates at any time.

Section 10. KRS 319.092 is amended to read as follows:

(1) In every proceeding for probation, suspension, or revocation of a license or certificate, the licensee or certificate holder shall be furnished with written notice setting out each offense charged with sufficient detail to apprise him of the nature, time, and place thereof at least twenty (20) days prior to the hearing. The notice is sufficient if served on the licensee or certificate holder personally or by certified mail, return receipt requested, to his last known address. The nonappearance of the licensee or certificate holder shall not prevent a hearing. The board or a hearing officer appointed by the board shall conduct the hearing. The licensee or certificate holder shall have the right to be present in person or by counsel, to present evidence and to be heard in opposition to the charges. If the licensee or certificate holder fails to respond to the complaint at or before the time of the hearing thereon, the board may take the allegations set forth in the complaint as confessed.

(2) The board or the hearing officer shall have the authority to issue subpoenas for the attendance of witnesses and the production of papers and records, administer oaths and schedule hearings. All decisions revoking or suspending a license or certificate or placing a licensee or certificate holder on probation shall be made by the board.

(3) If, after a hearing, a majority of the board finds that a psychologist has violated any provision of this chapter, the board may:

(a) Revoke or suspend the license or certificate;

(b) Impose a monetary penalty not to exceed two thousand dollars ($2,000) per violation;

(c) Revoke or suspend the license or certificate or impose a monetary penalty, but suspend enforcement thereof by placing the psychologist on probation, which shall be revocable if the board finds the conditions of the probation order are not being followed by the psychologist;

(d) Require the psychologist, as a condition of probation, to submit to care, counseling, or treatment by a professional designated by the board, or require the psychologist to be supervised by a licensed psychologist designated by the board. The expense of this action shall be borne by the psychologist on probation;

(e) Modify the conditions of the probation, with good cause, and may include among them any reasonable condition for the purpose of the protection of the public, or for the purpose of the rehabilitation of the probationer, or both;

(f) Require restitution; and

(g) Assess the costs of the disciplinary proceeding.

(4) ***If the board substantiates that sexual contact occurred between a licensee or certificate holder and a patient while the patient was under the care or in a professional relationship with the licensee or certificate holder, the licensee's or certificate holder's license or certificate may be revoked or suspended with mandatory treatment of that individual***

as prescribed by the board. The board may require the licensee or certificate holder to pay a specified amount for mental health services for the patient which are needed as a result of the misconduct.

(5) Orders of the board suspending or revoking a license or certificate or placing a licensee or certificate holder on probation shall become effective immediately after written notice is served on the licensee or certificate holder and the licensee or certificate holder shall not, after notice of same, engage or continue to engage in the practice of psychology unless the board's order is revoked or modified by a final order or judgment.

(6)~~[(5)]~~ The board shall make public its final order in all disciplinary actions.

(7)~~[(6)]~~ Any person aggrieved by an order of the board may within thirty (30) days after notice thereof appeal thereupon to the Franklin Circuit Court. The court shall decide the appeal upon the certified record and no new or additional evidence shall be heard or considered by the court.

(8)~~[(7)]~~ A party aggrieved by a final order of the Circuit Court may appeal to the Court of Appeals as in a civil action.

Section 11. KRS 335.070 is amended to read as follows:

(1) The board shall administer and enforce the provisions of KRS Chapter 335, and may promulgate, pursuant to the provisions of KRS Chapter 13A, administrative regulations consistent with the provisions of KRS Chapter 335, including a code of ethical practice for certified social workers, licensees certified for independent practice, and social workers.

(2) The board shall review and act upon applications for licensure at least twice each year, and shall regulate the renewal of licenses.

(3) The board may conduct hearings on charges calling for the denial, revocation, or suspension of a license, shall adopt administrative regulations for the conduct of the hearings, and shall cause the prosecution of all persons who violate any provisions of this chapter, or any administrative regulation promulgated pursuant to its provisions.

(4) The board may sue and be sued in its own name.

(5) The board may employ any other persons it deems necessary to carry on the work of the board, and shall define their duties and fix their compensation.

(6) The board shall maintain a register of certified social workers, social workers, and licensees certified for independent practice. The register shall be a public record.

(7) The board shall keep a complete record of all of its proceedings.

(8) The board shall set by administrative regulation a fee schedule for examinations. The fees shall be sufficient to cover the cost of preparation, administration, and grading of the examinations.

(9) The board shall develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by a social worker licensed or certified by the board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a social worker is falsely accused.

(10) The board and investigators hired by the board shall receive training on the dynamics of professional sexual misconduct, including the nature of this type of victimization, the characteristics of the offender, the impact on the victim, investigative procedure in sex offense cases, and effective intervention with victims and offenders.

Section 12. KRS 335.150 is amended to read as follows:

(1) The board may hear grievances of persons whose applications for a license have been denied.

(2) The board may deny, revoke, or suspend any license upon proof that the person has willfully or repeatedly violated any of the provisions of KRS 335.010 to 335.160 and 335.990, or has failed to comply with the requirements in KRS 214.610(1) or any rule or regulation promulgated by the board. The course described in KRS 214.610(1) shall be completed annually and may be a part of any continuing education course.

(3) The board shall not suspend, revoke or refuse to renew a license except after a hearing held before the board upon notice to the person charged.

(4) The notice shall be in writing, shall state the nature of the charges, the time and place of the hearing, and shall be served on the person charged by certified mail not less than thirty (30) days prior to the date of the hearing.

(5) The person charged may appear in person or by counsel, may testify and may produce evidence and witnesses on his own behalf, may cross-examine witnesses, and shall be entitled, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses and the production of documentary evidence.

(6) The board, or its duly authorized representative on its behalf, shall have authority to issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths. The board may invoke the aid of the Circuit Court for the county in which the hearing is held to enforce compliance with its subpoenas.

(7) A stenographic or mechanical record of the hearing shall be taken, and a transcript shall be preserved by the board.

(8) At all hearings before the board the Attorney General of the Commonwealth, or one of his assistants designated by him shall appear and represent the board.

(9) The decision of the board shall be by majority vote thereof.

(10) A copy of the board's order shall be sent by certified mail to the person charged at his last known address.

(11) The board may grant a rehearing when new and material evidence is offered for its consideration.

(12) Any person aggrieved by a final order of the board may within thirty (30) days of the entry of the order, appeal to the Circuit Court for the county in which he resides. The appeal shall be determined by the court upon the certified record and no new or additional evidence shall be heard or considered by the court. An appeal may be taken from the judgment of the Circuit Court on any such appeal to the Court of Appeals in accordance with the Rules of Civil Procedure.

(13) If the board substantiates that sexual contact occurred between a social worker licensed or certified by the board and a client while the client was under the care of or in a professional relationship with the social worker, the social worker's license or certificate may be revoked or suspended with mandatory treatment of the social worker as prescribed by the board. The board may require the social worker to pay a specified amount for mental health services for the client which are needed as a result of the misconduct.

(14) The board may revoke the license or certificate of a social worker if the social worker has been convicted of an offense under KRS Chapter 510, KRS 530.020, 530.064, or 531.310, or has been found by the board to have had sexual contact as defined in KRS 501.010(7) with a client while the client was under the care of the social worker.

Section 13. KRS 311.597 is amended to read as follows:

As used in KRS 311.595*(9)*~~[(8)]~~, "dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof" shall include, but not be limited to the following acts by a licensee:

(1) Prescribes or dispenses any "controlled substance" as defined in KRS 218A.010:

  (a) With the intent or knowledge that a controlled substance will be used or is likely to be used other than medicinally or for an accepted therapeutic purpose,

  (b) With the intent to evade any law with respect to sale, use or disposition of such controlled substance(s),

  (c) For the licensee's personal use or for the use of his immediate family when the licensee knows or has reason to know that an abuse of controlled substance(s) is occurring, or may result from such a practice, or

  (d) In such amounts that the licensee knows or has reason to know, under the attendant circumstances, that said amounts so prescribed or dispensed are excessive under accepted and prevailing medical practice standards.

(2) Issues or publishes in any manner whatsoever, representations in which grossly improbable or extravagant statements are made which have a tendency to deceive or defraud the public, or a member thereof, including, but not limited to:

  (a) Any representation in which the licensee claims that he can cure or treat manifestly incurable diseases, ailments, or infirmities by any method, procedure, treatment, or medicine which the licensee knows or has reason to know has little or no therapeutic value;

  (b) Represents or professes or holds himself out as being able and willing to treat diseases, ailments, or infirmities under a system or school of practice:

    1. Other than that for which he holds a certificate or license granted by the board, or

    2. Other than that for which he holds a degree or diploma from a school otherwise recognized as accredited by the board, or

    3. Under a school or system which he professes to be self-taught.

(3) A serious act, or a pattern of acts committed during the course of his medical practice which, under the attendant circumstances, would be deemed to be gross incompetence, gross ignorance, gross negligence, or malpractice.

(4) Conduct which is calculated or has the effect of bringing the medical profession into disrepute, including, but not limited to any departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky, and any departure from, or failure to conform to the principles of medical ethics of the American Medical Association or the code of ethics of the American Osteopathic Association. For the purposes of this subsection, actual injury to a patient need not be established.

(5) Failure by a licensee to report a known or observed violation of KRS Chapter 311 by another licensee as described in KRS 311.606.

Section 14. KRS 311.599 is amended to read as follows:

(1) When a hearing or inquiry panel has probable cause to believe a physician is suffering from a physical or mental condition that might impede his ability to practice competently, the panel may order the physician to undergo a physical or mental examination by persons designated by the panel.

(2) Failure of a physician to submit to such an examination when directed, unless the failure was due to circumstances beyond his control, shall constitute an admission that the concerned physician has developed such a physical or mental disability, or other conditions, that continued practice is dangerous to patients or to the public; said failure shall constitute a default and a final order may be entered without the taking of testimony or presentation of evidence.

(3) A physician whose license has been suspended, limited, restricted or revoked under this section and KRS 311.595*(8)*[~~(7)~~], shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of medicine with reasonable skill and safety to patients.

Section 15. KRS 311.606 is amended to read as follows:

(1) In order to assist the board in the enforcement of KRS 311.595*(20)*[~~(19)~~] and *(21)*[~~(20)~~], any professional medical association or society operating in the Commonwealth of Kentucky, or any hospital or medical staff of said hospital located in the Commonwealth of Kentucky, shall report all actions taken against a licensed physician as described in KRS 311.595*(20)*[~~(19)~~] and *(21)*[~~(20)~~] to the board within thirty (30) days of the final adjudication of said action together with all pertinent documents to include but not limited to transcripts, pleadings and certified copy of the final order.

(2) In order to assist the board in the enforcement of the provisions of KRS Chapter 311, any licensed physician who observes another licensed physician violating a provision of KRS Chapter 311 shall submit a written report to the board, or to the board and the concerned medical association or society, or to the board and the concerned hospital or medical staff of the hospital within ten (10) days of observing such a violation or obtaining other direct knowledge of such a violation; the report shall contain the name of the licensed physician believed to be in violation of a provision of KRS Chapter 311, a detailed account of the concerned actions, a list of all other witnesses to said actions, and the name of the physician submitting the report.

(3) All clerks of the Circuit and District Courts in the Commonwealth of Kentucky shall report to the secretary of the board all criminal convictions of licensees that may occur in their respective courts. The report shall contain the name of the licensee, the sentence imposed against the licensee, and whether the sentence imposed upon the licensee has been appealed.

Section 16. KRS 311.607 is amended to read as follows:

(1) Except for disciplinary actions taken pursuant to KRS 311.595*(8)*[~~(7)~~] and KRS 311.599, a licensee who has had his license revoked may, after two (2) years from the effective date of the revocation order, petition the board for a license to again practice in the Commonwealth of Kentucky.

(2) The board shall not be required to issue a new license as described in subsection (1). No new license shall be issued to such former licensee unless the applicant satisfies the board that he is presently of good moral character and qualified both physically and mentally to resume the practice of medicine without undue risk or danger to his patients or the public.

(3) In the event that the board should issue a new license under the circumstances as described in this section, the new license shall be under probation for a period of not less than two (2) years nor more than five (5) years, and any subsequent violation during the probation period shall result in automatic revocation of license.

The Committee Substitute to **HB 115** is as follows:

HB 115, AN ACT relating to sexual misconduct by professionals.

WHEREAS, child and adult survivors of sexual abuse are in need of health and mental health services as a result of the experience of victimization; and

WHEREAS, too often the experience of abuse and exploitation follows the victim or survivor of sexual abuse into the professional relationship with those to whom she or he turns for help; and

WHEREAS, sixty-five percent of therapists report having worked with clients who have had sexual contact with a previous therapist, and the single best predictor of being victimized by a therapist is a history of childhood sexual abuse; and

WHEREAS, a recent study of media accounts of sexual abuse by persons in positions of special trust revealed that the most significant percentage of these cases involve professionals within the educational system; and

WHEREAS, written testimony to the Attorney General's Task Force on Child Sexual Abuse described victimization by health professionals who exploited patients under the guise of providing appropriate health care; and

WHEREAS, boards which license and certify professionals must be empowered to stringently investigate and punish sexual misconduct in order to prevent further victimization and increase the accountability of the system which responds to child and adult survivors;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 161.028 is amended to read as follows:

(1) Beginning July 15, 1990, there shall be an Education Professional Standards Board, with the authority and responsibility to:

  (a) Establish standards and requirements for obtaining and maintaining a teaching certificate;

  (b) Set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel;

(c) Issue, renew, suspend, and revoke teaching certificates;

(d) *Develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by an employee certified by the Education Professional Standards Board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure the process does not revictimize the alleged victim or cause harm if an employee is falsely accused;*

(e) Receive, along with investigators hired by the Education Professional Standards Board, training on the dynamics of sexual misconduct by professionals, including the nature of this abuse of authority, the characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedures in sex offense cases, and effective intervention with victims and offenders;

(f) Maintain data and submit reports to the Governor and the Legislative Research Commission concerning employment trends and performance of certificated personnel and the quality of professional preparation programs. The board shall study the problem of the declining pool of minority teachers in the Commonwealth and submit recommendations for increasing the number of minority teachers to the 1992 Regular Session of the General Assembly;

(g)~~[(e)]~~Reduce and streamline the credential system to allow greater flexibility in staffing local schools while maintaining standards for teacher competence; and

(h)~~[(f)]~~Develop a professional code of ethics.

(2) (a) The board shall be composed of fifteen (15) members. The chief state school officer and the executive director of the Council on Higher Education shall serve as ex officio voting members. The Governor shall make the following thirteen (13) appointments:

1. Eight (8) members who shall be teachers representative of elementary, middle or junior high, secondary, special education, and secondary vocational classrooms;
2. Two (2) members who shall be school administrators, one (1) of whom shall be a school principal;
3. One (1) member representative of local boards of education; and
4. Two (2) members representative of deans of colleges of education.

(b) For the initial appointments, the Governor shall designate four (4) members to serve a term of four (4) years; three (3) members to serve a term of three (3) years; three (3) members to serve a term of two (2) years; three (3) members to serve a term of one (1) year.

(c) A vacancy on the board shall be filled in the same manner as the original appointment within sixty (60) days after it occurs. A member shall continue to serve until his successor is named. Any member who, through change of employment status or residence, or for other reasons, no longer meets the criteria for the position to which he was appointed shall no longer be eligible to serve in that position.

(d) Members of the board shall serve without compensation, but shall be permitted to attend board meetings and perform other board business without loss of income or other benefits.

(e) A state agency or any political subdivision of the state, including a school district, required to hire a substitute for a member of the board who is absent from his employment while performing board business shall be reimbursed by the board for the actual amount of any costs incurred.

(f) At the first meeting held after July 1 of each year, a chairman shall be elected by and from the membership. A member shall be eligible to serve no more than three (3) one (1) year terms in succession as chairman. The executive secretary appointed by the chief state school officer from the Department of Education staff shall keep records of proceedings. Regular meetings shall be held at least semiannually on call of the chairman. The Department of Education shall provide staff and support for the board.

(g) To carry out the functions relating to its duties and responsibilities, the board is empowered to receive donations and grants of funds; to appoint consultants as needed; and to sponsor studies, conduct conferences, and publish information.

(3) The Education Professional Standards Board shall be the successor to the State Board for Elementary and Secondary Education for purposes of performing the duties authorized in KRS 161.027, 161.028, 161.030, 161.042, 161.044, 161.046, 161.048, 161.049, 161.100, 161.115, 161.120, 161.124, and 161.126. Rules, administrative regulations and procedures relating to these duties shall not lapse and shall continue in effect until repealed or amended by the Education Professional Standards Board.

Section 2. KRS 161.120 is amended to read as follows:

(1) (a) Any certificate issued under KRS 161.010 to 161.100, or any certificate or license issued under any previous law to superintendents, principals, teachers, supervisors, directors of pupil personnel, or other administrative, supervisory, or instructional employees may be revoked by the Education Professional Standards Board for immorality, misconduct in office, incompetency, violation of the school laws of the state or administrative

regulations adopted by the State Board for Elementary and Secondary Education, willful neglect of duty, ***conviction of an offense under KRS Chapter 510, KRS 530.020, 530.064, or 531.310, being found by the Education Professional Standards Board to have had sexual contact as defined in KRS 510.010(7) with a student,*** or upon the determination that a certificate applicant presented or declared false information toward obtaining the issuance or renewal of any type of teacher certification.

(b) The board may revoke an individual's certificate if his certificate was revoked or voluntarily surrendered in another state on the same or similar grounds provided in this subsection. Such revocation by the board shall be in accordance with the procedures outlined in subsection (2).

(2) (a) The superintendent of each local school district shall report in writing to the Education Professional Standards Board the name, Social Security number, position name, and position code of any certified school employee in his district whose contract is terminated or not renewed, for cause; who resigns from, or otherwise leaves, a position under threat of contract termination, or nonrenewal, for cause; who is convicted in a criminal prosecution; or who is otherwise known to have engaged in such actions or conduct as might reasonably be expected to warrant consideration for certificate revocation. The duty to report shall exist without regard to any disciplinary action, or lack thereof, by the superintendent, and the required report shall be submitted within thirty (30) days of the event giving rise to the duty to report.

(b) The district superintendent shall inform the Education Professional Standards Board in writing of the full facts and circumstances leading to the contract termination or nonrenewal, resignation, or other absence, conviction, or otherwise reported actions or conduct of the certified employee, which are based on immorality, misconduct in office, incompetency, violation of school law or administrative regulation adopted by the State Board for Elementary and Secondary Education, willful neglect of duty, or falsification of certification credentials, and shall forward copies of all relevant documents and records in his possession.

(c) The certified school employee shall be given a copy of any report provided to the Education Professional Standards Board by the district superintendent and shall have the right to file a written rebuttal which shall be attached to the district superintendent's report.

(3) (a) Upon taking action to initiate proceedings to revoke a certificate, the Education Professional Standards Board shall provide the certified employee a written statement specifying in detail the charge against him and setting a time and date for a hearing. The hearing shall take place no less than twenty (20) days nor more than forty-five (45) days after the certified employee receives the statement of charges. A continuance of the hearing may be granted in accordance with administrative regulations promulgated by the board.

(b) The hearing may be public or private at the discretion of the certified employee. The certified employee may be represented by counsel. The presence of witnesses may be required upon subpoenas issued by the chief state school officer at the request of the chairman of the Education Professional Standards Board or the certified employee. Each witness shall be required to take an oath or affirmation prior to testimony.

(c) The hearing shall be conducted by the full board or a person appointed as hearing officer by the board.

(d) If the hearing is conducted by a hearing officer, the officer shall submit written findings and a recommended order to the board for its consideration and action upon completion of the hearing.

(4) ***If the Education Professional Standards Board substantiates that sexual contact occurred between a certified employee and an adult student, the employee's certificate may be revoked or suspended with mandatory treatment of the employee as prescribed by the Education Professional Standards Board. If the Education Professional Standards Board substantiates that sexual contact occurred between a certified employee and a student under the age of eighteen (18), the employee's certificate shall be revoked with mandatory treatment of the employee as prescribed by the Education Professional Standards Board. The Education Professional Standards Board may require the employee to pay a specified amount for mental health services for the student which are needed as a result of the sexual contact.***

(5) In all cases where the Education Professional Standards Board is unable, after reasonable diligence, to notify a certified individual of a scheduled hearing on pending charges, the hearing shall be continued generally until the individual can be notified or presents himself for hearing. The charges shall not be dropped in the interim, and the fact of pending revocation charges shall be appropriately noted in the individual's certification file.

(6)[~~(5)~~] Any individual whose certificate is revoked may apply for reissuance of his certificate when he believes he can demonstrate himself suitable for reissuance, unless the Education Professional Standards Board's order of revocation sets forth a specific minimum period of revocation.

Section 3. KRS 311.565 is amended to read as follows:

(1) The board may:

(a)[~~(1)~~] Exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy which shall include, but not be limited to, promulgation of reasonable regulations enabling the board to regulate the conduct of its licensees;

(b)[~~(2)~~] Promulgate reasonable regulations establishing moral, physical, intellectual, educational, scientific, technical, and professional qualifications of applicants for licenses and permits that may be issued by the board;

(c)[~~(3)~~]Issue, deny, suspend, limit, restrict, and revoke any licenses or permits that may be issued by the board, and to reprimand or to place licensees on probation, in compliance with the provisions of KRS 311.530 to 311.620;

(d)[~~(4)~~] Appoint an executive director and assistant executive directors and fix their compensation. The executive director shall oversee the work of the board, shall be authorized to discharge the duties of the secretary, as provided by KRS 311.530 to 311.620, and shall carry out the duties of the executive director as set forth elsewhere in this chapter;

(e)[~~(5)~~]Appoint a general counsel and assistant general counsel and fix their compensation;

(f)[~~(6)~~] Appoint investigatory personnel and fix their compensation;

(g)[~~(7)~~] Appoint one (1) or more hearing officers, who need not be members of the board, and fix their compensation. Every hearing officer shall be vested with the full and complete power and authority of the board to schedule and conduct hearings on behalf of and in the name of the board on all matters referred for hearing by the board or secretary thereof, including, among other things, proceedings for placing licensees on probation and for limitation, suspension, and revocation of licenses, and shall cause to be prepared and furnished to the board, for decision thereon by the board, a complete written transcript of the record of the hearing which shall contain all evidence introduced at the hearing and all pleas, motions, and objections and all rulings of the hearing officer. Every hearing officer shall be authorized to administer oaths and issue summonses, notices, and subpoenas, but shall not be empowered to place any licensee on probation or to issue, refuse, suspend, limit, or revoke any license;

(h)[~~(8)~~] Appoint committees of licensees, who need not be board members, to review issues of public or medical interest before the board and to make recommendations to the board on the issues;

(i)[~~(9)~~] Promulgate regulations to promote the efficient and fair conduct of disciplinary proceedings;

(j)[~~(10)~~] Promulgate a code of conduct governing the practice of medicine and osteopathy, which shall be based upon generally recognized principles of professional ethical conduct;

(k)[~~(11)~~] Utilize the services and facilities of professional organizations, and procure and receive the assistance and recommendations of professional organizations in administering KRS 311.530 to 311.620;

(l)[~~(12)~~] Make its personnel and facilities available to other governmental entities under mutually agreeable terms and conditions;

(m)[~~(13)~~] Issue regular licenses without further testing by endorsement from another state having qualifications and standards at least as high as those of this state or by endorsement from the National Board of Medical Examiners, the National Board of Examiners for Osteopathic Physicians and Surgeons, the National Gaint Committee of Preregistration Physician Training Programs, or any approved successors thereof;

(n)[~~(14)~~] Issue and renew regular licenses to practice medicine or osteopathy in accordance with KRS 311.530 to 311.620 and any reasonable regulations of the board;

(o)[~~(15)~~] Issue and renew, or refuse to issue or renew, or cancel and terminate limited licenses pursuant to rules and regulations prescribed by the board; provided however, no person who held a limited license for institutional practice or general practice as of September 1, 1972, shall be denied the renewal of that limited license for non-disciplinary reasons;

(p)[~~(16)~~] Appoint examiners, who need not be members of the board, and employ or contract with the Federation of State Medical Boards of the United States, Inc., or the National Board of Medical Examiners or other organizations, agencies, or individuals to prepare examination questions and grade examination papers;

(q)[~~(17)~~] Determine the schools, colleges, universities, institutions, and training acceptable in connection with licensure under KRS 311.530 to 311.620;

(r)[~~(18)~~] Prescribe the time, place, method, manner, scope and content of examinations; provided, however, that at least two (2) examinations shall be held annually;

(s)[~~(19)~~] Prescribe all forms which it considers appropriate, and require the submission of photographs, fingerprints, and personal history data;

(t)[~~(20)~~] Prescribe and collect reasonable fees and charges for examinations, directories, and the issuance and renewal of licenses and permits;

(u)[~~(21)~~] Impose fines of not greater than five thousand dollars ($5,000) per violation upon a finding pursuant to disciplinary proceedings that the licensee has violated any provision of KRS 311.595 to 311.597 or duly promulgated disciplinary regulation of the board; and

(v)[~~(22)~~] Exercise all the administrative functions of the state in regard to the regulation of physician assistants. In promulgating these regulations under the provisions of KRS Chapter 13A, the board shall address:

1.[~~(a)~~] The professional qualifications of physician assistants;

2.[~~(b)~~] The supervision of physician assistants by licensed physicians;

3.[~~(c)~~] The review and discipline of physician assistants and their supervising physicians;

4.[~~(d)~~] The scope of practice allowed physician assistants;

5.[~~(e)~~] The facilities in which physician assistants may practice; and

6.[~~(f)~~] The delegation of responsibilities from physicians to physician assistants.

The board may establish qualifications that the physician assistants shall attain before the board grants the right to practice in this state. At a minimum, these qualifications shall include the passage of a written examination approved by the board and satisfactory completion of a clinical training program approved by the board. The board may establish an advisory committee to aid the board in the regulation of physician assistants, who shall be considered adjuncts to supervising physicians and not independent practitioners of any healing art.

(2) The board shall develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by a physician licensed by the board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a physician is falsely accused.

(3) The board, the hearing officer, and investigators hired by the board shall receive training on the dynamics of sexual misconduct by professionals, including the nature of this abuse of authority, the characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedure in sex offense cases, and effective intervention with victims and offenders.

Section 4. KRS 311.591 is amended to read as follows:

(1) The president of the board shall divide the membership of the board, excluding himself, into two (2) panels of five (5) members each. Each panel shall have the power to act as an inquiry or a hearing panel. The president shall not be a member of either panel, but shall have the power to render the deciding vote whenever a tie vote is rendered by either panel.

(2) Grievances may be submitted by an individual (including board members), organization or entity. Each grievance shall be investigated as necessary and the executive director shall assign each grievance to an inquiry panel. All inquiry panels and the executive director shall have the power to issue investigatory subpoenas for the appearance of any person or production of any record, document or other item within the jurisdiction of the Commonwealth. The panel or executive director may seek enforcement of investigatory subpoenas in the courts of the Commonwealth as may be necessary.

(3) Upon completion of its inquiry, the inquiry panel shall make a finding that:

(a) The grievance is without merit and no further action is necessary;

(b) The grievance discloses an instance of misconduct which does not warrant the issuance of a complaint; in such instances, the panel may admonish the physician for his misconduct; or

(c) The grievance discloses one (1) or more violations of the provisions of this chapter which warrant the issuance of a complaint; in such instances, the panel shall cause a complaint to be prepared, signed by the presiding officer, which shall contain sufficient information to apprise the named physician of the general nature of the charges.

(4) The inquiry panel shall cause a complaint to be served on the charged physician by personal delivery or by certified mail to the physician's last address of which the board has record. The physician shall submit a response within thirty (30) days after service. Failure to submit a timely response or willful avoidance of service may be taken by the board as an admission of the charges.

(5) Upon the issuance of the complaint, the executive director shall assign the matter for hearing and decision by a hearing panel. No member who served on the inquiry panel may also serve as a member of the hearing panel. The hearing panel or the hearing officer on behalf of the panel shall preside over all proceedings pursuant to the issuance of a complaint. All board members, the executive director and hearing officer shall have the authority to administer oaths and issue summonses, subpoenas and other process. During or after any proceeding, the board or the hearing officer may petition the courts of the Commonwealth to punish as contempt the failure of a person or entity to obey a subpoena or other process, or contemptuous conduct directed to the board or the hearing officer.

(6) All proceedings pursuant to the issuance of a complaint shall be in accordance with the rules and regulations established by the board to promote the fair, orderly and efficient conduct of the proceedings. The board may establish regulations regarding the informal disposition of any complaint and such disposition may be made at any stage of the proceeding.

(7) Upon completion of the hearing process, the hearing officer shall prepare proposed findings of fact and conclusions of law. The parties shall have the opportunity to file objections or other comments regarding the proposed findings and conclusions. The hearing panel may adopt the proposed findings and conclusions, in whole or in part, or may make its own in addition to or substitution of the proposed ones. If a hearing officer is not used or the hearing officer fails to prepare findings and conclusions, the hearing panel shall prepare its own findings and conclusions and may then issue its final order.

(8) Upon completion of the disciplinary proceedings, the hearing panel shall issue an order that:

(a) Dismisses the complaint upon a conclusion that the provisions of this chapter have not been violated;

(b) Finds a violation of the provisions of this chapter, but does not impose discipline because the panel does not believe discipline to be necessary under the circumstances; or

(c) Imposes discipline upon the licensee; in such instances, the panel may revoke, suspend, restrict, deny, or limit a license, or may reprimand or place a licensee on probation under terms the panel may establish to protect the licensee, his patients or the general public. The hearing panel may impose a fine whenever it finds that a violation of this chapter has occurred. ***If the board substantiates that sexual contact occurred between the physician and the patient while the patient was under the care of or in a professional relationship with the physician, the physician's license may be revoked or suspended with mandatory treatment of the physician as prescribed by the board. The board may require the physician to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.*** The hearing panel's order shall be considered the final order of the board regarding the matter.

(9) Regardless of the restrictions on public disclosure of information established in subsection (10) of this section, the board may order information derived from any investigation or inquiry be released to the physician licensure authority of another state or to any health care ***or mental health care*** facility licensed and regulated by the Commonwealth of Kentucky upon a showing that the information is necessary to determine the propriety of a physician practicing in a particular state or facility.

(10) The presiding officer at any proceeding held pursuant to a complaint or show cause order shall take whatever measures are necessary to protect the privacy interests of individuals other than the charged physician upon a showing that evidence is to be introduced, the public disclosure of which would constitute a clear invasion of personal privacy. It is the general policy of the Commonwealth that administrative proceedings should be open to the public. Therefore, in applying this subsection the presiding officer shall balance the competing interests and employ the least restrictive measures available to protect the privacy interests involved.

Section 5. KRS 311.595 is amended to read as follows:

If the power has not been transferred by statute to some other board, commission***,*** or agency of this state, the board may deny an application for a license; place a licensee on probation for a period not to exceed five (5) years; suspend a license for a period not to exceed five (5) years; limit or restrict a license for an indefinite period; or revoke any license heretofore or hereafter issued by the board, upon proof that the licensee has:

(1) Knowingly made or presented, or caused to be made or presented, any false, fraudulent, or forged statement, writing, certificate, diploma or other thing, in connection with an application for a license or permit***;***[~~.~~]

(2) Practiced, or aided or abetted in the practice of fraud, forgery, deception, collusion, or conspiracy in connection with an examination for a license***;***[~~.~~]

(3) Committed, procured or aided in the procurement of an unlawful abortion***;***[~~.~~]

(4) Entered a guilty or nolo contendere plea, or been convicted, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be a felony under the laws of the Commonwealth of Kentucky, or of the United States, or of any crime involving moral turpitude which is a misdemeanor, under the laws***;***[~~.~~]

(5) ***Been convicted of an offense under KRS Chapter 510, KRS 530.020, 530.064, or 531.310, or been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the physician;***

(6) Become addicted to a controlled substance***;***[~~.~~]

(7)[~~(6)~~] Become a chronic or persistent alcoholic***;***[~~.~~]

(8)[~~(7)~~] Developed a physical or mental disability, or other condition, that continued practice is dangerous to patients or to the public***;***[~~.~~]

(9)[~~(8)~~] Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof***;***[~~.~~]

(10)[~~(9)~~] Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his profession***;***[~~.~~]

(11)[~~(10)~~] Employed, as a practitioner of medicine or osteopathy in the practice of his profession in this state, any person not duly licensed or otherwise aided, assisted or abetted the unlawful practice of medicine or osteopathy or any other healing art***;***[~~.~~]

(12)[~~(11)~~] Violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of any medical practice act, including but not limited to the code of conduct promulgated by the board under KRS 311.601 or any other valid regulation of the board***;***[~~.~~]

(13)[~~(12)~~] Violated any order of suspension, or the terms or conditions of any order of probation, issued by the board***;***[~~.~~]

(14)[~~(13)~~] Engaged in or attempted to engage in the practice of medicine or osteopathy under a false or assumed name, or impersonated another practitioner of a like, similar or different name*;*[~~.~~]

(15)[~~(14)~~] Obtained a fee or other thing of value on the fraudulent representation that a manifestly incurable condition could be cured*;*[~~.~~]

(16)[~~(15)~~] Willfully violated a confidential communication*;*[~~.~~]

(17)[~~(16)~~] Had his license to practice medicine or osteopathy in any other state, territory or foreign nation revoked, suspended, restricted, or limited or has been subjected to other disciplinary action by the licensing authority thereof*;*[~~.~~]

(18)[~~(17)~~] Failed or refused, without legal justification, to practice medicine in a rural area of this state in violation of a valid medical scholarship loan contract with the trustees of the rural Kentucky medical scholarship fund*;*[~~.~~]

(19)[~~(18)~~] Given or received, directly or indirectly, from any person, firm, or corporation, any fee, commission, rebate, or other form of compensation for sending, referring or otherwise inducing a person to communicate with a person licensed under KRS 311.530 to 311.620 in his professional capacity or for any professional services not actually and personally rendered; provided, however, that nothing contained in this subsection shall prohibit persons holding valid and current licenses under KRS 311.530 to 311.620 from practicing medicine in partnership or association or in a professional service corporation authorized by KRS Chapter 274, as now or hereinafter amended, or from pooling, sharing, dividing, or apportioning the fees and moneys received by them or by the partnership, corporation or association in accordance with the partnership agreement or the policies of the board of directors of the corporation or association. Nothing contained in this subsection shall abrogate the right of two (2) or more persons holding valid and current licenses under KRS 311.530 to 311.620 to receive adequate compensation for concurrently rendering professional care to a single patient and divide a fee, if the patient has full knowledge of this division and if the division is made in proportion to the services performed and responsibility assumed by each*;*[~~.~~]

(20)[~~(19)~~] Been removed, suspended, or expelled by any professional medical association or society when the action was based upon what the association or society found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provision of KRS Chapter 311*; or*[~~.~~]

(21)[~~(20)~~] Been disciplined by a licensed hospital or medical staff of the hospital, including removal, suspension, limitation of hospital privileges, failing to renew privileges for cause, resignation of privileges under pressure or investigation, or other disciplinary action if the action was based upon what the hospital or medical staff found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provisions of KRS Chapter 311.

Section 6. KRS 314.091 is amended to read as follows:

(1) The board shall have power to deny, limit, revoke, probate, or suspend any license to practice nursing issued by the board or applied for in accordance with this chapter, or to otherwise discipline a licensee, or to deny admission to the licensure examination, or to require evidence of evaluation and therapy upon proof that the person:

(a) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;

(b) Has been convicted of a misdemeanor or felony which involved acts that bear directly on the qualifications or ability of the applicant or licensee to practice nursing;

(c) ***Has been convicted of an offense under KRS Chapter 510, KRS 530.020, 530.064, or 531.310, or has been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the nurse;***

(d) Has negligently or willfully acted in a manner inconsistent with the practice of nursing;

(e)[~~(d)~~]Is unfit or incompetent to practice nursing by reason of negligence or other causes, including but not limited to, being unable to practice nursing with reasonable skill or safety;

(f)[~~(e)~~] Abuses use of controlled substances or has misused or misappropriated any drugs placed in the custody of the nurse for medication, or use of others;

(g)[~~(f)~~] Has falsified or in a repeatedly negligent manner made incorrect entries or failed to make essential entries on essential records;

(h)[~~(g)~~] Has a license to practice as a nurse denied, limited, suspended, probated, or revoked in another jurisdiction on grounds sufficient to cause a license to be denied, limited, suspended, probated, or revoked in this Commonwealth; or

(i)[~~(h)~~] Has willfully or repeatedly violated any of the provisions of this chapter.

(2) In all hearings for denial, limitation, probation, suspension, or revocation of the license of a registered or practical nurse, the licensee shall be furnished with a copy of the charges and shall be given at least thirty (30) days to prepare defense, except in the case of temporary suspension as set out in KRS 314.089. The person charged shall be heard by the board or its designated hearing officer in person or by counsel, or both, as may be desired. The presiding officer of the hearing may administer the oath in any manner arising in the course of duties. In the hearing the board may take oral or written proof for or against the aggrieved person. A suspended or revoked license may be reinstated at the discretion of the board, and in accordance with regulations promulgated by the board.

(3) The executive director may issue subpoenas to compel the attendance of witnesses and the production of documents. Said subpoenas may be enforced by the Circuit Court as for contempt. Any order or subpoena of such court requiring the attendance and testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in this state.

(4) The board, or any member thereof, may administer oaths, take testimony, hear proof, and receive exhibits in evidence at the hearing.

(5) The board shall not be bound by technical rules of evidence.

(6) A stenographic record of the hearing shall be kept and a transcript thereof filed with the board.

(7) At all hearings on request of the board the Attorney General of this state or one (1) of his assistants designated by him shall appear and represent the board.

(8) The decision of the board shall be by majority vote thereof.

(9) Any person adversely affected by any order of the board may obtain a review thereof by filing a written petition for review with the Circuit Court of the county in which the board's offices are located within thirty (30) days after the entry of said order. The petition shall state the grounds upon which the review is asked and shall pray that the order of the board be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon the executive director of the board and thereupon the executive director shall certify and file in the court a transcript of the record upon which the order complained of was entered. No new or additional evidence shall be introduced in the court except as to fraud or misconduct affecting the outcome of the case, but the court shall otherwise hear the case upon the record as attested by the executive director of the nursing board, and shall in all respects dispose of the appeal in a summary manner. Its review shall be limited to determine whether or not:

(a) The board acted without or in excess of its power;

(b) The order appealed from was procured by fraud or misconduct;

(c) Substantial evidence supports the order appealed from;

(d) The board's decision is supported by the law. The court may affirm, modify, or set aside the board's order in whole or in part, or may remand the case to the board for further evidence, and may in its discretion, stay the effect of the board's order pending its determination of the case. The court's order shall have the force and effect of a decree in equity.

(10) If the board substantiates that sexual contact occurred between a nurse and a patient while the patient was under the care of or in a professional relationship with the nurse, the nurse's license may be revoked or suspended with mandatory treatment of the nurse as prescribed by the board. The board may require the nurse to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.

Section 7. KRS 314.131 is amended to read as follows:

(1) The board shall meet at least annually and shall elect from its members a president, a vice president, and a secretary. The election shall be held in June of each year. A majority of the board including one (1) officer shall constitute a quorum at any meeting. The board is authorized to adopt and revise regulations not inconsistent with the law, as may be necessary to enable it to carry into effect the provisions of this chapter. The board shall approve curricula and standards for schools of nursing and courses preparing persons for licensure and shall monitor standards for nurse competency under this chapter. It shall provide for surveys of such schools and courses at such time as may be necessary, approve such schools and courses as meet the requirements of this chapter and of the board, evaluate and approve courses for affiliation, and examine, license and renew the license of duly qualified applicants; determine notice of place and time of licensure examinations; approve providers of continuing education; administer continuing education requirements; issue advisory opinions dealing with the practice of nursing; register and designate those persons qualified to engage in advanced nursing practice; and it shall conduct hearings upon charges calling for discipline of a licensee on probation or suspension or revocation or limitation of a license, have power to issue subpoenas, and compel the attendance of witnesses, administer oaths to persons giving testimony at hearings, and cause the prosecution of all persons violating any provisions of this chapter. It shall keep a record of all its proceedings and make an annual report to the Governor.

(2) ***The board shall develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by a nurse licensed by the board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a nurse is falsely accused.***

(3) The board and investigators hired by the board shall receive training on the dynamics of sexual misconduct by professionals, including the nature of this abuse of authority, the characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedure in sex offense cases, and effective intervention with victims and offenders.

(4) The board shall employ a qualified person to serve as executive director to the board, and shall fix his compensation and define his duties. It may employ such other persons as may be necessary to carry on the work of the board.

(5)~~[(3)]~~ The executive director shall have at least the qualifications for board members, and a master's degree in nursing or equivalent and shall have had at least two (2) years of experience in nursing administration immediately preceding the time of his appointment.

(6)[~~(4)~~] Each member of the board shall receive, in addition to traveling, hotel and other necessary expenses, one hundred dollars ($100) for each day he is actually engaged in the discharge of his official duties.

(7)[~~(5)~~] The board may, in its discretion, purchase liability insurance for board and staff members against acts performed in good faith discharge of duties.

Section 8. KRS 319.032 is amended to read as follows:

(1) The board shall promulgate administrative regulations:

(a) Establishing requirements, standards, and tests to determine the moral, intellectual, educational, scientific, technical, and professional qualifications of applicants for licenses or certificates; defining areas of specialty within the field of psychology; and preparing or selecting and administering examinations on general psychological knowledge and on the appropriate psychological specialty or specialties of the applicant. Neither certified psychologists nor psychological associates may participate in the examination of applicants for licensures;

(b) Establishing and defining the scope of practice within each area of specialty within the field of psychology;

(c) Setting the requirements for issuing, denying, suspending, restricting, and revoking licenses and certificates, and placing licensees and certificate holders on probation;

(d) *Developing specific guidelines to follow upon receipt of an allegation of sexual misconduct by a psychologist licensed or certified by the board. The guidelines shall include investigation, hearing officer, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a psychologist is falsely accused;*

(e) Requiring training for the board and investigators hired by the board on the dynamics of sexual misconduct by professionals, including the nature of this abuse of authority, the characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedure in sex offense cases, and effective intervention with victims and offenders;

(f) Establishing requirements for continuing education not to exceed thirty (30) contact hours per three (3) year renewal period as a condition for renewal of licenses and certificates;

(g)[~~(e)~~]Establishing and collecting reasonable fees for directories, transcribing, transferring of records, and other services;

(h)[~~(f)~~]Conducting hearings or appointing hearing officers to conduct hearings on any matter under the jurisdiction of the board. Every hearing officer shall cause to be prepared and furnished to the board, for decision thereon by the board, a complete written transcript or mechanical recording of the hearing which shall contain all evidence introduced at the hearing and all pleas, motions, objections, and all rulings of the hearing officer;

(i)[~~(g)~~] Entering into reciprocal agreements with boards of examiners of psychology of other states having qualifications and standards at least as high as those of this state providing for reciprocal licensure or certification;

(j)[~~(h)~~] Employing personnel, including hearing officers which it considers necessary for the performance of its functions, determining the duties of personnel, and compensating them within the limits of funds available to the board;

(k)[~~(i)~~] Investigating complaints or suspected violations of this chapter and notifying proper law enforcement authorities. For the purpose of enforcing the provisions of this chapter, the board shall have the authority to administer oaths, receive evidence, interview persons, issue subpoenas, and require the productions of books, papers, documents, or other evidence;

(l)[~~(j)~~] Governing the supervision of certified psychologists and the supervision and employment of psychological associates and candidates for licensure; and

(m)[~~(k)~~] Notwithstanding the fee schedules specified in this chapter, increasing or decreasing fees as it deems appropriate*.*[~~;~~]

(2) The board shall have the authority to promulgate such other administrative regulations as it deems necessary for the proper administration of this chapter.

(3) The board, at its discretion, may use funds as necessary to purchase liability insurance for members and executive officers of the board, inspectors, examiners, investigators, and staff members exempt from classificated service of the state by KRS 18A.115.

Section 9. KRS 319.082 is amended to read as follows:

(1) The board may suspend, revoke, or refuse to issue or renew a license or certificate, or may accept an assurance of voluntary compliance, restrict, or place a licensee or certificate holder on probation, upon proof that the licensee or certificate holder has:

(a) Committed any act involving moral turpitude, dishonesty, or corruption, relating to the practice of psychology, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon conviction of such a crime, the judgment and sentence is presumptive evidence at the ensuing disciplinary hearing of the guilt of the licensee or applicant of the crime described in the indictment or information and of the person's violation of the statute on which it is based. For the purpose of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended;

(b) Misrepresented or concealed a material fact in obtaining a license or certificate, or in reinstatement thereof;

(c) Committed any unfair, false, misleading, or deceptive act or practice;

(d) Been incompetent or negligent in the practice of psychology;

(e) Practiced psychology while under the suspension, revocation, or restriction of the individual's license to practice by competent authority in any state, federal, or foreign jurisdiction;

(f) Violated any state statute or administrative regulation governing the practice of psychology;

(g) Unlawfully failed to cooperate with the board by:

1. Not furnishing any papers or documents requested by the board;
2. Not furnishing in writing a complete explanation covering the matter contained in the complaint filed with the board;
3. Not appearing before the board at the time and place designated; or
4. Not properly responding to subpoenas issued by the board;

(h) Failed to comply with an order issued by the board or an assurance of voluntary compliance;

(i) Aided or abetted an unlicensed person to practice when a license or certificate is required;

(j) Grossly overcharged for professional services;

(k) Practiced beyond the scope of practice defined in the specialty area of examination;

(l) Failed to provide adequate supervision for certified psychologists, psychological associates, applicants for licensure or certification, or other staff;

(m) Been convicted of any misdemeanor or felony relating to the practice of psychology. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended;

(n) Physically abused or had sexual contact with a patient, client, student, or supervisee;

(o) ***Been convicted of an offense under KRS Chapter 510, KRS 530.020, 530.064, or 531.310;***

(p) Improperly divulged confidential information;

(q)[~~(p)~~] Exercised undue influence in such a manner as to exploit the client, patient, student, or supervisee for financial or other personal advantage to the practitioner or a third party;

(r)[~~(q)~~] Showed an inability to practice psychology with reasonable skill and safety to patients or clients by reason of illness, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition; or

(s)[~~(r)~~] Failed to comply with the requirements of the board for continuing education.

(2) No unlawful act or violation of any provision of this chapter by any certificate holder employed or supervised by a licensed psychologist shall be cause for the revocation of the supervisor's license, unless the board finds that the licensed psychologist had knowledge of it.

(3) Three (3) years from the date of a revocation, any person whose license or certificate has been revoked may petition the board for reinstatement. The board shall investigate his petition and may reinstate his license or certificate upon finding that the former holder has complied with the provisions of this chapter and administrative regulations promulgated by the board and is again able to engage in the practice of psychology with reasonable skill, competency and safety to the public.

(4) The board may, at its own discretion, reconsider, modify, or reverse its probations, suspensions, revocations, restrictions, or refusals to issue or renew licenses or certificates at any time.

Section 10. KRS 319.092 is amended to read as follows:

(1) In every proceeding for probation, suspension, or revocation of a license or certificate, the licensee or certificate holder shall be furnished with written notice setting out each offense charged with sufficient detail to apprise him of the nature, time, and place thereof at least twenty (20) days prior to the hearing. The notice is sufficient if served on the licensee or certificate holder personally or by certified mail, return receipt requested, to his last known address. The nonappearance of the licensee or certificate holder shall not prevent a hearing. The board or a hearing officer appointed by the board shall conduct the hearing. The licensee or certificate holder shall have the right to be present in person or by counsel, to present evidence and to be heard in opposition to the charges. If the licensee or certificate holder fails to respond to the complaint at or before the time of the hearing thereon, the board may take the allegations set forth in the complaint as

confessed.

(2) The board or the hearing officer shall have the authority to issue subpoenas for the attendance of witnesses and the production of papers and records, administer oaths and schedule hearings. All decisions revoking or suspending a license or certificate or placing a licensee or certificate holder on probation shall be made by the board.

(3) If, after a hearing, a majority of the board finds that a psychologist has violated any provision of this chapter, the board may:

(a) Revoke or suspend the license or certificate;

(b) Impose a monetary penalty not to exceed two thousand dollars ($2,000) per violation;

(c) Revoke or suspend the license or certificate or impose a monetary penalty, but suspend enforcement thereof by placing the psychologist on probation, which shall be revocable if the board finds the conditions of the probation order are not being followed by the psychologist;

(d) Require the psychologist, as a condition of probation, to submit to care, counseling, or treatment by a professional designated by the board, or require the psychologist to be supervised by a licensed psychologist designated by the board. The expense of this action shall be borne by the psychologist on probation;

(e) Modify the conditions of the probation, with good cause, and may include among them any reasonable condition for the purpose of the protection of the public, or for the purpose of the rehabilitation of the probationer, or both;

(f) Require restitution; and

(g) Assess the costs of the disciplinary proceeding.

(4) ***If the board substantiates that sexual contact occurred between a licensee or certificate holder and a patient while the patient was under the care or in a professional relationship with the licensee or certificate holder, the licensee's or certificate holder's license or certificate may be revoked or suspended with mandatory treatment of that individual as prescribed by the board. The board may require the licensee or certificate holder to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.***

(5) Orders of the board suspending or revoking a license or certificate or placing a licensee or certificate holder on probation shall become effective immediately after written notice is served on the licensee or certificate holder and the licensee or certificate holder shall not, after notice of same, engage or continue to engage in the practice of psychology unless the board's order is revoked or modified by a final order or judgment.

(6)[~~(5)~~] The board shall make public its final order in all disciplinary actions.

(7)[~~(6)~~] Any person aggrieved by an order of the board may within thirty (30) days after notice thereof appeal thereupon to the Franklin Circuit Court. The court shall decide the appeal upon the certified record and no new or additional evidence shall be heard or considered by the court.

(8)[~~(7)~~] A party aggrieved by a final order of the Circuit Court may appeal to the Court of Appeals as in a civil action.

Section 11. KRS 335.070 is amended to read as follows:

(1) The board shall administer and enforce the provisions of KRS Chapter 335, and may promulgate, pursuant to the provisions of KRS Chapter 13A, administrative regulations consistent with the provisions of KRS Chapter 335, including a code of ethical practice for certified social workers, licensees certified for independent practice, and social workers.

(2) The board shall review and act upon applications for licensure at least twice each year, and shall regulate the renewal of licenses.

(3) The board may conduct hearings on charges calling for the denial, revocation, or suspension of a license, shall adopt administrative regulations for the conduct of the hearings, and shall cause the prosecution of all persons who violate any provisions of this chapter, or any administrative regulation promulgated pursuant to its provisions.

(4) The board may sue and be sued in its own name.

(5) The board may employ any other persons it deems necessary to carry on the work of the board, and shall define their duties and fix their compensation.

(6) The board shall maintain a register of certified social workers, social workers, and licensees certified for independent practice. The register shall be a public record.

(7) The board shall keep a complete record of all of its proceedings.

(8) The board shall set by administrative regulation a fee schedule for examinations. The fees shall be sufficient to cover the cost of preparation, administration, and grading of the examinations.

(9) The board shall develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by a social worker licensed or certified by the board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a social worker is falsely accused.

(10) The board and investigators hired by the board shall receive training on the dynamics of sexual misconduct by

professionals, including the nature of this abuse of authority, the characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedure in sex offense cases, and effective intervention with victims and offenders.

Section 12. KRS 335.150 is amended to read as follows:

(1) The board may hear grievances of persons whose applications for a license have been denied.

(2) The board may deny, revoke, or suspend any license upon proof that the person has willfully or repeatedly violated any of the provisions of KRS 335.010 to 335.160 and 335.990, or has failed to comply with the requirements in KRS 214.610(1) or any rule or regulation promulgated by the board. The course described in KRS 214.610(1) shall be completed annually and may be a part of any continuing education course.

(3) The board shall not suspend, revoke or refuse to renew a license except after a hearing held before the board upon notice to the person charged.

(4) The notice shall be in writing, shall state the nature of the charges, the time and place of the hearing, and shall be served on the person charged by certified mail not less than thirty (30) days prior to the date of the hearing.

(5) The person charged may appear in person or by counsel, may testify and may produce evidence and witnesses on his own behalf, may cross-examine witnesses, and shall be entitled, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses and the production of documentary evidence.

(6) The board, or its duly authorized representative on its behalf, shall have authority to issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths. The board may invoke the aid of the Circuit Court for the county in which the hearing is held to enforce compliance with its subpoenas.

(7) A stenographic or mechanical record of the hearing shall be taken, and a transcript shall be preserved by the board.

(8) At all hearings before the board the Attorney General of the Commonwealth, or one of his assistants designated by him shall appear and represent the board.

(9) The decision of the board shall be by majority vote thereof.

(10) A copy of the board's order shall be sent by certified mail to the person charged at his last known address.

(11) The board may grant a rehearing when new and material evidence is offered for its consideration.

(12) Any person aggrieved by a final order of the board may within thirty (30) days of the entry of the order, appeal to the Circuit Court for the county in which he resides. The appeal shall be determined by the court upon the certified record and no new or additional evidence shall be heard or considered by the court. An appeal may be taken from the judgment of the Circuit Court on any such appeal to the Court of Appeals in accordance with the Rules of Civil Procedure.

(13) If the board substantiates that sexual contact occurred between a social worker licensed or certified by the board and a client while the client was under the care of or in a professional relationship with the social worker, the social worker's license or certificate may be revoked or suspended with mandatory treatment of the social worker as prescribed by the board. The board may require the social worker to pay a specified amount for mental health services for the client which are needed as a result of the sexual contact.

(14) The board may revoke the license or certificate of a social worker if the social worker has been convicted of an offense under KRS Chapter 510, KRS 530.020, 530.064, or 531.310, or has been found by the board to have had sexual contact as defined in KRS 510.010(7) with a client while the client was under the care of the social worker.

Section 13. KRS 311.597 is amended to read as follows:

As used in KRS 311.595***(9)***[~~(8)~~], "dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof" shall include, but not be limited to the following acts by a licensee:

(1) Prescribes or dispenses any "controlled substance" as defined in KRS 218A.010:

(a) With the intent or knowledge that a controlled substance will be used or is likely to be used other than medicinally or for an accepted therapeutic purpose,

(b) With the intent to evade any law with respect to sale, use or disposition of such controlled substance(s),

(c) For the licensee's personal use or for the use of his immediate family when the licensee knows or has reason to know that an abuse of controlled substance(s) is occurring, or may result from such a practice, or

(d) In such amounts that the licensee knows or has reason to know, under the attendant circumstances, that said amounts so prescribed or dispensed are excessive under accepted and prevailing medical practice standards.

(2) Issues or publishes in any manner whatsoever, representations in which grossly improbable or extravagant statements are made which have a tendency to deceive or defraud the public, or a member thereof, including, but not limited to:

(a) Any representation in which the licensee claims that he can cure or treat manifestly incurable diseases, ailments, or infirmities by any method, procedure, treatment, or medicine which the licensee knows or has reason to know has little or no therapeutic value;

(b) Represents or professes or holds himself out as being able and willing to treat diseases, ailments, or infirmities under a system or school of practice:

1. Other than that for which he holds a certificate or license granted by the board, or
2. Other than that for which he holds a degree or diploma from a school otherwise recognized as accredited by the board, or
3. Under a school or system which he professes to be self-taught.

(3) A serious act, or a pattern of acts committed during the course of his medical practice which, under the attendant circumstances, would be deemed to be gross incompetence, gross ignorance, gross negligence, or malpractice.

(4) Conduct which is calculated or has the effect of bringing the medical profession into disrepute, including, but not limited to any departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky, and any departure from, or failure to conform to the principles of medical ethics of the American Medical Association or the code of ethics of the American Osteopathic Association. For the purposes of this subsection, actual injury to a patient need not be established.

(5) Failure by a licensee to report a known or observed violation of KRS Chapter 311 by another licensee as described in KRS 311.606.

Section 14. KRS 311.599 is amended to read as follows:

(1) When a hearing or inquiry panel has probable cause to believe a physician is suffering from a physical or mental condition that might impede his ability to practice competently, the panel may order the physician to undergo a physical or mental examination by persons designated by the panel.

(2) Failure of a physician to submit to such an examination when directed, unless the failure was due to circumstances beyond his control, shall constitute an admission that the concerned physician has developed such a physical or mental disability, or other conditions, that continued practice is dangerous to patients or to the public; said failure shall constitute a default and a final order may be entered without the taking of testimony or presentation of evidence.

(3) A physician whose license has been suspended, limited, restricted or revoked under this section and KRS 311.595*(8)*[~~(7)~~], shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of medicine with reasonable skill and safety to patients.

Section 15. KRS 311.606 is amended to read as follows:

(1) In order to assist the board in the enforcement of KRS 311.595*(20)*[~~(19)~~] and *(21)*[~~(20)~~], any professional medical association or society operating in the Commonwealth of Kentucky, or any hospital or medical staff of said hospital located in the Commonwealth of Kentucky, shall report all actions taken against a licensed physician as described in KRS 311.595*(20)*[~~(19)~~] and *(21)*[~~(20)~~] to the board within thirty (30) days of the final adjudication of said action together with all pertinent documents to include but not limited to transcripts, pleadings and certified copy of the final order.

(2) In order to assist the board in the enforcement of the provisions of KRS Chapter 311, any licensed physician who observes another licensed physician violating a provision of KRS Chapter 311 shall submit a written report to the board, or to the board and the concerned medical association or society, or to the board and the concerned hospital or medical staff of the hospital within ten (10) days of observing such a violation or obtaining other direct knowledge of such a violation; the report shall contain the name of the licensed physician believed to be in violation of a provision of KRS Chapter 311, a detailed account of the concerned actions, a list of all other witnesses to said actions, and the name of the physician submitting the report.

(3) All clerks of the Circuit and District Courts in the Commonwealth of Kentucky shall report to the secretary of the board all criminal convictions of licensees that may occur in their respective courts. The report shall contain the name of the licensee, the sentence imposed against the licensee, and whether the sentence imposed upon the licensee has been appealed.

Section 16. KRS 311.607 is amended to read as follows:

(1) Except for disciplinary actions taken pursuant to KRS 311.595*(8)*[~~(7)~~] and KRS 311.599, a licensee who has had his license revoked may, after two (2) years from the effective date of the revocation order, petition the board for a license to again practice in the Commonwealth of Kentucky.

(2) The board shall not be required to issue a new license as described in subsection (1). No new license shall be issued to such former licensee unless the applicant satisfies the board that he is presently of good moral character and qualified both physically and mentally to resume the practice of medicine without undue risk or danger to his patients or the public.

(3) In the event that the board should issue a new license under the circumstances as described in this section, the new license shall be under probation for a period of not less than two (2) years nor more than five (5) years, and any subsequent violation during the probation period shall result in automatic revocation of license.

HB 256, AN ACT relating to education.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Education Reform Act Evaluation Board is hereby created.

(2) The board shall establish a corporation which can qualify and obtain status under Section 501(c)(3) of the Internal Revenue Code. The purpose and mission of the corporation shall be to solicit and raise funds through private foundations, grants, and government agencies to support the independent evaluation of KERA and related activities. The corporation shall serve as a stimulus and clearinghouse for KERA related research projects.

(3) (a) The board shall cause an in-depth evaluation of the impact of KERA to be performed. This evaluation shall include, but not be limited to, the effect of the reforms on students, individual schools, school systems, and educators.

(b) The board shall make recommendations to the citizens and elected leaders of the Commonwealth concerning the enhancement of the benefits of KERA and the expansion and improvement of services to students.

(c) The board shall establish an organizational capacity to:

1. Develop and manage implementation of a research design to include the issuing of requests for proposals; awarding of contracts; and general oversight and coordination of the quality and quantity of research;

2. Conduct research in accordance with a comprehensive research design and establish priorities; and

3. Design and implement a comprehensive educational data information system.

(d) The board shall prepare an annual report of its activities and the activities of the corporation and forward copies to the Governor, the Legislative Research Commission, the State Board for Elementary and Secondary Education, and the Council on Higher Education and make copies available to the citizens of the Commonwealth.

(e) The board shall hire an executive officer and other necessary personnel to carry out its responsibilities.

(f) The board shall consist of ten (10) members who shall initially be appointed to two (2) year terms by the Governor. The board shall select from its membership a chairperson and establish bylaws, including bylaws governing board membership and length of term. Upon expiration of the initial appointments and adoption of bylaws governing membership and length of terms by the board, the appointment and length of terms shall be made in accordance with the board's bylaws. Vacancies which occur within the initial appointments shall be filled by appointment by the Governor to serve out the term of the vacancy. Vacancies after the initial appointments shall be filled in the manner prescribed in the board's bylaws.

Section 2. The General Assembly confirms Executive Order 92-1258 to the extent it is not otherwise confirmed by this Act.

HB 304, AN ACT relating to student assessment.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 158.6453 is amended to read as follows:

(1) The State Board for Elementary and Secondary Education shall be responsible for creating and implementing a statewide, primarily performance-based assessment program to ensure school accountability for student achievement of the goals set forth in KRS 158.645. The program shall be implemented as early as the 1993-94 school year but no later than the 1995-96 school year. The board shall also be responsible for administering an interim testing program to assess student skills in reading, mathematics, writing, science, and social studies in grades four (4), eight (8), and twelve (12). The tests shall be designed to provide the state with national comparisons and shall be the same as, or similar to those used by the National Assessment of Educational Progress. The interim testing program shall begin during the 1991-92 school year and shall be administered to a sample of students representative of each school and the state as a whole. The test scores shall be used, along with other factors described in KRS 158.6451, to establish a baseline for determining school success during the 1993-94 school year.

(2) Upon July 13, 1990, the state board shall contract with three (3) or more authorities in the field of performance assessment to design the specifications for the interim and full-scale statewide assessment development effort. The bid specifications shall include requirements that the successful bidder:

(a) Be a consultant to the Council on School Performance Standards as it develops the educational outcomes expected of students;

(b) Direct the development of the interim and full-scale assessment program; and

(c) Direct the development of the formula to be used to determine successful schools pursuant to KRS 158.6455.

The assessment authorities shall review the bids and make a recommendation to the board. The authorities shall have no pecuniary interest with the successful bidder.

(3) In addition to statewide testing for the purpose of determining school success, the board shall have the responsibility of assisting local school districts and schools in developing and using continuous assessment strategies needed to assure student progress. ***A student's test results from the statewide testing program and the continuous assessment program shall be part of his official school record or grade transcript that shall be transferred when requested by a receiving educational institution, an employer, or the military.***

(4) By October 1 of each year, local boards of education shall publish in the newspaper with the largest circulation in the county an annual performance report on district accomplishments and activities pertaining to performance goals including, but not limited to, retention rates and student performance, the districts' goals for the succeeding year, and other items as may be set forth in State Board for Elementary and Secondary Education administrative regulations.

The Committee Amendment No. 1 to **HB 304** is as follows:

On page 2, lines 7 and 8, by deleting "***that shall be transferred when requested by a receiving educational institution, an employer, or the military***".

HB 327, AN ACT relating to school-based decision making.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 160.345 is amended to read as follows:

(1) The term "teacher" for the purpose of this section means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.

(2) By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy shall also address and comply with the following:

(a) Each participating school shall form a school council which shall be composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. The parent representatives on the council shall not be employees of the district or employees' relatives, nor shall they be a local board member or his spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees. By July 1, 1993, the State Board for Elementary and Secondary Education shall submit recommendations to the Legislative Research Commission relating to policies and procedures to insure minority representation on school councils.

(b) The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent representatives shall be ***elected*** ~~{selected}~~ for one (1) year terms. The parent members shall be elected by the ***parents of students enrolled in the school in an election conducted by*** ~~{parent members of}~~ the parent ***and*** teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. ***The chair shall be elected by the members of the council at the first council meeting of the school year*** ~~{The principal or head teacher shall be the chair of the school council}~~.

(c) The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.

(d) All certified staff at a school may be participants ***on committee*** ~~{in the school-based decision making. The staff may divide into committees according to their areas of interest, such as, but not limited to, grouped grade levels, subject areas, and special programs}~~. ***The council shall establish a policy for including parents and classified staff who want to participate on committees and shall determine the number and selection process for these members.*** Each committee shall elect by a majority of the committee a chair, who shall serve for a term of one (1) year. The committee shall submit its recommendations to the school council for consideration.

(e) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.

(f) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.

(g) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.

(h) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council.

(i) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.

(j) The school council shall adopt a policy to be implemented by the principal in the following additional areas:

1. Determination of curriculum, including needs assessment and curriculum development;
2. Assignment of all instructional and noninstructional staff time;
3. Assignment of students to classes and programs within the school;
4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
5. Determination of use of school space during the school day;
6. Planning and resolution of issues regarding instructional practices;
7. Selection and implementation of discipline and classroom management techniques, including responsibilities of the student, parent, teacher, counselor, and principal;
8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision; and
9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal.

(3) The policy adopted by the local board to implement school-based decision making shall also address the following:

(a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;

(b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;

(c) School improvement plans, including the form and function of strategic planning and its relationship to district planning;

(d) Professional development plans developed pursuant to KRS 156.095 and 156.0951;

(e) Parent, citizen, and community participation including the relationship of the council with other groups;

(f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;

(g) Requirements for waiver of district policies;

(h) Requirements for record keeping by the school council; and

(i) A process for appealing a decision made by a school council.

(4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

(5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon a favorable vote of a majority of the faculty at the school, a school performing above its threshold level requirement as determined by the Department of Education pursuant to KRS 158.6455 may apply to the State Board for Elementary and Secondary Education for exemption from the requirement to

implement school-based decision making, and the state board shall grant the exemption. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

(6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making.

(7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, ***terms of office,*** organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the State Board for Elementary and Secondary Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model. ***A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected without approval of the state board pursuant to this subsection.***

(8) The State Board for Elementary and Secondary Education, upon recommendation of the chief state school officer, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council.

(9) (a) No board member, superintendent of schools, or district employee shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (j) of subsection (2) of this section.

(b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the State Board for Elementary and Secondary Education.

(c) The State Board for Elementary and Secondary Education shall establish by administrative regulation a hearing process for complaints referred by the Office of Education Accountability.

(d) If the State Board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

The Committee Amendment No. 1 to **HB 327** is as follows:

On page 2, lines 2, 3, and 4, by deleting the new language;

On page 2, lines 4 and 5, by deleting the brackets and strikethroughs.

The Committee Amendment No. 2 to **HB 327** is as follows:

On page 6, line 9, after the word "***office***", by inserting "***no less than one (1) year and no more than four (4) years, that shall not be consecutive***".

HB 328, AN ACT relating to class size.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 157.360 is amended to read as follows:

(1) In determining the cost of the program to support education excellence in Kentucky, the statewide guaranteed base funding level, as defined in KRS 157.320, shall be computed by dividing the amount appropriated for this purpose by the prior year's statewide average daily attendance.

(2) Each district shall receive an amount equal to the base funding level for each pupil in average daily attendance in the district in the previous year. Each district's base funding level shall be adjusted by the following factors:

(a) The number of at-risk students in the district. At-risk students shall be identified as those approved for the free lunch program under state and federal guidelines. The number of at-risk students shall be multiplied by a factor to be established by the General Assembly;

(b) The number and types of exceptional children in the district as defined by KRS 157.200. No later than October 1, 1993, specific weights for each category of exceptionality shall be developed by the Department of Education and shall be used in the calculation of the add-on factor for exceptional children. Prior to the development of the necessary weights, the General Assembly shall determine the costs associated with the education of exceptional children based on the count of pupils with different exceptionalities, an appropriate pupil-teacher ratio, and total per-pupil costs; and

(c) Transportation costs. The per pupil cost of transportation shall be calculated as provided by KRS 157.370. No later than October 1, 1991, the Office of Education Accountability's Division of School Finance shall examine the components of the current system for allocating transportation funds, and recommend any needed changes to the General Assembly, the Governor, and the State Board for Elementary and Secondary Education. Districts which contract to furnish transportation to students attending nonpublic schools may adopt any payment formula which assures that no public school funds are used for the transportation of nonpublic students.

(3) The program to support education excellence in Kentucky shall be fully implemented by the 1994-95 school year. No district shall receive an annual increase in state funds of less than eight percent (8%) for 1990-91 and five percent (5%) in 1991-92 or more than twenty-five percent (25%) in either year.

(4) (a) Except for those schools which have implemented school-based decision making, the chief state school officer shall enforce maximum class sizes for every academic course requirement in all grades except in vocal and instrumental music, and physical education classes. Except ***as provided in subsection (5) of this section***~~[in classes combining pupils from two (2) or more grade levels]~~, the maximum number of pupils enrolled in a class shall be as follows:

1. Twenty-four (24) in primary grades (kindergarten through third grade);
2. Twenty-eight (28) in grade four (4);
3. Twenty-nine (29) in grades five (5) and six (6);
4. Thirty-one (31) in grades seven (7) to twelve (12);

(b) Except for those schools which have implemented school-based decision making, class size loads for middle and secondary school classroom teachers shall not exceed the equivalent of one hundred fifty (150) pupil hours per day.

(c) The chief state school officer, upon approval of the State Board for Elementary and Secondary Education, shall adopt administrative regulations for enforcing this provision. These administrative regulations shall include procedures for a superintendent to request an exemption from the State Board for Elementary and Secondary Education when unusual circumstances warrant an increased class size for an individual class. A request for an exemption shall include specific reasons for the increased class size with a plan for reducing the class size prior to the beginning of the next school year. A district shall not receive in any one (1) year exemptions for more classes than enroll twenty percent (20%) of the pupils in the primary grades and grades four (4) through eight (8).

(d) In all schools the chief state school officer shall enforce the special education maximum class sizes set by administrative regulations adopted by the State Board for Elementary and Secondary Education. A superintendent may request an exemption pursuant to paragraph (c) of this subsection. A local school council may request a waiver pursuant to KRS 156.160(2). An exemption or waiver shall not be granted if the increased class size will impede any exceptional child from achieving his individual education program in the least restrictive environment.

(5) In grades four (4) through six (6) with combined grades, the maximum class size shall be the average daily attendance upon which funding is appropriated for the lowest assigned grade in the class. There shall be no exceptions to the maximum class size for combined classes. In combined classes other than the primary grades, no ungraded students shall be placed in a combined class with graded students. In addition, there shall be no more than two (2) consecutive grade levels combined in any one (1) class in grades four (4) through six (6). However, this shall not apply to schools which have implemented school-based decision making.

(6) If a local school district, through its admission and release committee, determines that an appropriate program in the least restrictive environment for a particular handicapped child includes either part-time or full-time enrollment with a private school or agency within the state or a public or private agency in another state, the school district shall count as average daily attendance in a public school the time that the child is in attendance at the school or agency, contingent upon approval by the chief state school officer.

(7) Pupils attending a center for child learning and study established under an agreement pursuant to KRS 65.210 to 65.300 shall, for the purpose of calculating average daily attendance, be considered as in attendance in the school district in which the child legally resides and which is party to the agreement. For purposes of subsection (1) of this section, teachers who are actually employees of the joint or cooperative action shall be considered as employees of each school district which is a party to the agreement.

(8) Program funding shall be increased when the average daily attendance in any district for the first two (2) months of the current school year is greater than the average daily attendance of the district for the first two (2) months of the previous school year. The program funds allotted the district shall be increased by the percent of increase. The average daily attendance in kindergarten is the kindergarten full-time equivalent pupils in average daily attendance.

(9) If the average daily attendance for the current school year in any district decreases by ten percent (10%) or more than the average daily attendance for the previous school year, the average daily attendance for purposes of calculating program

funding for the next school year shall be increased by an amount equal to two-thirds (2/3) of the decrease in average daily attendance. If the average daily attendance remains the same or decreases in the succeeding school year, the average daily attendance for purposes of calculating program funding for the following school year shall be increased by an amount equal to one-third (1/3) of the decrease for the first year of the decline.

(10) If the percentage of attendance of any school district shall have been reduced more than two percent (2%) during the previous school year, the program funding allotted the district for the current school year shall be increased by the difference in the percentage of attendance for the two (2) years immediately prior to the current school year less two percent (2%).

(11) (a) Instructional salaries for vocational agriculture classes shall be allotted for twelve (12) months per year. Vocational agriculture teachers shall be responsible for the following program of instruction during the time period beyond the regular school term established by the local board of education: supervision and instruction of students in agriculture experience programs; group and individual instruction of farmers and agribusinessmen; supervision of student members of agricultural organizations who are involved in leadership training or other activity required by state or federal law; or any program of vocational agriculture established by the Office of Vocational Education in the Department of Education. Salary allotments for vocational agriculture units shall be computed by proportionately increasing the salary schedule allocation based on the regular one hundred eighty-five (185) day school year for teachers with comparable qualifications and experience. During extended employment, no vocational agriculture teacher shall receive salary on a day that the teacher is scheduled to attend an institution of higher education class which could be credited toward meeting any certification requirement.

(b) Each teacher of agriculture employed twelve (12) months per year shall submit an annual plan for summer program to the local school superintendent for approval. The summer plan shall include a list of tasks to be performed, purposes for each task, and time to be spent on each task. Approval by the local school superintendent shall be in compliance with the guidelines developed by the State Department of Education. The supervision and accountability of teachers of vocational agriculture's summer programs shall be the responsibility of the local school superintendent. The local school superintendent shall submit to the chief state school officer a completed report of summer tasks for each vocational agriculture teacher employed for twelve (12) months. Twenty percent (20%) of the approved twelve (12) month vocational agriculture programs shall be audited annually by the State Department of Education to determine that the summer plan has been properly executed.

(c) For the 1990-91 and the 1991-92 school years, an add-on appropriation shall be made to local school districts which are operating secondary vocational education programs. The amount provided in the budget shall be allocated on a per pupil basis and shall be used to meet the higher per student cost of operating vocational education programs.

(12) (a) In allotting program funds for home and hospital instruction, statewide guaranteed base funding excluding the capital outlay, shall be allotted for each child in average daily attendance in the current school year who has been properly identified according to State Board for Elementary and Secondary Education administrative regulations. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported monthly on forms provided by the Department of Education; and

(b) Pursuant to administrative regulations of the Department of Education, local school districts shall be reimbursed for home and hospital instruction for pupils unable to attend regular school sessions because of short term health impairments. A reimbursement formula shall be established by administrative regulations to include such factors as a reasonable per hour, per child allotment for teacher instructional time, with a maximum number of funded hours per week, a reasonable allotment for teaching supplies and equipment, and a reasonable allotment for travel expenses to and from instructional assignments, but the formula shall not include an allotment for capital outlay. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported monthly on forms provided by the Department of Education.

(13) Except for those schools which have implemented school-based decision making and the school council has voted to waive this subsection, kindergarten aides shall be provided for each twenty-four (24) full-time equivalent kindergarten students enrolled.

HB 329, AN ACT relating to professional development and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 158.070 is amended to read as follows:

(1) The minimum school term shall be one hundred eighty-five (185) days, including at least one hundred seventy-five (175) instructional days. A board of education may extend its term beyond the minimum term.

(2) Any local board of education operating its schools on a year-round school program basis shall conform with regulations promulgated and adopted by the State Board for Elementary and Secondary Education upon the recommendation of the chief state school officer, which regulations must be in conformity with the following criteria:

(a) The year-round school program shall be operated on a fiscal year beginning July 1 and ending June 30;

(b) A pupil's required attendance in school shall be for at least the minimum instructional term; and

(c) No teacher shall be required to teach more than the minimum term during the school year.

(3) Each local board of education shall use four (4) days of the minimum school term for professional development and planning activities for the professional staff ~~[without the presence of pupils]~~ pursuant to the requirements of KRS 156.095 ***and may include two (2) additional days for planning activities without the presence of pupils. The school council shall determine the activities, which may include planning, conducted on at least two (2) of the required four (4) days***~~[and 158.720]~~. The local board of each school district may use up to a maximum of four (4) days of the minimum school term for holidays, provided, however, any holiday which occurs on Saturday may be observed on the preceding Friday. ~~[Each local board may use two (2) days for planning activities without the presence of pupils.]~~ Each local board may use the number of days deemed necessary for:

(a) National or state disaster or mourning when proclaimed by the President of the United States or the Governor of the Commonwealth of Kentucky;

(b) Local disaster which would endanger the health or safety of children; and

(c) Mourning when so designated by the local board of education and approved by the State Board for Elementary and Secondary Education upon recommendation of the chief state school officer.

(4) The State Board for Elementary and Secondary Education, upon recommendation of the chief state school officer, shall adopt regulations governing the use of school days, including days missed from the regular school day as a result of local disaster, as defined in subsection (3)(b) of this section, and regulations setting forth the guidelines and procedures to be observed for the approval of the days utilized for the opening and closing of school and the days utilized for professional development and planning activities for the professional staff.

(5) In setting the school calendar, school shall be closed for two (2) consecutive days for the purpose of permitting professional school employees to attend statewide professional meetings. These two (2) days for statewide professional meetings shall be scheduled to begin with the first Thursday after Easter, or upon request of the statewide professional education association having the largest paid membership, the chief state school officer may designate alternate dates. The chief state school officer shall designate one (1) additional day during the school year when schools shall be closed to permit professional school employees to participate in regional or district professional meetings. These three (3) days so designated for attendance at professional meetings shall not be counted as a part of the minimum school term.

(6) Students applying for excused absence for attendance at the Kentucky State Fair shall be granted one (1) day of excused absence.

(7) Schools shall provide continuing education for those students who are determined to need additional time to achieve the outcomes defined in KRS 158.6451, and schools shall not be limited to the minimum school term in providing this education. Continuing education time may include extended days, extended weeks, or extended years. A local board of education may adopt a policy requiring its students to participate in continuing education. The local policy shall set out the conditions under which attendance will be required and any exceptions which are provided. The State Board for Elementary and Secondary Education shall promulgate administrative regulations establishing criteria for the allotment of grants to local school districts for the 1990-1991 and 1991-1992 school years for continuing education. These grants shall be allotted to school districts to provide instructional programs for pupils who are identified as needing additional time to achieve the outcomes defined in KRS 158.6451. The chief state school officer shall recommend to the Division of School Finance of the Office of Education Accountability by June 30, 1991, a method for funding continuing education for these students through the state-supported funding program.

(8) Notwithstanding any other statute, each school term shall include at least the minimum number of instructional days required by this section. However, for the school years ***1994-95*** ~~[1992-93]~~ and ***1995-96***~~[1993-94]~~, local school districts may use up to five (5) instructional days or up to thirty (30) hours during instructional days for additional professional development for teachers if the following conditions are met:

(a) The local board determines the number of additional days or hours to be used for professional development and designates them in the school calendar; and

(b) A plan for the use of the additional days or hours is developed by each school and approved by the district superintendent. The plan shall consist of training selected from a list approved by the Kentucky Department of Education.

Section 2. KRS 160.345 is amended to read as follows:

(1) The term "teacher" for the purpose of this section means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.

(2) By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy shall also address and comply with the following:

(a) Each participating school shall form a school council which shall be composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. The parent representatives on the council shall not be employees of the district or employees' relatives, nor shall they be a local board member or his spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees. By July 1, 1993, the State Board for Elementary and Secondary Education shall submit recommendations to the Legislative Research Commission relating to policies and procedures to insure minority representation on school councils.

(b) The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent representatives shall be selected for one (1) year terms. The parent members shall be elected by the parent members of the parent teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. The principal or head teacher shall be the chair of the school council.

(c) The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.

(d) All certified staff at a school may be participants in the school-based decision making. The staff may divide into committees according to their areas of interest, such as, but not limited to, grouped grade levels, subject areas, and special programs. Each committee shall elect by a majority of the committee a chair, who shall serve for a term of one (1) year. The committee shall submit its recommendations to the school council for consideration.

(e) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.

(f) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.

(g) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.

(h) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council.

(i) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.

(j) The school council shall adopt a policy to be implemented by the principal in the following additional areas:

1. Determination of curriculum, including needs assessment and curriculum development;
2. Assignment of all instructional and noninstructional staff time;
3. Assignment of students to classes and programs within the school;
4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
5. Determination of use of school space during the school day;
6. Planning and resolution of issues regarding instructional practices;
7. Selection and implementation of discipline and classroom management techniques, including responsibilities of the student, parent, teacher, counselor, and principal;
8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision; and
9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal.

(3) The policy adopted by the local board to implement school-based decision making shall also address the following:

(a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;

(b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;

(c) School improvement plans, including the form and function of strategic planning and its relationship to district planning;

(d) Professional development plans developed pursuant to KRS 156.095 and 156.0951;

(e) Parent, citizen, and community participation including the relationship of the council with other groups;

(f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;

(g) Requirements for waiver of district policies;

(h) Requirements for record keeping by the school council; and

(i) A process for appealing a decision made by a school council.

(4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

(5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon a favorable vote of a majority of the faculty at the school, a school performing above its threshold level requirement as determined by the Department of Education pursuant to KRS 158.6455 may apply to the State Board for Elementary and Secondary Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

(6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making.

(7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the State Board for Elementary and Secondary Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.

(8) The State Board for Elementary and Secondary Education, upon recommendation of the chief state school officer, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. ***Included in the school council formula shall be an allotment for professional development that is at least one half (1/2) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school, or two thousand dollars ($2,000), whichever is greater. The school council shall coordinate its use of this allotment with a consortium established pursuant to KRS 156.0951 if the district is a member of one, the professional development coordinator of the school district, and other school councils to enhance professional development opportunities.***

(9) (a) No board member, superintendent of schools, or district employee shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (j) of subsection (2) of this section.

(b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the State Board for Elementary and Secondary Education.

(c) The State Board for Elementary and Secondary Education shall establish by administrative regulation a hearing process for complaints referred by the Office of Education Accountability.

(d) If the State Board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

Section 3. KRS 156.0951 is amended to read as follows:

(1) During the 1990-91 school year, the school district shall receive a planning grant to be used in conjunction with other districts to plan for professional development activities through the 1994-95 school year. By June 30, 1991, each district, except those districts with an enrollment of twenty thousand (20,000) or more students, shall have joined a consortium involving two (2) or more districts and shall have submitted a preliminary professional development plan to the Department of Education. The plan shall describe the way the consortium will utilize the professional development activities available from the Department of Education described in KRS 156.095 during the 1991-92 school year and outline in general terms the types of professional development and the delivery mechanism which will be used during the 1992-93, 1993-94, and 1994-95 school years. When a consortium is operational, a consortium plan may replace plans for individual districts which are members of the consortium.

(2) During the school years 1991-92 through 1994-95, the consortia shall receive the districts' professional development funds***, except for the allotment to school councils made pursuant to KRS 160.345,*** to provide a high quality, coordinated professional development program to the staff of the member districts.

(3) After July 1, 1995, a school district shall be allowed to withdraw from the consortium and expend its professional development funds on any professional development activities it chooses.

Section 4. Whereas, it is imperative that school districts and school councils plan for professional development for the coming school year at this time, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor.

The Committee Substitute to **HB 329** is as follows:

HB 329, AN ACT relating to professional development and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 158.070 is amended to read as follows:

(1) The minimum school term shall be one hundred eighty-five (185) days, including at least one hundred seventy-five (175) instructional days. A board of education may extend its term beyond the minimum term.

(2) Any local board of education operating its schools on a year-round school program basis shall conform with regulations promulgated and adopted by the State Board for Elementary and Secondary Education upon the recommendation of the chief state school officer, which regulations must be in conformity with the following criteria:

- (a) The year-round school program shall be operated on a fiscal year beginning July 1 and ending June 30;
- (b) A pupil's required attendance in school shall be for at least the minimum instructional term; and
- (c) No teacher shall be required to teach more than the minimum term during the school year.

(3) Each local board of education shall use four (4) days of the minimum school term for professional development and planning activities for the professional staff without the presence of pupils ***and may include two (2) additional days for planning activities without the presence of pupils. The school council shall determine the activities, which may include planning, assessment activities, and parent-teacher conferences conducted on at least two (2) of the required four (4) days*** ~~[pursuant to the requirements of KRS 156.095 and 158.720]~~. The local board of each school district may use up to a maximum of four (4) days of the minimum school term for holidays, provided, however, any holiday which occurs on Saturday may be observed on the preceding Friday. ~~[Each local board may use two (2) days for planning activities without the presence of pupils.]~~ Each local board may use the number of days deemed necessary for:

- (a) National or state disaster or mourning when proclaimed by the President of the United States or the Governor of the Commonwealth of Kentucky;
- (b) Local disaster which would endanger the health or safety of children; and
- (c) Mourning when so designated by the local board of education and approved by the State Board for Elementary and Secondary Education upon recommendation of the chief state school officer.

(4) The State Board for Elementary and Secondary Education, upon recommendation of the chief state school officer, shall adopt regulations governing the use of school days, including days missed from the regular school day as a result of local disaster, as defined in subsection (3)(b) of this section, and regulations setting forth the guidelines and procedures to be observed for the approval of the days utilized for the opening and closing of school and the days utilized for professional development and planning activities for the professional staff.

(5) In setting the school calendar, school shall be closed for two (2) consecutive days for the purpose of permitting professional school employees to attend statewide professional meetings. These two (2) days for statewide professional meetings shall be scheduled to begin with the first Thursday after Easter, or upon request of the statewide professional education association having the largest paid membership, the chief state school officer may designate alternate dates. The chief state school officer shall designate one (1) additional day during the school year when schools shall be closed

to permit professional school employees to participate in regional or district professional meetings. These three (3) days so designated for attendance at professional meetings shall not be counted as a part of the minimum school term.

(6) Students applying for excused absence for attendance at the Kentucky State Fair shall be granted one (1) day of excused absence.

(7) Schools shall provide continuing education for those students who are determined to need additional time to achieve the outcomes defined in KRS 158.6451, and schools shall not be limited to the minimum school term in providing this education. Continuing education time may include extended days, extended weeks, or extended years. A local board of education may adopt a policy requiring its students to participate in continuing education. The local policy shall set out the conditions under which attendance will be required and any exceptions which are provided. The State Board for Elementary and Secondary Education shall promulgate administrative regulations establishing criteria for the allotment of grants to local school districts for the 1990-1991 and 1991-1992 school years for continuing education. These grants shall be allotted to school districts to provide instructional programs for pupils who are identified as needing additional time to achieve the outcomes defined in KRS 158.6451. The chief state school officer shall recommend to the Division of School Finance of the Office of Education Accountability by June 30, 1991, a method for funding continuing education for these students through the state-supported funding program.

(8) Notwithstanding any other statute, each school term shall include at least the minimum number of instructional days required by this section. However, for the school years ***1994-95*** ~~[1992-93]~~ and ***1995-96***~~[1993-94]~~, local school districts may use up to five (5) instructional days or up to thirty (30) hours during instructional days for additional ***planning, assessment activities, or*** professional development for teachers if ~~[the following conditions are met:~~

~~(a)]~~ the local board ***designates*** ~~[determines]~~ the number of additional days or hours to be used ~~[for professional development and designates them]~~ in the school calendar; and~~[~~

~~(b)]~~ a plan for the use of the additional days or hours is developed by each school and ***submitted to*** ~~[approved by]~~ the district ***professional development coordinator*** ~~[superintendent. The plan shall consist of training selected from a list approved by the Kentucky Department of Education]~~.

Section 2. Whereas it is imperative that school districts and school councils plan for professional development for the coming school year at this time, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor.

HR 18, A RESOLUTION petitioning the Kentucky High School Athletic Association to sanction bowling.

WHEREAS, the Kentucky High School Athletic Association is responsible for promoting athletics that will help all students become involved in sports that will serve them well throughout their lives; and

WHEREAS, bowling is the one sport that can be learned and enjoyed by people of all ages and with varying capacities; and

WHEREAS, 125,000 Kentucky citizens bowl on a regular basis and nationally, nearly eight million people bowl weekly; and

WHEREAS, bowling is a sport that can be enjoyed by the whole family;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. That the Kentucky High School Athletic Association is requested to educate its members on the research and facts on the virtues of bowling as a competitive and wholesome sport that can be enjoyed by students throughout their lives.

Section 2. That after educating its members on the positive aspects of bowling the Kentucky High School Athletic Association is asked to survey its members to secure their support for the sanctioning of bowling as a high school competitive sport with an inter-scholastic statewide tournament.

HJR 23, A JOINT RESOLUTION directing the naming of the "D. H. Anderson Technical Building."

WHEREAS, Dr. Dennis Henry Anderson, 1866 - 1952, had a life-long dedication to education; and

WHEREAS, in 1909, Dr. Anderson established in Paducah the second largest junior college for African-American students in the United States; and

WHEREAS, the fruits of Dr. Anderson's labor are exhibited in the Kentucky Tech West Campus in Paducah; and

WHEREAS, Dr. Anderson left a great heritage that should be emulated by those who strive to educate all people;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. That the State Board for Adult and Technical Education and the Workforce Development Cabinet recognize the accomplishments and memory of Dr. Dennis Henry Anderson and encourage educators in the Kentucky Tech system to follow his example to educate all people.

Section 2. That the State Board for Adult and Technical Education and The Workforce Development Cabinet be directed to name the main building on the Kentucky Tech West Campus in Paducah the "D. H. Anderson Technical Building" in honor of Dr. Dennis Henry Anderson.

The Committee on Tourism Development and Energy reported **HB 316, HB 318, HB 319, HB 320** and **HB 321,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 316, AN ACT relating to utilities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

All service supplied by a utility shall be billed within two (2) years of the service. No customer shall be liable for unbilled service after two (2) years from the date of the service, unless the customer obtained the service through fraud, theft, or deception.

HB 318, AN ACT relating to utilities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 278.460 is amended to read as follows:

(1) ***Except as provided in subsection (2) of this section, a utility***[~~Public utilities, such as gas, electric and water companies,~~] shall pay interest at six percent (6%) annually on amounts required to be deposited by patrons to secure ***utility service***[~~gas, electric or water accounts~~].

(2) ***No water district organized under KRS Chapter 74 nor water association organized under KRS Chapter 273 shall pay interest that exceeds the rate it receives in interest, nor shall the interest payable to the customer at any time exceed six percent (6%) annually on amounts required to be deposited by patrons to secure water accounts.***

(3) ***The commission may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to implement this section.***

Section 2. The following KRS sections are repealed:

74.085 Interest rate to be paid by water district.

273.392 Interest rate to be paid by water association.

HB 319, AN ACT relating to utilities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 278.020 is amended to read as follows:

(1) No person, partnership, public or private corporation, or combination thereof shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until such person has obtained from the Public Service Commission a certificate that public convenience and necessity require such construction. Upon the filing of an application for such a certificate, and after any public hearing which the commission may in its discretion conduct for all interested parties, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part, except that the commission shall not refuse or modify an application submitted under KRS 278.023 without consent by the parties to the agreement. The commission, when considering an application for a certificate to construct a base load electric generating facility, may consider the policy of the General Assembly to foster and encourage use of Kentucky coal by electric utilities serving the Commonwealth. Unless exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.

(2) No utility shall exercise any right or privilege under any franchise or permit, after the exercise of that right or privilege has been voluntarily suspended or discontinued for more than one (1) year, without first obtaining from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity authorizing the exercise of that right or privilege.

(3) No utility shall apply for or obtain any franchise, license, or permit from any city or other governmental agency until it

has obtained from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity showing that there is a demand and need for the service sought to be rendered.

(4) No person [~~under the jurisdiction of the commission~~] shall acquire or transfer ownership of**,** or control, or the right to control, any utility ***under the jurisdiction of the commission***[~~,~~] by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

(5) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any such acquisition of control without such prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any such individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that such ownership does not in fact confer control. Application for any such approval or authorization shall be made to the commission in writing, verified by oath or affirmation, and be in such form and contain such information as the commission requires. The commission shall approve any such proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The commission may make such investigation and hold such hearings in the matter as it deems necessary, and thereafter may grant any application under this subsection in whole or in part and with such modification and upon such terms and conditions as it deems necessary or appropriate. The commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixty (60) days after the filing of the application therefor or on a later date mutually acceptable to the commission and the acquirer. In the absence of any such action within such period of time, any such proposed acquisition shall be deemed to be approved.

(6) Subsection (5) of this section shall not apply to any acquisition of control of any:

(a) Utility which derives a greater percentage of its gross revenue from business in another jurisdiction than from business in this state if the commission determines that the other jurisdiction has statutes or rules which are applicable and are being applied and which afford protection to ratepayers in this state substantially equal to that afforded such ratepayers by subsection (5) of this section;

(b) Utility by an acquirer who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, such utility, including any entity created at the direction of such utility for purposes of corporate reorganization; or

(c) Utility pursuant to the terms of any indebtedness of the utility, provided the issuance of such indebtedness was approved by the commission.

(7) If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to that end the provisions are declared to be severable.

HB 320, AN ACT relating to utilities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 278.120 is amended to read as follows:

(1) The chairman and the other two (2) members of the commission shall be paid a salary fixed under KRS 64.640 to be paid monthly.

(2) The executive director [~~and the secretary~~] of the commission shall be paid a salary to be fixed by the commission, with the approval of the Governor.

(3) The commissioners, the executive director, [~~the secretary~~] and employees of the commission are entitled to all expenses, including hotel bills, incurred in traveling on business of the commission.

(4) The salaries and expenses provided for by this section, and all other expenses of the commission incurred in the administration of this chapter, shall be paid out of appropriations as provided by law out of the general expenditure fund.

Section 2. KRS 278.240 is amended to read as follows:

Copies of official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner, or by the ***executive director*** [~~secretary~~] under the seal of the commission, to be true copies of the originals, shall be evidence in like manner as the originals in all matters before the commission and in courts of competent jurisdiction.

Section 3. KRS 278.300 is amended to read as follows:

(1) No utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the

commission.

(2) Application for authority to issue or assume securities or evidences of indebtedness shall be made in such form as the commission prescribes. Every such application shall be made under oath, and shall be signed and filed on behalf of the utility by its president, or by a vice president, auditor, comptroller or other executive officer having knowledge of the matters set forth and duly designated by the utility. Every such application shall be placed at the head of the docket of the commission and disposed of promptly within sixty (60) days after it is filed with the commission, unless it is necessary for good cause to continue the application for longer time than sixty (60) days, in which case the order making the continuance shall state fully the facts that make it necessary.

(3) The commission shall not approve any issue or assumption unless, after investigation of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the commission finds that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.

(4) The commission may grant or deny the application in whole or in part, or may grant it with such modifications and upon such terms and conditions as the commission deems necessary or appropriate. The order of the commission shall specify that the securities or evidences of indebtedness, or the proceeds thereof, shall be used only for the lawful purposes specified in the application, and both the application of the utility and the order of the commission shall state in general terms the purpose of the issuance or assumption.

(5) A copy of any order made and entered by the commission under this section, duly certified by the ***executive director*** ~~[secretary]~~ of the commission, shall be sufficient evidence for all purposes of full and complete compliance by the utility with all procedural and other matters required precedent to the entry of the order.

(6) Securities and evidences of indebtedness issued and obligations and liabilities assumed by a utility, for which, under the provisions of this section, the authorization of the commission is required, shall comply with the terms and conditions of the order of authorization entered prior to the issue or assumption, and where the order has been fully complied with the validity of the issue or assumption shall not be affected by a failure to comply with any provision of this section or rule of the commission relating to procedure or other matters preceding the entry of the order of authorization or order supplemental thereto.

(7) The commission may require periodical or special reports from the utility issuing any security or evidence of indebtedness. The report shall show, in such detail as the commission requires, the disposition made of such securities or evidences of indebtedness, and the application of the proceeds thereof.

(8) This section does not apply to notes issued by a utility, for proper purposes and not in violation of law, that are payable at periods of not more than two (2) years from the date thereof, or to like notes, payable at a period of not more than two (2) years from date thereof, that are issued to pay or refund in whole or in part any such notes, or to renewals of such notes from time to time, not exceeding in the aggregate six (6) years from the date of the issue of the original notes so renewed or refunded.

(9) Nothing in this section implies any guarantee of securities or evidences of indebtedness by the state, or any obligation on the part of the state with respect thereto, and nothing in this section limits the power of any court having jurisdiction to authorize or cause receiver's certificates or debentures to be issued according to the rules and practice obtaining in receivership proceedings in courts of equity.

(10) This section does not apply in any instance where the issuance of securities or evidences of indebtedness is subject to the supervision or control of the federal government or any agency thereof, but the commission may appear as a party to any proceeding filed or pending before any federal agency if the issuance of the securities or evidences of indebtedness will materially affect any utility over which the commission has jurisdiction.

(11) This section also does not apply to the issuance of securities or evidence of indebtedness by a utility principally engaged in transportation of gas by pipeline in interstate commerce and subject to the supervision, control or jurisdiction of the federal government or any agency, board or commission thereof.

Section 4. KRS 278.530 is amended to read as follows:

(1) Whenever any telephone company desires to connect its exchange or lines with the exchange or lines of another telephone company and the latter refuses to permit this to be done upon reasonable terms, rates and conditions, the company desiring the connection may proceed as provided in subsection (2) or as provided in subsection (3) of this section.

(2) The company desiring the connection may file a written statement with the Public Service Commission setting out the reasons why the connection is desired and the points at which the connection should be made, and giving the name and address of the owner or chief officer residing in this state of each company with which the connection is desired. The ***executive director*** ~~[secretary]~~ of the commission shall thereupon cause a copy of the written statement to be served upon the companies owning or operating such lines or exchanges, by mailing a copy to the owner or chief officer residing in this state, and shall fix a date, not earlier than ten (10) days from the date of mailing the notice, for the hearing of the application. Upon the day so fixed for the hearing, the companies may respond in writing to the application, and either

side may introduce such testimony as it desires and be heard by attorneys. After the hearing is completed the commission shall make its finding and enter it in a book to be kept for that purpose, and shall mail a copy thereof to each side; and if the commission directs the connection to be made it shall indicate the points where the connection is to be made, the number of wires to be connected, the terms and conditions and the rates to be charged, and the division of the rates charged between the companies handling the messages. The cost of making the connection shall be borne equally by the parties. If any company refuses to make a connection for a period of thirty (30) days after the finding of the commission directing the connection to be made, the company desiring the connection may make the connection and may recover one-half (1/2) of the cost thereof from the company so refusing.

(3) In lieu of the procedure provided in subsection (2) of this section, the company desiring the connection may compel the connection upon reasonable terms by suit in equity in the Franklin Circuit Court or in the Circuit Court of the county in which the company making the demand resides or has its chief office in this state, and the court shall, by mandatory injunction, compel the physical connection of the wires and interchange of messages, and enforce the same by contempt proceedings and in the same manner that other mandatory injunctions are enforced.

HB 321, AN ACT relating to utilities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 278.400 is amended to read as follows:

After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order[~~upon him~~], apply for a hearing with respect to any of the matters determined. ***Service of a commission order is complete upon the date the order is mailed.*** The application shall specify the matters on which a rehearing is sought. The commission shall either grant or deny the application for rehearing within twenty (20) days after it is filed, and failure of the commission to act upon the application within that period shall be deemed a denial of the application. Notice of the hearing shall be given in the same manner as notice of an original hearing. Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing. Upon the rehearing, the commission may change, modify, vacate or affirm its former orders, and make and enter such order as it deems necessary.

Section 2. KRS 278.410 is amended to read as follows:

(1) Any party to a commission proceeding or any utility affected by an order of the commission may, within ***thirty (30)*** [~~twenty (20)~~] days after ***service of*** [~~being served with~~] the order, or within twenty (20) days after its application for rehearing has been denied by failure of the commission to act, or within twenty (20) days after ***service of*** [~~being served with~~] the final order on rehearing, when a rehearing has been granted, bring an action against the commission in the Franklin Circuit Court to vacate or set aside the order or determination on the ground that it is unlawful or unreasonable. ***Service of a commission order is complete upon the date the order is mailed.*** Notice of the institution of such action shall be given to all parties of record before the commission.

(2) The answer of the commission shall be served and filed within twenty (20) days after service of the complaint. The action shall then be at issue and stand ready for trial upon ten (10) days' notice to either party, on the equity side of the docket of the court. The answer need not deny verbatim the allegations of the petition, but a general denial thereof on behalf of the commission shall be sufficient.

(3) Injunctive relief may be granted by the Circuit Court in the manner and upon the terms provided by law.

The Committee Substitute to **HB 321** is as follows:

HB 321, AN ACT relating to utilities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 278.400 is amended to read as follows:

After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order[~~upon him~~], apply for a hearing with respect to any of the matters determined. ***Service of a commission order is complete three (3) days after the date the order is mailed.*** The application shall specify the matters on which a rehearing is sought. The commission shall either grant or deny the application for rehearing within twenty (20) days after it is filed, and failure of the commission to act upon the application within that period shall be deemed a denial of the application. Notice of the hearing shall be given in the same manner as notice of an original hearing. Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing. Upon the rehearing, the commission may change, modify, vacate or affirm its former orders, and make and enter such order as it deems necessary.

Section 2. KRS 278.410 is amended to read as follows:

(1) Any party to a commission proceeding or any utility affected by an order of the commission may, within ***thirty (30)*** [~~twenty (20)~~] days after ***service of*** [~~being served with~~] the order, or within twenty (20) days after its application for

rehearing has been denied by failure of the commission to act, or within twenty (20) days after ***service of*** [~~being served with~~] the final order on rehearing, when a rehearing has been granted, bring an action against the commission in the Franklin Circuit Court to vacate or set aside the order or determination on the ground that it is unlawful or unreasonable. ***Service of a commission order is complete three (3) days after the date the order is mailed.*** Notice of the institution of such action shall be given to all parties of record before the commission.

(2) The answer of the commission shall be served and filed within twenty (20) days after service of the complaint. The action shall then be at issue and stand ready for trial upon ten (10) days' notice to either party, on the equity side of the docket of the court. The answer need not deny verbatim the allegations of the petition, but a general denial thereof on behalf of the commission shall be sufficient.

(3) Injunctive relief may be granted by the Circuit Court in the manner and upon the terms provided by law.

Floor Amendments

Floor Amendment No. 1 to **HB 275**, by Representative Farrow:

On page 1, line 3, by deleting "***constable,***"; and

On page 1, line 14, by deleting "***constable,***".

Floor Amendment No. 1 to **HB 224**, by Representative Jensen:

On page 9, line 5, to place brackets around and strike through "capital offense,"; and

On page 9, line 5, following "A felony" to add "***not specified in Section 5 of this Act***"; and

On page 9, line 5, following "B felony" to add "***not specified in Section 5 of this Act***"; and

On page 9, line 12, following "C felony" to add "***not specified in Section 5 of this Act***"; and

On page 9, line 12, following "D felony" to add "***not specified in Section 5 of this Act***"; and

On page 9, line 25, following "***offenses***" to add "***not specified in Section 5 of this Act***"; and

On page 10, line 17, to place brackets around and strike through "capital offense,"; and

On page 10, line 17, following "A felony" to add "***not specified in Section 5 of this Act***"; and

On page 10, line 18, following "felony" to add "***not specified in Section 5 of this Act***"; and

On page 8, line 24, following "***640***" to add "***, other than Section 5 of this Act***"; and

On page 13, below, line 16, to add the following

SECTION 5. A NEW SECTION OF KRS CHAPTER 640 IS CREATED TO READ AS FOLLOWS:

Any child, fourteen (14) years of age or older, who is charged with a felony offense of which a necessary element for conviction is a homicide or a serious physical injury, or a felony offense under KRS Chapter 218A, shall not be subject to the jurisdiction of the juvenile session of the District Court but shall be handled in the same manner as an adult and shall be tried in the Circuit Court. Age may be considered as a mitigating factor in the sentencing phase of the proceedings.

Section 6. KRS 640.040 is amended to read as follows:

(1) No ***child***[~~youthful offender~~] who has been convicted of a capital offense who was under the age of sixteen (16) years at the time of the commission of the offense shall be sentenced to capital punishment. A ***child***[~~youthful offender~~] may be sentenced to capital punishment if he was sixteen (16) years of age or older at the time of the commission of the offense. A youthful offender convicted of a capital offense regardless of age may be sentenced to a term of imprisonment appropriate for one who has committed a Class A felony and may be sentenced to life imprisonment without benefit of parole for twenty-five (25) years.

(2) No youthful offender shall be subject to persistent felony offender sentencing under the provisions of KRS 532.080 for offenses committed before the age of eighteen (18) years.

(3) No youthful offender shall be subject to limitations on probation, parole, or conditional discharge as provided for in KRS 533.060.

(4) Any youthful offender convicted of a misdemeanor or any felony offense which would exempt him from KRS 635.020(2), (3), (4), (5), or (6) shall be disposed of by the Circuit Court in accordance with the provisions of KRS 635.060.

Calendar

HB 370, **HB 395**, **HB 297**, **HB 400**, **HB 361**, **HB 195**, **HB 223**, **HB 289**, **HB 353**, **HB 374**, **HB 407**, **HB 45**, **HB 229**, **HB 275** and **HB 92** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Orders of the Day

HB 299, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of the Committee Substitute to **HB 299**. Agreed.

Representative Long moved that **HB 299**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 90, Nays 0. (See February 9, 1994 roll call on **HB 299** - Appendix)

HB 299, by way of Committee Substitute, was passed and the title agreed to.

Representative Long moved that the vote by which **HB 299**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 2 to **HB 289**, by Representative Heleringer:

On page 1, line 1, by deleting everything after the enacting clause and inserting in lieu thereof the following:

"SECTION 1. A NEW SECTION OF KRS CHAPTER 600 IS CREATED TO READ AS FOLLOWS:

The religious convictions of the parents or guardian of a child notwithstanding, no minor child who is a resident of this Commonwealth shall be denied life-saving medical treatment."

Floor Amendment No. 3 to **HB 339**, by Representative Bowling:

On page 1, line 23, after the word "*Court*" by inserting the following: "*, except as provided in Section 12 of this Act*"; and

On page 3, line 22, after the word "*Court*" by inserting the following: "*, except as provided in Section 12 of this Act*"; and

On page 6, after line 24 but before line 25, by inserting the following language:

"SECTION 9. A NEW SECTION OF KRS CHAPTER 27A IS CREATED TO READ AS FOLLOWS:

(1) For each judicial district, the Chief Justice of the Commonwealth of Kentucky shall designate a nonprofit agency to operate and administer programs for the provision of legal services to indigent clients involved in civil matters within the judicial district.

(a) This agency shall be the nonprofit legal services organization designated as eligible to receive funds from the federal Legal Services Corporation for the provision of civil legal services to the indigent, if one exists. The nonprofit legal services organization shall receive supplemental funds provided by this section for each county in the district in which it provides service.

(b) At least twelve and one-half percent (12.5%) of any funds appropriated pursuant to subsection (1)(a) shall be used to promote increased participation by the private bar in the delivery of legal services to the indigent through pro bono efforts, which may include the operation of intake and referral systems; the provision of professional education regarding legal matters peculiar to the indigent; the provision of technical co-counseling assistance to private attorneys engaged in representing indigent clients in civil matters; and reimbursement of reasonable costs and expenses incurred by private attorneys in delivering pro bono legal assistance. Nothing in this subsection shall be construed as limiting the maximum amount of funds appropriated under this section which may be used for promotion of pro bono efforts by the private bar, where the local legal services organization's board of directors deems that an effective and efficient system of delivering legal assistance to the local indigent population would require the allocation of a sum in excess of twelve and one-half percent (12.5%) of the funds disbursed pursuant to this section. The local organization's board of directors shall annually review the appropriate allocation of funds from this section for the promotion of pro bono services by the private bar.

(c) If any county in the Commonwealth is not currently served by a nonprofit agency eligible to receive funds from the federal Legal Services Corporation, the Chief Justice shall designate a nonprofit agency to provide legal services to indigent clients in civil matters within that county.

(2) In designating an agency pursuant to subsection (1) of this section, the Chief Justice shall consult with the Chief Circuit Judge of the judicial district, the president of the local bar association within the county or the judicial district, and agencies providing legal services to indigent clients in civil matters within the judicial district. The designated agency may serve one (1) or more counties within the judicial district, and designation of a multicounty agency shall be undertaken if consultations indicate that it would promote efficient use of funds. To receive designation, an agency shall certify to the Chief Justice that:

(a) It is incorporated under the laws of the Commonwealth of Kentucky;

(b) It is an organization within the meaning of Section 501 (c) of the Internal Revenue Code of 1986; and

(c) All persons participating in delivery of legal services to agency clients provide the service without any fee to the client for these services.

SECTION 10. A NEW SECTION OF KRS CHAPTER 27A IS CREATED TO READ AS FOLLOWS:

The agency designated pursuant to Section 9 of this Act shall have the following duties in carrying out the provisions of Sections 9 to 13 of this Act:

(1) To develop, operate, and administer programs within the judicial district or districts served to provide free legal services to indigent clients involved in civil matters within the jurisdiction of the courts or the judicial district or districts.

(2) To report annually to the Supreme Court of Kentucky, through the Administrative Office of the Courts, on its activities conducted pursuant to Sections 9 to 13 of this Act.

(3) To maintain an appropriate accounting of all funds received pursuant to Sections 9 to 13 of this Act, and to prepare and submit to the Administrative Office of the Courts an annual statement accounting for the use of the funds.

(4) To refund annually all unused or uncommitted funds as provided in subsection (4) of Section 12 of this Act.

SECTION 11. A NEW SECTION OF KRS CHAPTER 27A IS CREATED TO READ AS FOLLOWS:

All designations made by the Chief Justice pursuant to Sections 9 to 13 of this Act shall be forwarded to each circuit clerk for the judicial district or districts which shall be served by the agency designated.

SECTION 12. A NEW SECTION OF KRS CHAPTER 27A IS CREATED TO READ AS FOLLOWS:

(1) Upon receipt of notice of designation of an agency by the circuit clerk, there shall be added to the filing fee in all civil actions filed in Circuit Court the sum of ten dollars ($10.00), and to all civil actions filed in District Court, the sum of five dollars ($5.00). No fee shall be charged for actions filed in neglect and dependency cases or in the small claims division of District Court. This fee shall be designated as the Access to Justice Fee, and shall be charged at the time of filing of the first papers in the action.

(2) All fees collected pursuant to subsection (1) of this section during each month shall be placed in the general fund of the State Treasury, and appropriated in accordance with subsection (3) of this section. The clerks shall make a full report with the payment, and receive a receipt for all payments.

(3) Fees collected shall be distributed monthly to the designated agencies on a pro rata basis, utilizing an allocation formula that distributes funds for each judicial district served, according to the proportion of the number of residents of that judicial district whose incomes are less than the official United States federal poverty guidelines, based on latest published United States census data, as a percentage of the total number of these residents in the Commonwealth of Kentucky. These funds shall be used by the designated agency to carry out the duties prescribed in Section 10 of this Act.

(4) All unused or uncommitted funds received by a designated agency during its fiscal year shall be returned by the designated agency to the State Treasury, to be redistributed in the following calendar quarter to operating designated agencies in accordance with administrative regulations promulgated by the Administrative Office of the Courts.

SECTION 13. A NEW SECTION OF KRS CHAPTER 27A IS CREATED TO READ AS FOLLOWS:

Any fees awarded as a result of legal services provided pursuant to provisions of Sections 9 to 13 of this Act shall be payable to the designated agency through which the services were provided and shall be subject to the provisions of subsection (4) of Section 12 of this Act. If fees are recovered by an attorney providing volunteer or pro bono legal services, the attorney may receive reimbursement from the designated agency for transcription and photocopy costs, long distance phone expenses, reasonable travel costs, and similar direct, out-of-pocket expenses."; and

By renumbering subsequent sections to conform; and

On page 7, line 7, by deleting the number "9" and inserting "8 and Section 14".

Floor Title Amendment to **HB 339**, by Representative Bowling:

By amending the title to read: "AN ACT relating to the judicial system and declaring an emergency."

Orders of the Day (Continued)

HB 365, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Ford moved the adoption of Floor Amendment No. 1 to **HB 365**. Agreed.

Representative Ford moved that **HB 365**, as amended, be passed.

On the roll call the vote was: Yeas 91, Nays 0. (See February 9, 1994 roll call on **HB 365** - Appendix)

HB 365, as amended, was passed and the title agreed to.

Representative Ford moved that the vote by which **HB 365**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 269 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Richards moved that **HB 269** be passed.

On the roll call the vote was: Yeas 90, Nays 0. (See February 9 , 1994 roll call on **HB 269** - Appendix)

HB 269 was passed and the title agreed to.

Representative Richards moved that the vote by which **HB 269** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 107, with Committee Substitute and Committee Title Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of the Committee Substitute to **HB 107**. Agreed.

Representative Long moved that **HB 107**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 53, Nays 30. (See February 9, 1994 roll call on **HB 107** - Appendix)

HB 107, by way of Committee Substitute, was passed.

Representative Long moved the adoption of the Committee Title Amendment to **HB 107**. Agreed; and the title was agreed to.

Representative Long moved that the vote by which **HB 107**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 169, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Little moved the adoption of the Committee Substitute to **HB 169**. Agreed.

Representative Little moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 169**. Agreed.

Representative Bowling moved the adoption of Floor Amendment No. 2 to the Committee Substitute to **HB 169**. Agreed.

Representative Little moved that **HB 169**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 64, Nays 19. (See February 9, 1994 roll call on **HB 169** - Appendix)

HB 169, by way of Committee Substitute as amended, was passed and the title agreed to.

Representative Little moved that the vote by which **HB 169**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 73, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Wayne moved the adoption of the Committee Substitute to **HB 73**. Agreed.

Representative Wayne moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 73**. Agreed.

Representative Wayne moved that **HB 73**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 72, Nays 21. (See February 9, 1994 roll call on **HB 73** - Appendix)

HB 73, by way of Committee Substitute as amended, was passed and the title agreed to.

Representative Wayne moved that the vote by which **HB 73**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 136 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative L. Clark moved that **HB 136** be passed.

On the roll call the vote was: Yeas 93, Nays 0. (See February 9 , 1994 roll call on **HB 136** - Appendix)

HB 136 was passed and the title agreed to.

Representative L. Clark moved that the vote by which **HB 136** was passed be reconsidered and said motion be placed on the table. Agreed.

HR 15, with Committee Substitute and Committee Title Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Riggs moved the adoption of the Committee Substitute to **HR 15**. Agreed.

Representative Riggs moved that **HR 15**, by way of Committee Substitute, be adopted.

HR 15, by way of Committee Substitute, was adopted.

Representative Riggs moved the adoption of the Committee Title Amendment to **HR 15**. Agreed; and the title was agreed to.

HB 277, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Morris moved the adoption of Committee Amendment No. 1 to **HB 277**. Agreed.

Representative Lewis moved that **HB 277**, as amended, be passed.

On the roll call the vote was: Yeas 87, Nays 6. (See February 9, 1994 roll call on **HB 277** - Appendix)

HB 277, as amended, was passed and the title agreed to.

Representative Stumbo moved that the vote by which **HB 277**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 295 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lear moved that **HB 295** be passed.

On the roll call the vote was: Yeas 90, Nays 0. (See February 9 , 1994 roll call on **HB 295** - Appendix)

HB 295 was passed and the title agreed to.

Representative Lear moved that the vote by which **HB 295** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 315, with Committee Amendments and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Donnermeyer moved the adoption of Committee Amendment No. 1 to **HB 315**. Agreed.

Representative Donnermeyer moved the adoption of Committee Amendment No. 2 to **HB 315**. Agreed.

Representative Donnermeyer moved the adoption of Floor Amendment No. 1 to **HB 315**. Agreed.

Representative Donnermeyer moved that **HB 315**, as amended, be passed.

On the roll call the vote was: Yeas 89, Nays 0. (See February 9, 1994 roll call on **HB 315** - Appendix)

HB 315, as amended, was passed and the title agreed to.

Representative Donnermeyer moved that the vote by which **HB 315**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 325 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Kerr moved that **HB 325** be passed.

On the roll call the vote was: Yeas 91, Nays 0. (See February 9 , 1994 roll call on **HB 325** - Appendix)

HB 325 was passed and the title agreed to.

Representative Kerr moved that the vote by which **HB 325** was passed be reconsidered and said motion be placed on the table. Agreed.

HCR 19 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Graham moved that **HCR 19** be adopted.

On the roll call the vote was: Yeas 93, Nays 0. (See February 9 , 1994 roll call on **HCR 19** - Appendix)

HCR 19 was adopted.

Representative Graham moved that the vote by which **HCR 19** was adopted be reconsidered and said motion be placed on the table. Agreed.

SB 44 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bowling moved that **SB 44** be passed.

On the roll call the vote was: Yeas 95, Nays 0. (See February 9 , 1994 roll call on **SB 44** - Appendix)

SB 44 was passed and the title agreed to.

Representative Bowling moved that the vote by which **SB 44** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 49, with Senate Committee Amendment and Senate Committee Title Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Committee Amendment No. 1 to **HB 49** is as follows:

On page 1, line 19, after "July 1," by deleting the brackets and strikethroughs and new language, and by placing brackets around and striking through "July 1, 1992" and inserting in lieu thereof "***June 30, 1994***";

On page 3, line 7, after "after", by deleting the brackets, strikethroughs, and new language.

On page 4, after line 15, by adding the following:

"Section 4. As it is necessary that persons appointed to the office of superintendent be treated similarly, whether relocating from outside the state or residing within the state, and as the superintendent's term of office begins on July 1, an emergency is declared to exist, and this Act shall become effective upon its passage and approval of the Governor."

The Senate Committee Amendment No. 2 Title to **HB 49** is as follows:

By amending the title to read as follows:

"AN ACT relating to school employees and declaring an emergency."

Representative Curd moved that the House concur in Senate Committee Amendment No. 1 to **HB 49**. Agreed.

Representative Curd moved that the House concur in Senate Committee Amendment No. 2 Title to **HB 49**. Agreed.

Representative Curd moved that **HB 49**, as amended by the Senate, be passed.

On the roll call the vote was: Yeas 94, Nays 0. (See February 9, 1994 roll call on **HB 49** - Appendix)

HB 49, as amended by the Senate, was passed and the title agreed to.

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 3, HB 72, HB 81, HB 103, HB 106, HB 121,** and **HB 122** have been examined and found correctly enrolled . Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -3:04 p.m.)

Motions, Petitions and Communications

Representative Stumbo moved that **HB 65** be referred to the Committee on Education. Agreed.

Representative Stumbo moved that **HB 433** and **HB 450** be reassigned to the Committee on Counties and Special Districts. Agreed.

Representative Stumbo moved that the three day posting requirement be waived on **SB 11**. Agreed.

Representative Stumbo moved that the rules be suspended for the Introduction of Bills and Resolutions and Committee Reports. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 508, by Representative Gray: AN ACT relating to city licenses.

HB 509, by Representative Little: AN ACT relating to state personnel.

HB 510, by Representatives Collins, McElroy, Nelson and Mason: AN ACT relating to insurance.

HB 511, by Representative Lear: AN ACT relating to financing of development generally.

HB 512, by Representative Callahan: AN ACT relating to riverport authorities.

HB 513, by Representative Geveden: AN ACT relating to property valuation administration.

HB 514, by Representatives Crenshaw, Damron, Hatcher and Mason: AN ACT relating to consumer choice among psychologists and social workers through payment of insurance benefits where mental health services are covered.

HB 515, by Representative Heleringer: AN ACT relating to involuntary hospitalization.

HB 516, by Representative Gray: AN ACT relating to licenses.

HB 517, by Representatives Barrows and Hancock: AN ACT relating to retirement.

HB 518, by Representatives Donnermeyer, Callahan, Bentley, Collins, Adkins, Brown and Maggard: AN ACT relating to the Firefighters Foundation Program Fund.

HB 519, by Representatives Graham, Adams, Farrow and Coleman: AN ACT relating to tobacco plants, and declaring an emergency.

HB 520, by Representatives Palumbo and Marzian: AN ACT relating to crimes and punishments.

HB 521, by Representative Barrows: AN ACT relating to state employees.

HB 522, by Representative Barrows: AN ACT relating to the state employment system.

HB 523, by Representative Little: AN ACT relating to oil and gas.

HR 45, by Representatives Richards, Clarke, Stumbo, Rapier and L. Clark: A RESOLUTION relating to committees of the General Assembly.

HR 46, by Representatives Clarke, Stumbo, L. Clark, Rapier and Richards: A RESOLUTION amending the Rules of the House of Representatives, relating to analysis bills.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills have been posted for Committee consideration:

Natural Resources and Environment: **HB 402, HB 481**

Economic Development: **HB 483**

Banking and Insurance: **SB 78**

Motions, Petitions and Communications (Continued)

Representative Keith moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Keith moved that he be recorded as voting "nay" on **HB 215, HB 7, HB 13** and **HB 31**. Agreed.

Representative Keith moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Keith moved that he be recorded as voting "yea" on **HB 218, HB 294, HB 243, HB 348, HB 347, HB 36, HB 85, HB 113, HB 128, HB 157, HB 173, HB 176, HB 183, HB 191, HB 208** and **HB 6**. Agreed.

Representative Crenshaw moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Crenshaw moved that he be recorded as voting "yea" on **HCR 19**. Agreed.

Representative French moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative French moved that he be recorded as voting "nay" on **HB 107**. Agreed.

Representative Altman moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Altman moved that he be recorded as voting "yea" on **HB 107**. Agreed.

Representative Trapp moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Trapp moved that he be recorded as voting "yea" on **HB 277**. Agreed.

Representative Callahan moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Callahan moved that he be recorded as voting "yea" on **HB 269** and **HB 365**. Agreed.

Representative Barrows moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Barrows moved that he be recorded as voting "yea" on **HB 365**. Agreed.

Representative Ackerson moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Ackerson moved that he be recorded as voting "nay" on **HB 107**. Agreed.

The following members filed requests to have their names added as co-sponsors to Bills: **HB 9, HB 204, HB 205, HB 224**, Representative Callahan; **HB 96, HB 127, HB 368**, Representative Todd; **HB 204, HB 205, HB 224**, Representative Simpson; **HB 276**, Representatives Buis, Cave; **HB 517**, Representative Lee; **HB 518**, Representative Maricle.

Announcements

The Clerk announced the following meetings:

Labor and Industry, 9:00 a.m., February 10, 1994, Room 125

Committee on Rules, upon adjournment, Speaker's Office

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Thursday, February 10, 1994.

On the roll call the vote was **Yeas 85**--Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bowling, Brown, Bruce, Bryant, Buis, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, French, Gedling, Geveden, Graham, Gray, Hampton, Hancock, Harper, Jensen, Johnson, Keith, Kerr, Lear, Lee, Lindsay, Little, Long, Lyne, Maggard, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Riggs, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, R. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Zimmerman. **Nays 3**--Heleringer, LeMaster, Lile.

The motion to adjourn was adopted.

THURSDAY, FEBRUARY 10, 1994

TWENTY-FIFTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend Charles W. Elliott, Kings Solomon Baptist Church, Louisville.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representative Ackerson.

Representative McElroy moved that the absent member be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of February 9, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Messages

Announcing passage of **SB 137, HB 238** and **HJR 5**. (Time: 2:05 p.m.)

Floor Amendments

Floor Amendment No. 1 to the Committee Substitute to **HB 206**, by Representative Ford:

On page 4, line 3, after the semicolon "***;***", by inserting the word "***and***";
on page 4, line 5, after the word "***event***", by deleting the following "***; and***" and by inserting in lieu thereof a period "***.***";
on page 4, by deleting lines 6 through 10 in their entirety; and
on page 28, line 24, after the word "***gaming***", by inserting the phrase "***, except casino-type games***".

Introduction of Bills and Resolutions

HB 524, by Representatives Little, Cyrus, Bentley, Collins, Worthington, Gee, Graham, Adkins, Nelson and Ballard: AN ACT relating to motor vehicle insurance.

HB 525, by Representatives Bondurant and Callahan: AN ACT relating to city elections.

HB 526, by Representative Bentley: AN ACT relating to mine electricians and electricity in underground and surface mines.

HB 527, by Representative Bentley: AN ACT relating to reports of a mine owner, lessee, or superintendent.

HB 528, by Representative Bentley: AN ACT relating to the safety rights of miners.

HB 529, by Representative Bentley: AN ACT relating to training of surface coal miners.

HB 530, by Representatives Bryant, Gedling, Lyne, Mullinix, Buis, Napier, Burch and McElroy: AN ACT proposing an amendment to Sections 30 and 31 of the Constitution of Kentucky relating to legislative terms.

HB 531, by Representative Nesler: AN ACT relating to state employees.

HCR 47, by Representative Bondurant: A CONCURRENT RESOLUTION directing a study of the statutory differences which exists between Kentucky's classes of cities.

Representative Hatcher moved that the rules be suspended for the introduction of guests. Agreed.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Agriculture and Small Business: **HB 519**

Appropriations and Revenue: **SB 22, HB 513, HB 518**

Banking and Insurance: **HB 510, HB 514**

Business Organizations and Professions: **HB 516**

Cities: **HB 504, HB 505, HB 508**

Counties and Special Districts: **SB 87, SB 140**

Economic Development: **HB 511, HB 512**

Education: **HCR 44, HB 506**

Health and Welfare: **SB 86**

Judiciary: **SB 89, HB 515, HB 520**

Natural Resources and Environment: **HB 503**

State Government: **SB 74, SB 75, SB 119, SB 128, HCR 33, HCR 34, HCR 35, HCR 36, HCR 37, HCR 38, HCR 39, HCR 40, HCR 41, HCR 42, HCR 43, HR 45, HR 46, HB 509, HB 517, HB 521, HB 522**

Tourism Development and Energy: **HB 502, HB 523**

Transportation: **HB 507**

Report of Committees

The Committee on Rules reported that **HB 322, HB 45, HB 92, HB 195, HB 275, HB 289, HB 297, HB 370, HB 395, HB 400** and **HB 407** have been posted for passage in the Orders of the Day for February 11, 1994.

The Committee on Rules reported that the following Bills have been recommitted:

Appropriations and Revenue: **HB 223, HB 353, HB 374**

Report of Committees

The Committee on Judiciary reported **HB 204** with Committee Title Amendment and Committee Substitute attached thereto, **HB 232,** with Committee Substitute attached thereto, and **HB 272** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 204, AN ACT relating to the Kentucky Unified Juvenile Code.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 610.320 is amended to read as follows:

(1) A special record book shall be kept by the court for all cases, to be known as the "juvenile record," and the docket or calendar of such cases shall be called the "juvenile docket."

(2) No probation officer, nor employee of a probation officer, shall, without the consent of the District Judge sitting in juvenile session divulge or communicate to any persons other than the court, an officer of the court interested in the case, a member of the advisory board of the court, or a representative of the cabinet, any information obtained pursuant to the discharge of his duties, nor shall any record of the action of the probation officer be made public except by leave of the District Judge; provided, that nothing in this subsection shall prohibit the probation officer from divulging or communicating such information to the court, to his colleagues or superiors in his own department, or to another probation officer having a direct interest in the record or social history of the child.

(3) All law enforcement records regarding children who have not reached their eighteenth birthday shall not be opened to scrutiny by the public ***except law enforcement and court records in juvenile delinquency proceedings concerning a child who is adjudicated a juvenile delinquent for the commission of an offense that would constitute a felony if the juvenile were an adult, or any offense involving a deadly weapon, or an offense wherein a deadly weapon is used or displayed or a child who is charged with the commission of an offense specified in this subsection***. ***Otherwise*** ~~[However]~~, ***the*** ~~[such]~~ law enforcement records shall be made available to the child, family, guardian or legal

representative of the child involved. *The* ~~[Such]~~ records shall also be made available to the court, probation officers, or representatives of the cabinet.

(4) This section shall not relieve the probation officer or peace officer from divulging such facts as a witness in a trial or hearing involving any cases falling under KRS Chapters 600 to 645 or the production of *juvenile* ~~[such]~~ records for use in such trial or proceedings.

The Committee Title Amendment to **HB 204** is as follows:

The Title, to delete the title appearing thereon to insert in lieu thereof:

"AN ACT relating to criminal matters.".

The Committee Substitute to **HB 204** is as follows:

HB 204, AN ACT relating to the Kentucky Unified Juvenile Code.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) If a student has been adjudicated guilty of an offense specified in this subsection or has been expelled from school for an offense specified in this subsection, prior to a student's admission to any school, the parent, guardian, or other person or agency responsible for a student shall provide to the school a sworn statement or affirmation indicating on a form provided by the State Board for Elementary and Secondary Education that the student has been expelled from school attendance at a public or private school in this state or another state for homicide, felony assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs.

(2) If any student who has been expelled from attendance at a public or private school in this state for homicide, felony assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs requests transfer of his records, those records shall reflect the charges and final disposition of the expulsion proceedings.

(3) If any student who is subject to an expulsion proceeding at a public or private school in this state for homicide, felony assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs requests transfer of his records to a new school, the records shall not be transferred until that proceeding has been terminated and shall reflect the charges and any final disposition of the expulsion proceedings.

(4) A person who is an administrator, teacher, or other employee of a public or private school shall promptly make a report to the local police department, sheriff, or Kentucky State Police, by telephone or otherwise, if:

(a) The person knows or has reasonable cause to believe that conduct has occurred which constitutes:

1. A misdemeanor or violation offense under the laws of this Commonwealth and relates to:

a. Carrying, possession, or use of a deadly weapon; or

b. Use, possession, or sale of controlled substances; or

2. Any felony offense under the laws of this Commonwealth; and

(b) The conduct occurred on the school premises or within one thousand (1,000) feet of school premises on a school bus, or at a school sponsored or sanctioned event.

(5) A person who is an administrator, teacher, supervisor, or other employee of a public or private school who receives information from a student or other person of conduct which is required to be reported under subsection (1) of this section shall report the conduct in the same manner as required by that subsection.

(6) Nothing in this section shall be construed as to require self-incrimination.

(7) A person acting upon reasonable cause in the making of a report under this section in good faith shall be immune from any civil or criminal liability that might otherwise be incurred or imposed from:

(a) Making the report; and

(b) Participating in any judicial proceeding that resulted from the report.

Section 2. KRS 158.990 is amended to read as follows:

(1) Any member of a school board who votes to permit entrance to a school of any child not eligible therefor under the provisions of KRS 158.030 shall be fined not less than five dollars ($5) nor more than fifty dollars ($50).

(2) Any person required to report under Section 1 of this Act who fails to report promptly, or who refuses to make a report is guilty of a Class A misdemeanor.

SECTION 3. A NEW SECTION OF KRS CHAPTER 610 IS CREATED TO READ AS FOLLOWS:

(1) When a child is adjudicated guilty of an offense which classifies him as a youthful offender under KRS Chapter 640,

the court in which the matter was tried shall notify the principal of any public elementary or secondary school which the child attends of the adjudication and the nature and circumstances of the case.

(2) When a child is adjudicated guilty of an offense which would be a felony if committed by an adult, but which would not classify him as a youthful offender under KRS Chapter 640, the court in which the matter was tried shall notify the principal of any public elementary or secondary school which the child attends of the adjudication and the nature and circumstances of the case.

(3) When a child is adjudicated guilty of an offense which would be a misdemeanor if committed by an adult and the offense involved an assault, a controlled substances offense, criminal damage to property, terrorist threatening, or the possession, carrying or use of a deadly weapon, the court in which the matter was tried shall notify the principal of any public or private elementary or secondary school which the child attends of the adjudication and the nature and circumstances of the case.

(4) In any case listed above, the principal of a public elementary or secondary school or a person designated in writing by the principal, may view the juvenile and police records in the case, except for the name or other identification of the complainant, if the complainant is not a parent, and the name or any identification of any confidential informant.

(5) Records disclosed pursuant to this section shall be limited to records of that student's criminal activity covered by this section, shall be subject to the provisions of KRS 610.320 and 610.340, and shall not be disclosed except on a need-to-know basis to law enforcement officers, licensed social workers, mental health care professionals, probation officers, and public elementary and secondary school administrative, teaching, and counseling personnel.

Section 4. KRS 610.320 is amended to read as follows:

(1) A special record book shall be kept by the court for all cases, to be known as the "juvenile record," and the docket or calendar of such cases shall be called the "juvenile docket."

(2) No probation officer, nor employee of a probation officer, shall, without the consent of the District Judge sitting in juvenile session divulge or communicate to any persons other than the court, an officer of the court interested in the case, a member of the advisory board of the court, or a representative of the cabinet, any information obtained pursuant to the discharge of his duties, nor shall any record of the action of the probation officer be made public except by leave of the District Judge; provided, that nothing in this subsection shall prohibit the probation officer from divulging or communicating such information to the court, to his colleagues or superiors in his own department, or to another probation officer having a direct interest in the record or social history of the child.

(3) All law enforcement ***and court*** records regarding children who have not reached their eighteenth birthday shall not be opened to scrutiny by the public***, except court records, limited to the order of the adjudication, in juvenile delinquency proceedings concerning a child who is adjudicated a juvenile delinquent for the commission of an offense that would constitute a felony if the juvenile were an adult, or any offense involving a deadly weapon, or an offense wherein a deadly weapon is used or displayed***. ***Otherwise, the*** ~~[However, such]~~ law enforcement records shall be made available to the child, family, guardian***,*** or legal representative of the child involved. ***The*** ~~[Such]~~ Records shall also be made available to the court, probation officers, or representatives of the cabinet. ***Records, limited to the child's criminal activity covered by Section 3 of this Act, shall also be made available on a need-to-know basis to law enforcement officers, licensed social workers, mental health care professionals, probation officers, and public elementary and secondary school administrative, teaching and counseling personnel, subject to the provisions of KRS 610.340 and Section 3 of this Act.***

(4) This section shall not relieve the probation officer or peace officer from divulging ~~[such]~~ facts as a witness in a trial or hearing involving any cases falling under KRS Chapters 600 to 645***,*** or the production of ***juvenile*** ~~[such]~~ records for use in ***the*** ~~[such]~~ trial or proceedings.

Section 5. KRS 610.330 is amended to read as follows:

(1) Any child who has been adjudicated as coming within the purview of KRS Chapters 630, 635, or 645, but not KRS Chapters 620 or 640, may petition the court for the expungement of his juvenile court record. He shall be informed of such right at the time of adjudication. The court on its own motion, or on the motion of a probation officer of the court, a representative of the cabinet or any other interested person, may initiate expungement proceedings concerning the record of any child who has been under the jurisdiction of the court. ***The*** ~~[Such]~~ petition shall be filed or ***the*** ~~[such]~~ court order entered no sooner than two (2) years after the date of termination of the court's jurisdiction over the person, or two (2) years after his unconditional release from commitment to the Cabinet for Human Resources or a public or private agency, except that the two (2) year period may be waived if the court finds that such extraordinary circumstances exist with regard to the petitioner as to make the waiver advisable.

(2) Upon the filing of a petition or entering of a court order, the court shall set a date for a hearing and shall notify the county attorney and anyone else whom the court or the child, his parents, relatives, guardian, or custodian has reason to believe may have relevant information related to the expungement of the record.

(3) The court shall order sealed all records in the petitioner's case in the custody of the court and any ***of these*** such records in

the custody of any other agency or official, including law enforcement ***and public elementary and secondary school*** records, if at the hearing the court finds that:

(a) Since the termination of the court's jurisdiction or his unconditional release from commitment to the cabinet or a public or private agency, the person whose record is in question has not been convicted of a felony, and has not been adjudicated under KRS 610.010(1)(a); and

(b) No proceeding concerning a felony and no petition under KRS 610.010(1)(a) is pending or being instituted against him.

(4) Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred and all index references shall be deleted and the person and court may properly reply that no record exists with respect to such person upon any inquiry in the matter.

(5) Copies of the order shall be sent to each agency or official named therein.

(6) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of such records, and only to those persons named in such petition.

Section 6. KRS 610.340 is amended to read as follows:

(1) Unless a specific provision of KRS Chapters 600 to 645 specifies otherwise, all juvenile court records of any nature generated pursuant to KRS Chapters 600 to 645 by any agency or instrumentality, public or private, shall be deemed to be confidential and shall not be disclosed except to the child or parent unless ordered by the court for good cause.

(2) The provisions of this section shall not apply to public officers or employees engaged in the prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes provided that the inspection of the records and the disclosure of the information contained therein is limited to that required in the investigation and the prosecution of the case.

(3) The provisions of this section shall not apply to employees of the cabinet or its designees responsible for any services under KRS Chapters 600 to 645 or to attorneys for parties involved in actions relating to KRS Chapters 600 to 645 or other prosecutions authorized by the Kentucky Revised Statutes provided that the inspection of the records and the disclosure of the information contained therein is limited to that required in the investigation and the representation of the client in the case.

(4) ***The provisions of this section shall not apply to records disclosed pursuant to Section 4 of this Act or to law enforcement officers, licensed social workers, mental health care professionals, probation officers, and public elementary and secondary school administrative, instructional, and counseling personnel entitled to have juvenile records under Section 3 of this Act, if the possession and use of the records is in compliance with the provisions of Section 3 of this Act and this section.***

(5) No person shall disclose any record or any information contained therein except as permitted by this section or other specific section of KRS Chapters 600 to 645, or except as permitted by specific order of the court.

(6)[~~(5)~~] No person authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records to which he is not entitled or for purposes for which he is not permitted to obtain them pursuant to KRS Chapters 600 to 645.

(7)[~~(6)~~] No person not authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records which are made confidential pursuant to KRS Chapters 600 to 645 except upon proper motion to a court of competent jurisdiction.

(8)[~~(7)~~] No person shall destroy or attempt to destroy any record required to be kept pursuant to KRS Chapters 600 to 645 unless the destruction is permitted pursuant to KRS Chapters 600 to 645 and is authorized by the court upon proper motion and good cause for the destruction being shown.

(9)[~~(8)~~] As used in this section the term "KRS Chapters 600 to 645," includes any ***administrative*** regulations which are lawfully promulgated pursuant to KRS Chapters 600 to 645.

HB 232, AN ACT relating to health matters.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 438 IS CREATED TO READ AS FOLLOWS:

(1) When a public servant, as defined in KRS 521.010, is exposed to the blood or body fluids of a criminal defendant, or the blood or body fluids of a criminal defendant have come into contact with the skin or unprotected clothing of a public servant during any incident in which the public servant and the criminal defendant are involved, the criminal defendant shall be ordered to submit to testing of the blood for blood-borne pathogens or diseases.

(2) The written results of the testing shall be made available to each public servant coming within the purview of subsection (1). However, the results shall not be public records and shall be disclosed to others only on a need-to-know basis.

(3) If a criminal defendant fails or refuses to be tested as ordered, he is guilty of a Class A misdemeanor. A circuit or district judge shall compel the criminal defendant to undergo the testing required herein if he fails or refuses to do so. Undergoing compulsory testing after a failure or refusal to be tested shall not relieve the criminal defendant of the liability imposed by this subsection.

(4) The costs of the testing shall be borne by the criminal defendant unless he is determined unable to pay for the test by a court of competent jurisdiction, in which case the Commonwealth shall pay for the testing.

The Committee Substitute to **HB 232** is as follows:

HB 232, AN ACT relating to health matters.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 438 IS CREATED TO READ AS FOLLOWS:

(1) When a public servant, as defined in KRS 521.010, is exposed to the blood or body fluids of a criminal defendant, inmate, parolee, or probationer or the blood or body fluids of a criminal defendant, inmate, parolee, or probationer have come into contact with the skin or unprotected clothing of a public servant during any incident in which the public servant and the criminal defendant, inmate, parolee, or probationer are involved, the criminal defendant, inmate, parolee, or probationer shall be ordered to submit to testing of the blood for human immunodeficiency virus (HIV).

(2) The written results of the testing shall be made available to each public servant, criminal defendant, inmate, parolee, or probationer coming within the purview of subsection (1). However, the results shall not be public records and shall be disclosed to others only on a need-to-know basis.

(3) If a criminal defendant, inmate, parolee, or probationer fails or refuses to be tested as ordered, he may be held in criminal contempt. A circuit or district judge shall compel the criminal defendant, inmate, parolee, or probationer to undergo the testing required herein if he fails or refuses to do so. Undergoing compulsory testing after a failure or refusal to be tested shall not relieve the criminal defendant, inmate, parolee, or probationer of the liability imposed by this subsection.

(4) The costs of the testing shall be borne by the criminal defendant, inmate, parolee, or probationer unless he is determined unable to pay for the test by a court of competent jurisdiction for criminal defendants and probationers and by the Department of Corrections pursuant to their indigency standards for inmates and parolees, in which case the Commonwealth shall pay for the testing.

Section 2. KRS 214.625 is amended to read as follows:

(1) The General Assembly finds that the use of tests designed to reveal a condition indicative of human immunodeficiency virus (HIV) infection can be a valuable tool in protecting the public health. The General Assembly finds that despite current scientific knowledge that zidovudine (AZT) prolongs the lives of acquired immunodeficiency syndrome victims, and may also be effective when introduced in the early stages of human immunodeficiency virus infection, many members of the public are deterred from seeking testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent. The General Assembly finds that the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to detect human immunodeficiency virus infection.

(2) A person who has signed a general consent form for the performance of medical procedures and tests, is not required to also sign or be presented with a specific consent form relating to medical procedures or tests to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any other causative agent of acquired immunodeficiency syndrome that will be performed on the person during the time in which the general consent form is in effect. However, a general consent form shall instruct the patient that as part of the medical procedures or tests, the patient may be tested for human immunodeficiency virus infection, hepatitis, or any other blood-borne infectious disease if a doctor orders the test for diagnostic purposes. Except as otherwise provided in subsection (5)(c) of this section, the results of a test or procedure to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any probable causative agent of acquired immunodeficiency syndrome performed under the authorization of a general consent form shall be used only for diagnostic or other purposes directly related to medical treatment.

(3) In any emergency situation where informed consent of the patient cannot reasonably be obtained before providing health care services, there is no requirement that a health care provider obtain a previous informed consent.

(4) The physician who orders the test pursuant to subsections (1) and (2) of this section, or the attending physician, shall be responsible for informing the patient of the results of the test if the test results are positive for human immunodeficiency virus infection. If the tests are positive, the physician shall also be responsible for either:

(a) Providing information and counseling to the patient concerning his infection or diagnosis and the known medical implications of such status or condition; or

(b) Referring the patient to another appropriate professional or health care facility for the information and counseling.

(5) (a) No person in this state shall perform a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in subsections (2) and (3) of this section.

(b) No test result shall be determined as positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted.

(c) No person, who has obtained or has knowledge of a test result pursuant to this section, shall disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to the following persons:

1. The subject of the test or the subject's legally authorized representative;
2. Any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;
3. A physician, nurse, or other health care personnel who has a legitimate need to know the test result in order to provide for his protection and to provide for the patient's health and welfare;
4. Health care providers consulting between themselves or with health care facilities to determine diagnosis and treatment;
5. The cabinet, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law;
6. A health facility or health care provider which procures, processes, distributes, or uses:
    a. A human body part from a deceased person, with respect to medical information regarding that person; or
    b. Semen provided prior to the effective date of this section for the purpose of artificial insemination;
7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews;
8. Authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information;
9. ***A parent, foster parent, or legal guardian of a minor; a crime victim; or a person specified in Section 1 of this Act.***

10. A person allowed access by a court order which is issued in compliance with the following provisions:
    a. No court of this state shall issue an order to permit access to a test for human immunodeficiency virus performed in a medical or public health setting to any person not authorized by this section or by KRS 214.420. A court may order an individual to be tested for human immunodeficiency virus only if the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for testing and disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human immunodeficiency virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records;
    b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court;
    c. Before granting any order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he is not already a party;
    d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice;
    e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

No person to whom the results of a test have been disclosed shall disclose the test results to another person except as authorized by this subsection. When disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied by oral notice and followed by a written notice within ten (10) days.

(6) (a) The Cabinet for Human Resources shall establish a network of voluntary human immunodeficiency virus testing programs in every county in the state. These programs shall be conducted in each public health department established under the provisions of KRS Chapter 211. Additional programs may be contracted to other private providers to the extent that finances permit and local circumstances dictate;

(b) Each public health department shall have the ability to provide counseling and testing for the human immunodeficiency virus to each patient who receives services and shall offer the testing on a voluntary basis to each patient who requests the test;

(c) Each public health department shall provide a program of counseling and testing for human immunodeficiency virus infection, on an anonymous or confidential basis, dependent on the patient's desire. The cabinet shall continue to provide for anonymous testing and counseling;

(d) The result of a serologic test conducted under the auspices of the cabinet shall not be used to determine if a person may be insured for disability, health, or life insurance or to screen or determine suitability for, or to discharge a person from, employment. Any person who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.

(7) No public health department and no other person in this state shall conduct or hold themselves out to the public as conducting a testing program for acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus status without first registering with the cabinet, complying with all other applicable provisions of state law, and meeting the following requirements:

(a) The program shall be directed by a person who has completed an educational course approved by the cabinet in the counseling of persons with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus infection;

(b) The program shall have all medical care supervised by a physician licensed under the provisions of KRS Chapter 311;

(c) The program shall have all laboratory procedures performed in a laboratory licensed under the provisions of KRS Chapter 333;

(d) Informed consent shall be required prior to testing. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses, and limitations and the meaning of its results;

(e) The program, unless it is a blood donor center, shall provide pretest counseling on the meaning of a test for human immunodeficiency virus, including medical indications for the test; the possibility of false positive or false negative results; the potential need for confirmatory testing; the potential social, medical, and economic consequences of a positive test result; and the need to eliminate high-risk behavior;

(f) The program shall provide supplemental corroborative testing on all positive test results before the results of any positive test is provided to the patient;

(g) The program shall provide post-test counseling, in person, on the meaning of the test results; the possible need for additional testing; the social medical, and economic consequences of a positive test result; and the need to eliminate behavior which might spread the disease to others;

(h) Each person providing post-test counseling to a patient with a positive test result shall receive specialized training, to be specified by regulation of the cabinet, about the special needs of persons with positive results, including recognition of possible suicidal behavior, and shall refer the patient for further health and social services as appropriate;

(i) When services are provided for a charge during pretest counseling, testing, supplemental testing, and post-test counseling, the program shall provide a complete list of all charges to the patient and the cabinet;

(j) Nothing in this subsection shall be construed to require a facility licensed under KRS Chapter 333 or a person licensed under the provisions of KRS Chapters 311, 312 or 313 to register with the cabinet if he does not advertise or hold himself out to the public as conducting testing programs for human immunodeficiency virus infection or specializing in such testing.

(8) Any violation of this section by a licensed health care provider shall be a ground for disciplinary action contained in the professional's respective licensing chapter.

(9) Except as provided in subsection (6)(d) of this section and KRS 304.12-013, insurers and others participating in activities related to the insurance application and underwriting process shall be exempt from this section.

(10) The cabinet shall develop a program standards consistent with the provisions of this section for counseling and testing persons for the human immunodeficiency virus.

Section 3. KRS 197.055 is amended to read as follows:

(1) The Department of Corrections, in conjunction with the Cabinet for Human Resources, shall establish a mandatory

introductory and continuing education program on human immunodeficiency virus and acquired immunodeficiency syndrome for all inmates. Programs shall be specifically designed for inmates while incarcerated and in preparation for release into the community. Consideration shall be given to cultural and other relevant differences among inmates in the development of educational materials and shall include emphasis on behavior and attitude change. The education program shall be continuously updated to reflect the latest medical information available.

(2) If there is evidence that an inmate, while in the custody of the department, has engaged in behavior which places the inmate at a high risk of transmitting or contracting a human immunodeficiency disorder, the department shall begin a testing program which is consistent with guidelines of the Centers for Disease Control and recommendations of the Correctional Medical Authority and shall target persons who have been involved in or reasonably thought to have been involved in a high risk behavior. For purposes of this subsection, "high-risk behavior" includes:

(a) Sexual contact with any person within the institution;

(b) The use of intravenous drugs;

(c) Tattooing; and

(d) Any other activity medically known to transmit the virus.

(3) The results of the tests shall become a part of that inmate's medical file, accessible only to persons designated by agency administrative regulations.

(4) The department shall establish policies consistent with guidelines of the Centers for Disease Control and recommendations of the Correctional Medical Authority on the housing, physical contact, dining, recreation, and exercise hours or locations for inmates with immunodeficiency disorders as are medically indicated and consistent with the proper operation of its facilities.

(5) The department shall report to the General Assembly by July 1 each year as to the implementation of this program and the participation by inmates and staff.

(6) If an inmate is involved in a situation with a department employee which could result, according to the institution's physician, in the transmission of the human immunodeficiency virus infection, the inmate shall be tested.

(7) All testing procedures, disclosure, and payment shall be pursuant to Section 1 of this Act.

HB 272, AN ACT relating to the testimony of children.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 421.350 is amended to read as follows:

(1) This section applies only to a proceeding in the prosecution of an offense, including but not limited to an offense under KRS 510.040 to 510.150, 529.030 to 529.050, 529.070, 530.020, 531.310, 531.320, 531.370, the offense of endangering the welfare of a minor, all dependency proceedings pursuant to KRS Chapter ***620*** ~~[208]~~, and the criminal offense of unlawful transaction with a minor when the minor is induced, assisted or caused to engage in illegal sexual activity, when the act is alleged to have been committed against a child twelve (12) years of age or younger, and applies only to the statements or testimony of that child.

(2) ~~[The recording of an oral statement of the child made before the proceeding begins is admissible into evidence if:~~

~~(a) No attorney for either party was present when the statement was made;~~

~~(b) The recording is both visual and oral and is recorded on film or videotape or by other electronic means;~~

~~(c) The recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and has not been altered;~~

~~(d) The statement was not made in response to questioning calculated to lead the child to make a particular statement;~~

~~(e) Every voice on the recording is identified;~~

~~(f) The person conducting the interview of the child in the recording is present at the proceeding and available to testify or be cross-examined by either party;~~

~~(g) The defendant or the attorney for the defendant is afforded an opportunity to view the recording before it is offered into evidence; and~~

~~(h) The child is available to testify.~~

~~If the electronic recording of the oral statement of a child is admitted into evidence under this section, either party may call the child to testify, and the opposing party may cross-examine the child.~~

~~(3)~~] The court may, on the motion of the attorney for any party ***after a hearing and findings consistent with constitutional requirements established by the United States Supreme Court or the Supreme Court of Kentucky***, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding. Only the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.

(3)~~[(4)]~~ The court may, on the motion of the attorney for any party ***after a hearing and findings consistent with constitutional requirements established by the United States Supreme Court or the Supreme Court of Kentucky***, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding. Only those persons permitted to be present at the taking of testimony under subsection (3) of this section may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by subsection (3) of this section. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant. The court shall also ensure that:

(a) The recording is both visual and oral and is recorded on film or videotape or by other electronic means;

(b) The recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;

(c) Each voice on the recording is identified; and

(d) Each party is afforded an opportunity to view the recording before it is shown in the courtroom.

(4)~~[(5)]~~ If the court orders the testimony of a child to be taken under ***subsections (2) or*** ~~[subsection]~~ (3) ~~[or (4)]~~ of this section, the child may not be required to testify in court at the proceeding for which the testimony was taken ***unless the court determines that the testimony is constitutionally required by the United States Supreme Court or the Supreme Court of Kentucky***.

The Committee on Labor and Industry reported **HB 360** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 360, AN ACT relating to boilers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 236.060 is amended to read as follows:

(1) KRS 236.005 to 236.150 shall not apply to boilers or pressure vessels or related piping under federal control.

(2) KRS 236.005 to 236.150 shall not apply to the following boilers or related piping:

(a) Boilers or pressure vessels located on farms and used solely for agricultural purposes;

(b) Boilers or pressure vessels located at any oil refineries;

(c) Boilers or pressure vessels located at any utility operating under a certificate issued pursuant to KRS 278.020, if the boilers or pressure vessels are inspected by a special boiler inspector under the provisions of KRS 236.110, except that the inspection interval provided for in KRS 236.110 shall be extended to eighteen (18) months;

(d) Steam or vapor boilers used for heating purposes carrying a pressure of not more than fifteen (15) pounds per square inch gauge, and which are located in private residences or in apartment houses of less than six (6) families;

(e) Hot water heating boilers carrying a pressure of not more than thirty (30) pounds per square inch gauge which are located in private residences or in apartment houses of less than six (6) families or hot water supply boilers which are located in private residences or in apartment houses of less than six (6) families;

(f) Any unfired pressure vessels used as containers for liquefied petroleum gases and subject to the jurisdiction of the Department of Housing, Buildings and Construction under KRS Chapter 234;

(g) Pressure vessels used for transportation of compressed gases if constructed and operated in compliance with specifications and regulations of another state or federal authority;

(h) Pressure vessels containing air located on vehicles operating under the regulations of another state or federal authority;

(i) Pressure vessels operating at a maximum pressure of fifteen (15) PSI or less;

(j) Single wall pressure vessels having an inside diameter of six (6) inches;

(k) Pressure vessels with a nominal water containing capacity of one hundred twenty (120) gallons or less, to be used for domestic supply purposes, for containing water under pressure, including those containing air, the compression of which serves only as a cushion;

(l) Pressure vessels containing water heated by steam or other indirect means when none of the following are exceeded:

1. Heat input of two hundred thousand (200,000) BTU/Hr.;
2. Water temperature of two hundred ten (210) degrees Fahrenheit;
3. Water storage capacity of one hundred twenty (120) gallons;

(m) Coil type hot water boilers without a steam space and where no steam is generated within the confines of the unit but where water flashes into steam when released to atmospheric pressure by the operation of a manually operated nozzle, unless one (1) of the following is exceeded:

1. Three quarter (3/4) inch inside diameter tubing or pipe size with no drum or header attached;
2. Six (6) gallon water containing capacity;
3. Three hundred fifty (350) degrees Fahrenheit water temperature;

(n) Water heaters which are directly fired with oil, gas, or electricity, when none of the following limitations are exceeded:

1. Heat input of two hundred thousand (200,000) BTU/Hr.;
2. A water temperature of two hundred ten (210) degrees Fahrenheit;
3. A water containing capacity of one hundred twenty (120) gallons;

(o) Pressure vessels which may be classified as:

1. Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices such as pumps, compressors, turbines, generators, engines, and hydraulic or pneumatic cylinders where the primary design considerations or stresses are derived from the functional requirements of the device; or
2. Structures whose primary function is the transport of fluids from one location to another within a system of which it is an integral part, that is, piping system***; and***

(p) Steam boilers on farm tractors or steam engines which are used only in parades or other public events and on which there shall be no passengers except the operators.

The Committee on State Government reported **HB 180,** with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 180, AN ACT relating to retirement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 61.545 is amended to read as follows:

(1) The board shall determine by appropriate administrative regulations how much service in any year is the equivalent of a year of service credit and how much service in any calendar month is the equivalent of a month of service credit. It shall not allow credit for more than one (1) year of service for all service rendered in any period of twelve (12) consecutive months except as provided in KRS 61.546 and in subsection (2) of this section.

(2) Employees participating in one (1) of the state administered retirement systems who are or have been employed by a school board participating in the County Employees Retirement System***, a state operated school under Chapter 167, or a Kentucky institute of higher education which participates in the Kentucky Employees Retirement System who*** ~~{to}~~ work less than twelve (12) months each year may purchase the additional months of service credit needed to total one (1) year of service credit. The employee or the school board may purchase the service credit by paying the retirement system the member and employer contributions calculated on the average monthly rate multiplied by the number of months to be purchased. The payment shall be received by the retirement system by December 31 immediately following the school year in which the fractional year's service occurred. Members who have service credit prior to July 1, 1992, or their employers, may purchase service credit for previous years if payment is made by August 1, ***1995*** ~~{1993}~~.

(3) An employee who is simultaneously eligible for membership in more than one (1) retirement system administered by the Kentucky Retirement Systems may, at his option, choose to participate in only one (1) of those systems. The choice, once made, shall remain in effect so long as the employee is eligible for membership in more than one (1) system.

The Committee Amendment No. 1 to **HB 180** is as follows:

On page 1, line 11, by deleting "***institute***" and inserting in lieu thereof "***institution***".

The Committee on State Government reported **HB 357, HCR 17, SB 27,** with Committee Amendment attached thereto, and **SB 60** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the

Calendar.

HB 357, AN ACT relating to retirement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 61.592 is amended to read as follows:

(1) "Hazardous position" means any position whose principal duties involve active law enforcement, including the positions of probation and parole officer and Commonwealth detective, active fire suppression or prevention, or other positions, including but not limited to pilots of the Transportation Cabinet ***and paramedics and emergency medical technicians***, with duties that require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning. Hazardous positions shall include positions in the Department of Corrections in state correctional institutions and the Kentucky Correctional Psychiatric Center with duties that regularly and routinely require face-to-face contact with inmates.

(2) Each employer may request of the board hazardous duty coverage for those positions as defined in subsection (1) of this section, but a county, narrowly defined as one (1) of Kentucky's one hundred and twenty (120) counties, the provisions of KRS 78.510(3) notwithstanding, shall request hazardous duty coverage for its full-time paid firefighters. Upon request, each employer shall certify to the system, in the manner prescribed by the board, the names of all employees working in a hazardous position as defined in subsection (1) of this section for which coverage is requested. The certification of the employer shall bear the approval of the agent or agency responsible for the budget of the department or county indicating that the required employer contributions have been provided for in the budget of the employing department or county. The system shall determine whether the employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as provided by subsection (1) of this section.

(3) (a) An employee determined by the system to be working in a hazardous position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, seven percent (7%) of his creditable compensation;

(b) Each employer shall pay employer contributions based on the creditable compensation of the employees determined by the system to be working in a hazardous position at the employer contribution rate as determined by the board. The rate shall be determined by actuarial methods consistent with the provisions of KRS 61.565;

(c) If the employer participated in the system prior to electing hazardous duty coverage, the employer may pay to the system the cost in order that the nonhazardous service be credited as hazardous service, or the employer may establish a payment schedule for payment of the cost of the hazardous service above that which would be funded within the existing employer contribution rate. The employer may extend the payment schedule to a maximum of thirty (30) years. Payments made by the employer under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members. If the employer elects not to make the additional payment, the employee may make the lump-sum payment in his own behalf or may pay by increments. Payments made by the employee under this subsection shall not be picked up, as described in KRS 61.560(4), by the employer. If neither the employer nor employee makes the payment, the service prior to hazardous coverage shall remain nonhazardous.

(4) The normal retirement age, retirement allowance, other benefits, eligibility requirements, rights, and responsibilities of a member in a hazardous position, as prescribed by subsections (1), (2), and (3) of this section, and the responsibilities, rights, and requirements of his employer shall be as prescribed for a member and employer participating in the State Police Retirement System as provided for by KRS 16.510 to 16.652, except the mandatory retirement provisions of KRS 16.576(1) and the maximum employment age in KRS 16.520(2) shall not be applicable.

(5) Any person employed in a hazardous position after July 1, 1972, shall be required to undergo a thorough medical examination by a licensed physician, and a copy of the medical report of the physician shall be retained on file by the employee's department or county and made available to the system upon request.

(6) If doubt exists regarding the benefits payable to a hazardous position employee under this section, the board shall determine the benefits payable under KRS 61.515 to 61.705, or 78.520 to 78.852, or 16.510 to 16.652.

HCR 17, A CONCURRENT RESOLUTION requesting the United States Congress to prohibit or limit the sending of unsolicited, mailed advertisements.

WHEREAS, the citizens of the Commonwealth are bombarded daily with unsolicited, mailed advertisements; and

WHEREAS, these mailings are unwelcomed by most recipients; and

WHEREAS, those recipients have expectations that their privacy at home will not be disturbed by unsolicited mailings; and

WHEREAS, much of the unsolicited mail entering into Kentucky's stream of commerce is of no artistic, educational, or social value; and

WHEREAS, recipients of unsolicited, mailed advertisements must expend hours of their time sorting through mail-time that could be better spent on activities which enhance one's self, family, or community; and

WHEREAS, unsolicited, mailed advertisements must be disposed of in the state's landfills, thus adding to the state's environmental problems; and

WHEREAS, the United States Congress is charged by the United States Constitution with establishing and regulating the postal system;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the United States Congress enact legislation prohibiting or limiting the sending of unsolicited, mailed advertisements.

Section 2. That the Clerk of the House of Representatives be directed to send a copy of this resolution to each member of the United States House of Representatives from Kentucky and each United States Senator from Kentucky and to the Postmaster General of the United States.

SB 27, AN ACT relating to the Department for the Blind.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 163.460 is amended to read as follows:

As used in this chapter unless the context otherwise requires:

(1) "Bureau" means the Bureau for the Blind.

(2) "Legally blind" means a visual acuity of 20/200 or less in the better eye with correction or a visual field of 20 degrees or less.

(3) "Visually impaired" means a condition of the eye ***with correction*** which constitutes or ***progressively*** results for the individual in a substantial ***limitation of life activities*** ~~[handicap to employment]~~.

(4) "Executive director" means the executive director of the Bureau for the Blind.

Section 2. KRS 163.470 is amended to read as follows:

(1) There is created within the Cabinet for Workforce Development the Department for the Blind.

(2) The executive director shall be appointed by the Governor upon the recommendation of the secretary of the Cabinet for Workforce Development to whom he shall be directly responsible.

(3) The department shall be the state agency responsible for all rehabilitation services for the blind and the visually impaired and other services as deemed necessary. The department shall be the agency authorized to expend all state and federal funds designated for rehabilitation services for the blind and visually impaired. The Office of the Secretary of the Cabinet for Workforce Development is authorized as the state agency to receive all state and federal funds and gifts and bequests for the benefit of rehabilitation services for the blind and visually impaired.

(4) All records, equipment, and personnel presently under the Division of Vocational Rehabilitation Services for the Blind, which includes the Kentucky Business Enterprises Program and the Kentucky Industries and Rehabilitation Center for the Blind, and the Division of Special and Technical Aids for the Blind, under the jurisdiction of the Department of Rehabilitation Services, Department of Education, shall be transferred to the department. All funds budgeted to the Division of Vocational Rehabilitation Services for the Blind, the Kentucky Business Enterprises Program, the Kentucky Industries and Rehabilitation Center for the Blind, and the Division of Special and Technical Aids for the Blind shall be transferred to the department. The State Treasurer is designated as the custodian of all funds and shall make disbursements for rehabilitation purposes upon certification by the executive director.

(5) The Department for the Blind shall establish an Advisory Council on Services for the Blind and Visually Impaired of fifteen (15) persons. There shall be statewide representation. Leaders of the known organizations of the blind shall be included. The Advisory Council on Services for the Blind and Visually Impaired shall advise the department and the executive director on matters concerning the delivery of services, the determination of priorities, the formulation of policy, the allocation of resources, the evaluation of programs, and other matters as may be referred to the council by the executive director. The Advisory Council on Services for the Blind and Visually Impaired shall be utilized by the department to fulfill federal requirements for citizens' advisory councils associated with programs designed to provide rehabilitation services to the blind and visually impaired. A majority of the members shall be blind or visually impaired. The term of appointments shall be four (4) years except for the members first appointed: four (4) members shall be appointed for four (4) year terms; four (4) members shall be appointed for three (3) year terms; four (4) members shall be appointed for two (2) year terms; and three (3) members shall be appointed for one (1) year terms. Persons shall be eligible for reappointment; however, no person shall serve more than two (2) consecutive four (4) year terms. The Governor shall appoint the chairman from the membership of the council. The term of office for the chairman shall be two (2) years, and an appointee shall be eligible to serve more than one (1) term. No department employee shall be a

member of the council. Members of the council shall serve without compensation but shall be reimbursed for actual expenses incurred in service on the council.

(6) The department shall establish and implement policies and procedures for the carrying out of the program of services for the blind.

(7) At the close of each fiscal year, the department shall prepare a financial report and present it to the secretary of the Cabinet for Workforce Development and to the Governor. The annual report shall be published. The annual report shall also contain a precise review of the work of the department and contain necessary suggestions for improvement.

(8) The department shall coordinate its functions with other appropriate public and private agencies.

(9) The department shall perform all other duties as required of it by law.

(10) The executive director shall hire personnel as necessary to carry out the work of the department and the provisions of KRS 163.450 to 163.470. Preference shall be given to hiring qualified blind persons. Hiring and promotional personnel practices shall not be discriminatory because of age, sex, race, physical disability, or national origin. Department employees shall receive compensation and travel expenses as allowed other employees of the Commonwealth.

(11) There shall be created under the authority of the department, to be directed by the executive director, a Division of Client Services which shall provide intake and rehabilitation counseling services; distribute or sell technical educational and other aids to the blind; provide educational materials such as recorded texts, braille or large-type texts, or such other materials as may be deemed necessary for the education of the blind; research into the development of new technical aids for the blind, mobility training, work evaluation, personal adjustment, ***independent living,*** and other services as needed for blind adults, and services for the blind who have other disabilities; and promote employment of the blind in public and private sectors.

(12) There shall be established under the authority of the department to be directed by the executive director, a Division of Business Enterprises. This division shall manage and supervise the Vending Facilities Program and license qualified blind persons as vendors. In connection therewith, the department shall be authorized to own or lease vending equipment for the operation of vending facilities in federal, state, private, and other buildings. The set-aside charges levied shall comply with the existing federal regulations as specified in 34 CFR 395.9. One (1) or more facility placement agents shall be employed to locate and establish additional vending facilities. The Department for the Blind shall make such surveys as may be deemed necessary to determine the vending facility opportunities for blind vendors in state buildings or on other property owned, leased, or otherwise occupied by the state government and shall install vending facilities in suitable locations on such property for the use of the blind. All of the net income from vending machines which are on the same property as a vending facility shall be paid to the blind vendor of the vending facility. Whenever there exists a conflict of interest between state agencies seeking to vend merchandise on the same state property, the agencies shall negotiate a fair agreement which shall protect the interest of both from unreasonable competition. The agreement shall be submitted to the custodial authority having jurisdiction over the property for approval. Provided, however, that in all situations the blind vendor shall be permitted to vend all items of merchandise customarily sold at similar vending facilities.

(13) There shall be established under authority of the department, to be directed by the executive director, a Division of Industries for the Blind which shall provide industrial evaluation, training, and employment. Emphasis shall be on placement in public employment and long-term sheltered employment at industries for the blind.

(14) There shall be established an office of support services to provide services and data required by the program divisions for proper and timely execution of their assigned responsibilities, including fiscal and personnel management; staff development and training; program planning, evaluation, and audit; affirmative action and client appeal and hearing services.

(15) The department shall provide staff services which shall include fiscal management, staff development and training, program development and evaluation, public information office, and other staff services as may be deemed necessary.

The Committee Amendment No. 1 to **SB 27** is as follows:

On page 1, line 3, by inserting "***Department***" before and by placing brackets around and striking through "Bureau" both times it appears; and

On page 1, line 9, by inserting "***Department***" before and by placing brackets around and striking through "Bureau".

SB 60, AN ACT relating to procedures for confirmation of appointments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 11.160 is amended to read as follows:

(1) When a statute specifically requires Senate confirmation of an appointment by the Governor or by other appointing authority, the appointment shall be handled in the following manner:

(a) All names of persons nominated when the General Assembly is not in session shall be submitted for confirmation no later than the next regular session of the General Assembly. The Governor who makes the appointment, or other appointing authority, shall deliver the name of the nominee to the clerk of the Senate upon appointment or no later than the fifteenth legislative day of the next regular session of the General Assembly. The Governor may submit a nominee for confirmation at any special session that occurs between the date of initial appointment and the next regular session of the General Assembly. If the Governor desires to submit the name of a nominee for confirmation at a special session of the General Assembly, he shall place confirmation of the nominee on the call for special session.

(b) All names of persons nominated to positions during a regular session of the General Assembly shall be submitted for confirmation at that regular session.

The Governor who makes the appointment, or other appointing authority, shall submit the name of the nominee, together with such accompanying information as may expedite the consideration of the appointment to the clerk of the Senate not more than three (3) legislative days after making the appointment, unless the appointment is made during the last fifteen (15) legislative days, in which case the nominee's name and information shall be submitted not more than one (1) legislative day later.

(c) For each nominee, the Governor who makes the appointment, or other appointing authority, shall deliver to the clerk of the Senate a letter of appointment. The letter of appointment shall be accompanied by a resume which contains at least the following information:

1. Complete employment history of the nominee;
2. Complete educational background of the nominee; and
3. Current and past employment by or financial relationships with the Commonwealth of Kentucky or any of its political subdivisions held by the nominee and any member of the nominee's immediate family.

(d) ***When a statute requires an interim legislative committee to hold a public hearing on a particular appointment, the Governor who makes the appointment, or other appointing authority, shall deliver the letter of appointment and resume for each nominee to the Legislative Research Commission within seven (7) days after making the appointment.***

(e) The Legislative Research Commission may utilize the services of its staff or other appropriate persons or organizations to investigate the background of nominees and to verify the information provided. The State Police shall conduct and provide a criminal record history on a nominee if requested by the Legislative Research Commission.

(f)[~~(e)~~] During periods when the General Assembly is not in session, the Governor's or other appointing authority's power of appointment shall not be diminished, and nominees may assume the responsibilities of the position pending confirmation. During that period, they shall be considered for all purposes to have been appointed and to be lawful occupants of the post to which they have been nominated, except that they shall be subject to the confirmation process when the General Assembly is next in regular session or special session called for the purpose of confirming the nominees.

(g)[~~(f)~~] If the Governor who makes the appointment, or other appointing authority, fails to submit the name of the nominee or if the Senate declines to consider a nominee, the position shall become vacant as of sine die adjournment of the applicable special or regular session of the General Assembly at which the appointment was to be confirmed. If the Senate declines to confirm the nominee, the position shall become vacant upon the date the Senate declined to confirm.

(h)[~~(g)~~] Any person not confirmed by the Senate shall not be reappointed by the Governor, or other appointing authority, to the same position for which confirmation is required for a period of two (2) years from the date the Senate declined to confirm the nomination or the date of sine die adjournment if the Senate declined to consider the nomination.

(2) When a statute specifically requires Senate and House of Representatives confirmation of an appointment by the Governor or by other appointing authority, the appointment shall be handled in the following manner:

(a) All names of persons nominated when the General Assembly is not in session shall be submitted for confirmation no later than the next regular session of the General Assembly. The Governor who makes the appointment, or other appointing authority, shall deliver the name of the nominee to the clerk of the House of Representatives no later than the fifteenth legislative day of the next regular session of the General Assembly. The Governor may submit a nominee for confirmation at any special session that occurs between the date of initial appointment and the next regular session of the General Assembly. If the Governor desires to submit the name of a nominee for confirmation at a special session of the General Assembly, he shall place confirmation of the nominee on the call for special session.

(b) All names of persons nominated to positions during a regular session of the General Assembly shall be submitted for confirmation at that regular session. The Governor who makes the appointment, or other appointing authority, shall submit the name of the nominee to the clerk of the House of Representatives not more than three (3) legislative days after making the appointment, unless the appointment is made during the last fifteen (15) legislative days, in which case the nominee's name and information shall be submitted not more than one (1) legislative day later.

(c) For each nominee, the Governor who makes the appointment, or other appointing authority, shall deliver to the clerk of the House of Representatives a letter of appointment. The letter of appointment shall be accompanied by a resume which contains at least the following information:

1. Complete employment history of the nominee;
2. Complete educational background of the nominee; and
3. Current and past employment by or financial relationships with the Commonwealth of Kentucky or any of its political subdivisions held by the nominee and any member of the nominee's immediate family.

(d) ***When a statute requires an interim legislative committee to hold a public hearing on a particular appointment, the Governor who makes the appointment, or other appointing authority, shall deliver the letter of appointment and resume for each nominee to the Legislative Research Commission within seven (7) days after making the appointment.***

(e) The Legislative Research Commission may utilize the services of its staff or other appropriate persons or organizations to investigate the background of nominees and to verify the information provided. The State Police shall conduct and provide a criminal record history on a nominee if requested by the Legislative Research Commission.

(f)~~[(e)]~~ The confirmation shall originate in the House of Representatives. If the House of Representatives does not confirm an appointment, the Senate shall not consider the appointment.

(g)~~[(f)]~~ When both the Senate and the House of Representatives have confirmed an appointment, the Senate shall notify the House of Representatives of the final approval. The clerk of the House shall then notify the Governor, or other appointing authority, and the appointee in writing of the General Assembly's action.

(h)~~[(g)]~~ During periods when the General Assembly is not in session, the Governor's or other appointing authority's power of appointment shall not be diminished, and nominees may assume the responsibilities of the position pending confirmation. During that period, they shall be considered for all purposes to have been appointed and to be lawful occupants of the post to which they have been nominated, except that they shall be subject to the confirmation process when the General Assembly is next in regular session or special session called for the purpose of confirming the nominees.

(i)~~[(h)]~~ If the Governor who makes the appointment, or other appointing authority, fails to submit the name of the nominee or if the House of Representatives or the Senate declines to consider a nominee, the position shall become vacant as of sine die adjournment of the regular session of the General Assembly at which the appointment was to be confirmed. If the House of Representatives or the Senate declines to confirm the nominee, the position shall become vacant upon the date that a chamber of the General Assembly first declined to confirm.

(j)~~[(i)]~~ Any person not confirmed by the House of Representatives or the Senate shall not be reappointed by the Governor, or other appointing authority, to the same position for which confirmation is required for a period of two (2) years from the date that a chamber of the General Assembly first declined to confirm the nomination, or the date of sine die adjournment if the House of Representatives or the Senate declined to consider the nomination.

Calendar

SB 4, SB 91, SB 120, HB 91, HB 97, HB 115, HB 256, HB 304, HB 327, HB 328, HB 329, HR 18 and **HJR 23** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Consent Calendar

HB 316, HB 318, HB 319, HB 320 and **HB 321** taken from the Consent Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Report On Enrolled Bills

The Committee on Enrollment reported that **SB 44** has been examined and found correctly enrolled . Said Bill was read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -2:19 p.m.)

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 287**, by Representative Lewis:

On page 7, lines 9-15, by deleting them in their entirety, and inserting in lieu thereof:

"*(9) The text shall permit the placement and use of manufactured homes, 1993 model year and later in agricultural zones, or in residential zones subject to compliance with the same regulations applicable to other homes in the same zone. In nonagricultural zones, aesthetic standards may be adopted, limiting roofing or siding material permitted, and requiring perimeter foundation enclosures. Nothing in this subsection shall be construed to affect, modify, or abolish restrictions contained in past or present recorded deeds, covenants, or deed of restrictions or developer's subdivision restrictions. Nothing in this subsection shall remove the authority of the local building inspector to regulate additions to the manufactured home, inspect foundations, or check for aesthetic standards compliance in residential areas.*

Floor Amendment No. 4 to **HB 339**, by Representative Hancock:

On page 6, between lines 24 and 25, insert the following:

"SECTION 9. A NEW SECTION OF KRS 431.570 TO 431.595 IS CREATED TO READ AS FOLLOWS:

(1) In any county, urban-county, or charter county meeting the requirements of this section, a crime stoppers organization operating within the county, shall be funded, at least in part, by a fee levied upon convictions for misdemeanors and violations, other than convictions for violations of KRS Chapters 186, 187, 188, 189, or 189A, in cases in which a fine has been levied by the District Court.

(2) A crime stoppers organization desiring funding pursuant to this section shall:

(a) Enter into a written agreement of affiliation with the county and approved by the fiscal court or urban-county council setting forth the relationship with the county and law enforcement agencies in the county. The agreement shall be valid for two (2) years and may be renewed by additional approvals by the fiscal court or urban county council;

(b) Be approved by the fiscal court may be by resolution or by ordinance;

(c) Agree to provide the fiscal court or urban-county council with an annual accounting of the funds raised by the crime stoppers organization from all sources, identified generically by source but not by name of private donors, and an accounting for all funds expended by the organization for any purpose. The accounting of funds shall not divulge the amounts of individual rewards paid, nor the names or any identification of the persons to whom rewards were paid.

(3) In a county where an agreement of affiliation is approved by the fiscal court or urban-county council, the county clerk shall notify the circuit clerk to collect the fee levied pursuant to this section for a period of two (2) years from the date of the signing of the agreement.

(4) In any county in which a county has executed an agreement of affiliation with a crime stoppers organization pursuant to this section the circuit clerk shall add one dollar ($1) to the court costs as a crime stoppers organization fee of any person who:

(a) Is convicted of a misdemeanor or violation, other than a conviction for violating a provision of KRS Chapters 186, 187, 188, 189, or 189A; and

(b) Is sentenced to pay a fine, regardless of whether the person is also incarcerated, or the fine is suspended, waived, or otherwise not imposed.

(5) Additional costs for the crime stoppers organization fee shall not be waived or suspended, but nonpayment of the cost shall be treated in the same manner as for a fine pursuant to KRS Chapter 534.

(6) The circuit clerk shall, at the time fines and costs are paid over to the state, pay all moneys collected pursuant to this section to the crime stoppers organization named in the agreement of affiliation with the county.

(7) Funds collected pursuant to this section and transferred to a crime stoppers organization may be used by that organization for any purpose authorized by KRS 431.575.";

On page 6, line 25, delete "9" and insert in lieu thereof "10";

On page 7, line 4, delete "10" and insert in lieu thereof "11";

On page 7, line 7, delete "9" and insert in lieu thereof "8 and 10".

Floor Amendment No. 3 to the Committee Substitute to **HB 206**, by Representative Geveden:

On page 4, line 7, by deleting the words, "*slot machines,*"; and

On page 4, line 7, after the word "***games,***", by inserting the word "***and***"; and

On page 4, line 8, after the word "***house***"; by deleting the following: "***, and, any other game of chance customarily played in a gambling casino, as identified and defined by administrative regulation of the division***".

Floor Amendment No. 2 to the Committee Substitute to **HB 206**, by Representative Geveden:

On page 4, line 7, by deleting the words, "***slot machines,***".

Floor Amendment No. 1 to the Committee Substitute to **HB 400**, by Representative Barrows:

On page 1, line 21, before the word "***approval***" by inserting the following: "***consideration. The fiscal court may either approve or deny the proposed tax rate levy***" and by deleting the word "***approval***".

Floor Amendment No. 1 to the Committee Substitute to **HB 45**, by Representative Riggs:

On page 1, line 10, by deleting all of the language after the comma; and

On page 1, by deleting line 11, and by substituting therefor the following:

"***but the clerk shall receive no commission.***".

Orders of the Day

Representative Stumbo moved that the rules be suspended for the introduction of guests. Agreed.

Representative Stumbo moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Northup moved the adoption of the following **Legislative Citation No. 57**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby commends The Junior League of Kentucky Day. The entire membership joins Representative Anne Northup in commending these admirable ladies of Louisville, Lexington and Owensboro, Kentucky for the remarkable work done in this non-profit organization to raise funds for their schools, communities and hospitals.

Report on Enrolled Bills

HB 3, HB 72, HB 81, HB 103, HB 106, HB 121 and **HB 122** delivered to the Senate, signed by the President. Delivered to the Governor on February 10, 1994 at 2:18 p.m.

Orders of the Day (Continued)

HB 104, with Floor Amendments attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of Floor Amendment No. 1 to **HB 104**. Agreed.

Representative Long moved that **HB 104**, as amended, be passed.

Representative French moved the adoption of Floor Amendment No. 3 to **HB 104**. Agreed.

On the roll call on the passage of **HB 104**, as amended, the vote was: Yeas 48, Nays 49. (See February 10, 1994 roll call on **HB 104** - Appendix)

HB 104, as amended, was defeated.

Representative Zimmerman moved that the vote by which **HB 104**, as amended, was defeated be reconsidered and said motion be placed on the table. Agreed.

Representative Stumbo moved that the rules be suspended for the introduction of guests. Agreed.

Representative Gray moved that the rules be suspended to allow floor privileges to the University of Louisville football team, coaches and cheerleaders and to act upon a Legislative Citation. Agreed.

Representative Gray moved the adoption of the following **Legislative Citation No. 54**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds your efforts and offers its sincerest congratulations to the University Of Louisville "Cardinals Football Team" for your notable achievements as members of the 1993-94 University of Louisville "Cardinals Football Team". Your athletic performance is a result of diligence, spectacular skill and a zealous, winning attitude. The House of Representatives joins with Representative Leonard Gray in honoring you on your many achievements and wishes you every success as you further your academic and athletic careers.

Representative Gray moved the adoption of the following **Legislative Citation No. 55**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds your effort and offers its sincerest congratulations to the University Of Louisville National Champion Cheerleading Squad for your achievements during your athletic careers. Your contributions have been outstanding, and you have brought a great deal of recognition to the University of Louisville and your community. The House of Representatives joins with Representative Leonard Gray in honoring you on your many achievements and wishes you every success as you further your academic and athletic careers.

Representative Stumbo moved that the rules be suspended to give permission for Coach Schnellenberger to address the House. Agreed. Coach Howard Schnellenberger informally addressed the House.

Orders of the Day (Continued)

HB 220, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative LeMaster moved the adoption of Floor Amendment No. 1 to **HB 220**. Agreed.

Representative LeMaster moved that **HB 220**, as amended, be passed.

On the roll call the vote was: Yeas 93, Nays 5. (See February 10, 1994 roll call on **HB 220** - Appendix)

HB 220, as amended, was passed and the title agreed to.

Representative LeMaster moved that the vote by which **HB 220**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Report On Enrolled Bills

The Committee on Enrollment reported that **HJR 5, HB 238** and **HB 49** have been examined and found correctly enrolled . Said Bills and Resolution were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -2:50 p.m.)

HJR 5, HB 238 and **HB 49** delivered to the Senate and signed by the President. Delivered to the Governor on February 10 at 3:05 p.m.

Orders of the Day (Continued)

HR 20 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Hancock moved that **HR 20** be adopted.

HR 20 was adopted by voice vote.

HB 52, with Senate Committee Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Committee Amendment No. 1 to **HB 52** is as follows:

On page 1, line 19, after "***Commission***" by deleting "***direct its general counsel to***".

Representative Donnermeyer moved that the House concur in Senate Committee Amendment No. 1 to **HB 52**. Agreed.

Representative Donnermeyer moved that **HB 52**, as amended by the Senate, be passed.

On the roll call the vote was: Yeas 93, Nays 0. (See February 10, 1994 roll call on **HB 52** - Appendix)

HB 52, as amended by the Senate, was passed and the title agreed to.

Representative Donnermeyer moved that the vote by which **HB 52**, as amended by the Senate, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Kerr moved that **HB 23** be withdrawn. Agreed.

Representative Little moved that a call of the roll be taken to show co-sponsors of **HB 524**. Agreed.

Roll call to show co-sponsors of **HB 524**--Adams, Allen, Arnold, Ballard, Bentley, Bowling, Brown, Bryant, Buis, P. Clark, Collins, Curd, Cyrus, Deskins, Ford, Fox, French, Gee, Graham, Hancock, Kerr, Lee, Lindsay, Little, Maggard, Maricle, Mason, Mullinix, Napier, Nelson, Noland, Nunn, Reinhardt, Ridley, Riner, Scott, Todd, Turner, Walton, Yates.

Representative Ballard moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Ballard moved that his vote be changed form "yea" to "nay" on **HB 220**. Agreed.

Representative Stumbo moved that the rules be suspended for the Introduction of Bills and Resolutions and Report of Committees. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 532, by Representatives Donnermeyer and Callahan: AN ACT relating to retirement benefits for police and firefighters.

HB 533, by Representative Curd: AN ACT relating to driver's license.

HB 534, by Representative Ridley: AN ACT relating to unemployment insurance.

HB 535, by Representative Lewis: AN ACT relating to social workers.

HB 536, by Representative Palumbo: AN ACT relating to wages and hours.

HB 537, by Representative Johnson: AN ACT relating to crimes and punishments.

HB 538, by Representative R. Smith: AN ACT relating to telecommunication devices for the deaf, hard of hearing, or speech-impaired.

HB 539, by Representatives Cyrus, Rapier, L. Clark, Maggard, Heleringer, Gray, Noland, Yates and Burch: AN ACT relating to motor vehicle operator's licenses.

HB 540, by Representative Johnson: AN ACT relating to crimes and punishments.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills have been posted for Committee consideration:

Business Organizations and Professions: **HB 380**

Health and Welfare: **HB 313**

Tourism Development and Energy: **HB 421, HB 500**

Motions, Petitions and Communications (Continued)

Representative Cave moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Cave moved the adoption of the following **Legislative Citation No. 58**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby declares March 14-18 as Social Worker's Week. The entire membership joins Representative Stan Cave in thanking and commending the many social workers for finding open hearts, safe homes, food, clothing, medical relief and shelter in times of despair for so many needy Kentuckians.

Report of Committees (Continued)

The Committee on Transportation reported **HB 41,** with Committee Substitute attached thereto, **HB 201, HB 394,** with Committee Amendment attached thereto, and **SB 11** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 41, AN ACT relating to motor carriers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 281.670 is amended to read as follows:

(1) The department may order a motor carrier to appear at a fixed time and place for a hearing if the carrier, or the carrier's drivers or motor vehicles, violate:

(a) The provisions of this chapter;

(b) An order or rule issued, or administrative regulation promulgated by the department pursuant to this chapter;

(c) The laws of this state; or

(d) Is found to be unfit to carry out the duties, obligations, and responsibilities of a motor carrier.

(2) After a hearing pursuant to subsection (1) of this section, the department may suspend, revoke, alter, or amend any certificate or permit issued to a motor carrier, if the department is satisfied the carrier, or the carrier's drivers or motor vehicles, violated or refused to observe:

(a) The provisions of this chapter;

(b) An order or rule issued, or administrative regulation promulgated by the department;

(c) The laws of this state; or

(d) Has become unfit to carry out the duties, obligations, and responsibilities of a motor carrier.

(3) [~~Whenever any motor carrier is found to be violating any of the provisions of this chapter, or any order or rule and regulation prescribed by the department pursuant thereto, or any of the laws of this state, or is found to be permitting any of its drivers or vehicles to violate any of the provisions of this chapter, or any order, or rule and regulation prescribed by the department pursuant thereto, or any of the laws of this state or is found to be unfit to carry out the duties, obligations and responsibilities of a motor carrier, the department may, upon complaint or upon its own motion, issue its order to such motor carrier notifying it to appear before the department at a fixed time and place at which time and place the department shall have a hearing. If the department is satisfied, after a hearing, that the motor carrier has violated or refused to observe any of the provisions of this chapter, or any order, or rule or regulation of the department, or any of the laws of this state, or has permitted any of its drivers or motor vehicles to violate any of the provisions of this chapter or any order, or rule or regulation prescribed by the department pursuant thereto, or any of the laws of this state, or has become unfit to carry out the duties, obligations and responsibilities of a motor carrier, the department may suspend, revoke, alter or amend any certificate or permit issued to such carrier.~~] The renewal by the department of the certificate or permit of ***a*** [~~any~~] motor carrier shall not be construed to be a waiver or condonement of any violation ***that*** [~~which~~] occurred prior to ***the*** [~~such~~] renewal and shall not prevent subsequent proceedings against the motor carrier [~~therefor~~].

(4) If a driver of a motor carrier fails to appear in answer to a citation or summons issued by a law enforcement officer for an offense not covered by the nonresident violator compact authorized pursuant to KRS 186.860, the department may revoke or suspend any certificate, permit, or license issued to the motor carrier until proper disposition of the citation or summons is made by the driver or the motor carrier whose certificate, permit, or license has been revoked or suspended. The department shall inform the motor carrier by first class mail of the existence of the citation or summons prior to a court date.

The Committee Substitute to **HB 41** is as follows:

HB 41, AN ACT relating to motor carriers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 281.670 is amended to read as follows:

(1) The department may order a motor carrier to appear at a fixed time and place for a hearing if the carrier, or the carrier's drivers or motor vehicles, violate:

(a) The provisions of this chapter;

(b) An order or rule issued, or administrative regulation promulgated by the department pursuant to this chapter;

(c) The laws of this state; or

(d) Is found to be unfit to carry out the duties, obligations, and responsibilities of a motor carrier.

(2) After a hearing pursuant to subsection (1) of this section, the department may suspend, revoke, alter, or amend any certificate or permit issued to a motor carrier, if the department is satisfied the carrier, or the carrier's drivers or motor vehicles, violated or refused to observe:

(a) The provisions of this chapter;

(b) An order or rule issued, or administrative regulation promulgated by the department;

(c) The laws of this state; or

(d) Has become unfit to carry out the duties, obligations, and responsibilities of a motor carrier.

(3) ~~[Whenever any motor carrier is found to be violating any of the provisions of this chapter, or any order or rule and regulation prescribed by the department pursuant thereto, or any of the laws of this state, or is found to be permitting any of its drivers or vehicles to violate any of the provisions of this chapter, or any order, or rule and regulation prescribed by the department pursuant thereto, or any of the laws of this state or is found to be unfit to carry out the duties, obligations and responsibilities of a motor carrier, the department may, upon complaint or upon its own motion, issue its order to such motor carrier notifying it to appear before the department at a fixed time and place at which time and place the department shall have a hearing. If the department is satisfied, after a hearing, that the motor carrier has violated or refused to observe any of the provisions of this chapter, or any order, or rule or regulation of the department, or any of the laws of this state, or has permitted any of its drivers or motor vehicles to violate any of the provisions of this chapter or any order, or rule or regulation prescribed by the department pursuant thereto, or any of the laws of this state, or has become unfit to carry out the duties, obligations and responsibilities of a motor carrier, the department may suspend, revoke, alter or amend any certificate or permit issued to such carrier.]~~ The renewal by the department of the certificate or permit of *a* ~~[any]~~ motor carrier shall not be construed to be a waiver or condonement of any violation *that* ~~[which]~~ occurred prior to *the* ~~[such]~~ renewal and shall not prevent subsequent proceedings against the motor carrier ~~[therefor]~~.

(4) If a holder of a commercial driver's license issued from another jurisdiction fails to appear in answer to a citation or summons for an offense not covered by the nonresident violator compact authorized pursuant to KRS 186.860, the Division of Driver's Licensing shall notify the Division of Motor Carriers. Upon the determination that the failure to appear occurred from a violation committed in a commercial vehicle, the Division of Motor Carriers shall immediately notify the motor carrier. If the citation or summons is not satisfied within sixty (60) days of notification of the motor carrier, the Department of Vehicle Regulation shall suspend all licenses of the motor carrier issued pursuant to KRS 281.752.

HB 201, AN ACT relating to special license plates.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

(1) Any owner or lessee of a motor vehicle required to be registered under the provisions of KRS 186.050(1) or (3)(a) shall be issued a five (5) year license plate, for either one (1) automobile, or one (1) truck of one-half (1/2) or three-quarter (3/4) ton rating, upon application to the county clerk in the county of his residence and after payment of a twenty-five dollar ($25) state fee and a two dollar ($2) clerk's fee. Application shall be made on a form prescribed by the Transportation Cabinet.

(2) The license plate authorized in subsection (1) of this section shall be printed in the following manner:

(a) Each plate shall have a white background and shall be designed with the word "Kentucky" printed in red characters centered at the top of the plate;

(b) The words "Salutes Veterans" shall be printed in white characters on a red background centered at the bottom of the plate;

(c) The flag of the United States shall be centered in the middle of the plate and shall be designed to be waving; and

(d) The year and registration number shall be printed in blue characters on either side of the flag.

(3) The Transportation Cabinet shall have received at least five hundred (500) requests for salute veterans license plates before it shall be required to print them. The annual registration renewal fee for salute veterans license plates shall be an eleven dollar and fifty cent ($11.50) state fee and a two dollar ($2) clerk's fee.

(4) Upon the sale, transfer, or termination of lease of a vehicle licensed pursuant to subsection (1) of this section, the owner or lessee shall remove the salutes veterans license plate and return it and the certificate of registration to the county clerk. The county clerk shall issue a regular license plate and certificate of registration upon payment of an eleven dollar and fifty cent ($11.50) state fee and a two dollar ($2) clerk's fee. When the salutes veterans license plate has been presented to the county clerk, he shall reissue it free of charge by the Transportation Cabinet. Upon payment of a one dollar ($1) fee to the clerk, the salutes veterans license plate may be used on any other vehicle

owned or leased by the same person who purchased the special plate for the current licensing period. The license plate and decal on this other vehicle shall be turned in to the county clerk who shall forward the license plate to the Transportation Cabinet.

(5) A person who initially applies for, or renews a registration on, a salutes veterans license plate pursuant to this section may contribute an additional fee of one dollar ($1) that shall be used for the purpose of constructing, renovating, and operating Kentucky state veterans' nursing homes pursuant to KRS 36.355. All county clerks shall forward on a quarterly basis all money collected pursuant to this subsection to the Department of Military Affairs.

Section 2. KRS 36.355 is amended to read as follows:

(1) There shall be established and maintained in the Commonwealth of Kentucky state veterans' nursing homes to provide domiciliary or nursing home care to veterans who are residents of Kentucky.

(2) The Kentucky state veterans' nursing homes shall be under the administrative authority and control of the Department of Military Affairs. The Department of Military Affairs may promulgate such administrative regulations as are necessary to operate the homes in compliance with applicable state and federal statutes and regulations.

(3) The Department of Military Affairs is authorized to seek federal and private funding for the construction or renovation, and operation of Kentucky state veterans' nursing homes.

(4) The Department of Military Affairs shall use all money received pursuant to subsection (5) of Section 1 of this Act for the purpose of constructing, renovating, and operating Kentucky state veterans' nursing homes.

HB 394, AN ACT relating to motor vehicle operator's licenses.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186.412 is amended to read as follows:

(1) Every person seeking an ***original or renewal*** operator's license ***to operate***{~~, or a renewal of an operator's license for the operation of~~} a motor vehicle, motorcycle, or moped, or ***obtain*** an identification card shall apply in person to the circuit {~~Court~~} clerk of the county in which the applicant resides ***on*** {~~and shall make application upon~~} a form furnished by the Transportation Cabinet. The application form shall {~~contain and shall~~} require the ***applicant's*** full {~~and~~} legal name and signature, date of birth, Social Security number, sex, present resident address***, and brief description*** of the applicant{~~, and briefly describe the applicant~~}. It shall also state whether the applicant has previously been licensed as an operator and if so, when and by what state or county, whether any license has ever been canceled, suspended, revoked, or refused, and if so, the date of and reason for the cancellation, suspension, revocation, or refusal, and {~~such~~} other information as may be required.

(2) The Transportation Cabinet shall issue a plastic laminated operator's license bearing {~~thereon~~} a color photograph of the ***applicant. The*** {~~licensee, which~~} photograph shall be taken by the circuit clerk ***so*** {~~in such a manner~~} that one (1) exposure will photograph the applicant and the application simultaneously, using the process determined under provisions of KRS 186.413. ***The plastic laminated operator's license issued by the cabinet shall not contain the applicant's social security number. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A that develops a numbering system that uses an identification system other than social security numbers. The new numbering system shall be fully implemented no later than January 1, 1995.*** The license shall ***also*** designate by color coding and by use of the phrase "under (21)" if the licensee is under the age of twenty-one (21); "CDL" if the license is issued pursuant to KRS Chapter 281A; or "under 21 CDL" if the licensee holds a commercial driver's license issued pursuant to KRS Chapter 281A and is under ***the age of*** twenty-one (21).

(3) ***After January 1, 1995, a person may, before the renewal date for their operator's license, request a circuit clerk to issue a new plastic laminated operator's license that does not contain the person's social security number. The person shall be charged the fee established by KRS 186.531 for renewing an operator's license if the person requests a license pursuant to this subsection.***

(4) Every applicant shall make oath to the circuit clerk as to the truthfulness of the statements contained in the form.

(5){~~(4)~~} The clerk may, after determining that the applicant has fully complied with the law governing applications, issue a temporary operator's license to be valid for not more than ninety (90) days. The temporary license shall be valid in lieu of the permanent license during the certification period and shall be destroyed upon receipt of the permanent operator's license.

(6){~~(5)~~} Every person seeking a color photo identification card may apply in person to the circuit clerk in the county in which he resides. When requested by the clerk, a person shall bring a birth certificate and Social Security card. The Social Security card shall contain his signature. Every applicant shall make oath to the circuit clerk as to the truthfulness of the statements contained on the form. The identification card shall designate by color coding and by use of the phrase "under (21)" if the licensee is under the age of twenty-one (21).

(7){~~(6)~~} Military personnel and other licensed drivers temporarily out-of-county may be issued a license without a photograph. The license shall show in the space provided for the photograph the legend "valid without photo and signature."

(8)[~~(7)~~] The cabinet shall provide on each license to operate motor vehicles or motorcycles issued a space for the licensed driver's blood type; a space for a medical insignia to be stamped with the proper insignia by the Circuit Court clerk, if the person provides evidence that a medical identification bracelet noting specific physical ailments or a drug allergy is being worn or other proof as may be required by the cabinet; and a statement whereby the owner of the license may certify in the presence of two (2) witnesses his willingness to make an anatomical gift under KRS 311.195. In addition, if the motor vehicle operator denotes a physical ailment or drug allergy on the license, he may apply for and shall receive, for a fee of one dollar ($1), a medical insignia decal which may be affixed to the lower left side of the front windshield of a motor vehicle. The applicant shall remit a fee of one dollar ($1) to the circuit clerk, at which time the clerk shall issue the insignia.

(9)[~~(8)~~] An operator's license as issued pursuant to this section shall be designated a Class D license.

(10)[~~(9)~~] ***A*** [~~No~~] person shall ***not*** have more than one (1) license.

Section 2. KRS 281A.170 is amended to read as follows:

(1) The commercial driver's license shall be marked "commercial driver's license" or "CDL" and shall be, to the maximum extent practicable, tamper proof. It shall include, but is not limited to, the following information:

(a) The name and present resident address of the licensee;

(b) The licensee's color photograph;

(c) A physical description of the licensee including sex, height, weight, and eye color;

(d) The licensee's date of birth;

(e) [~~The licensee's Social Security number;~~

~~(f)~~] The licensee's signature;

(f)[~~(g)~~] The class or type of commercial motor vehicle or vehicles that the person is authorized to drive together with any endorsements or restrictions;

(g)[~~(h)~~] The name of this state;

(h)[~~(i)~~] The dates between which the license is valid; and

(i)[~~(j)~~] ***Except for a person's social security number,*** [~~Any~~] other information required by the cabinet.

(2) A commercial driver's license shall be issued with classifications, endorsements, and restrictions. Vehicles that require an endorsement shall not be driven unless the proper endorsement appears on the license and the applicant has passed the knowledge and skills test required by the state police.

(a) Classifications:

1. Class A - Any combination of vehicles with a gross vehicle weight rating of twenty-six thousand and one (26,001) pounds or more, if the gross vehicle weight rating of the vehicle being towed is in excess of ten thousand (10,000) pounds. Licensees with an "A" classification may with the proper endorsement drive Class B and C vehicles.

2. Class B - Any single vehicle with a gross vehicle weight rating of twenty-six thousand and one (26,001) pounds or more, and any vehicle towing a vehicle not in excess of ten thousand (10,000) pounds. Licensees with a "B" classification may with the proper endorsements drive Class C vehicles.

3. Class C - Any single vehicle with a gross weight rating of less than twenty-six thousand and one (26,001) pounds or any vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand (10,000) pounds which includes:

a. Vehicles designed to transport sixteen (16) or more passengers, including the driver; or

b. Vehicles used in the transportation of hazardous materials which requires the vehicle to be placarded under Title 49, Code of Federal Regulations, Part 172, sub-part F, as adopted by administrative regulations of the cabinet, pursuant to KRS Chapter 13A.

4. Class D - All other vehicles not listed in any other class.

5. Class E - Moped only.

6. Class M - Motorcycles. Licensees with a "M" classification may also drive Class E vehicles.

(b) Endorsements:

1. "H" - Authorizes the driver to operate a vehicle transporting hazardous materials.

2. "T" - Authorizes operation of double trailers and triple trailers in those jurisdictions allowing the operation of triple trailers.

3. "P" - Authorizes operation of vehicles carrying passengers.

4. "N" - Authorizes operation of tank vehicles.

5. "X" - Authorizes operation of combination of hazardous materials and tank vehicle endorsements.
6. "R" - Authorizes operation of all other endorsements not otherwise specified.

(c) Restrictions:

1. "K" - Restricts the driver to operation of vehicles not equipped with airbrakes.
2. "I" - Restricts the driver to Kentucky intrastate commerce driving.
3. "S" - Restricts the driver to school buses, church buses, buses operated by a mass transit authority created under the provisions of KRS Chapter 96A, buses operated under a nonprofit bus certificate established pursuant to KRS 281.619, and fixed route buses operated by a public entity pursuant to the provisions of KRS Chapter 281.
4. "L" - Shall not include a Class "A" bus.
5. "J" - Shall not include a Class "A" or "B" bus.
6. "O" - Shall not include tractor, semitrailer style vehicles.
7. "Z" - Exempt intracity zones for commercial vehicles.
8. "1-13" - Other restrictions.

(3) Within ten (10) days after issuing a commercial driver's license, the cabinet shall notify the commercial driver's license information system of that fact, providing all information required to ensure identification of the person.

(4) A commercial driver's license issued pursuant to this chapter shall expire in four (4) years unless the license was issued pursuant to the terms of KRS 281A.200, or unless the license was issued to a person under the age of twenty-one (21).

(5) A person under the age of twenty-one (21) shall not be licensed to operate a Class A, B, or C vehicle unless he has an "I" restriction. A commercial driver with an "I" restriction shall not drive a commercial motor vehicle in interstate commerce, unless he is exempt pursuant to 49 C.F.R. 391.2. A commercial driver under the age of twenty-one (21) shall not be allowed to operate a school bus or a vehicle transporting hazardous material in intrastate commerce.

(6) The holder of a commercial driver's license shall be considered to hold a valid Kentucky driver's license issued under the provisions of KRS 186.412.

Section 3. KRS 281A.120 is amended to read as follows:

(1) A commercial driver's instruction permit may be issued to an individual twenty-one (21) years and older who holds a valid automobile Class D driver's license and who has passed the vision and knowledge tests required for a commercial driver's license of the class vehicle to be driven. Instruction permits shall be class specific.

(2) A commercial driver's instruction permit may be issued to an individual eighteen (18) years of age who holds a valid automobile Class D driver's license, who has passed the vision and knowledge tests required for a commercial driver's license of the class vehicle to be driven, if the individual only drives a commercial motor vehicle in intrastate commerce and does not drive a school bus or a vehicle hauling hazardous material. The instruction permit shall be class specific and shall contain an "I" restriction noting that the commercial driver is limited to Kentucky intrastate commerce.

(3) A commercial driver's instruction permit shall not be issued for a period to exceed six (6) months. Only one (1) renewal or reissuance may be granted within two (2) year period for the same class of vehicle. The holder of a commercial driver's instruction permit may, unless otherwise disqualified, drive a commercial motor vehicle on the highways of Kentucky only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven and who occupies a seat beside the permit holder for the purpose of giving instruction in driving the commercial motor vehicle.

(4) A commercial driver's instruction permit shall contain, in addition to ~~[any]~~ other information ***required by*** ~~[which]~~ the cabinet ~~[deems necessary]~~, those requirements set forth in KRS 281A.170***. The commercial driver's instruction permit shall not contain the permit holder's social security number but*** ~~[and]~~ shall include a color photo of the permit holder.

The Committee Amendment No. 1 to **HB 394** is as follows:

On page 1, line 2, after the word "an" and before the word "***original***", insert the following new language: "***instruction permit, or***".

SB 11, AN ACT relating to motor vehicle license plates.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

(1) (a) Upon application to the county clerk of the county of his residence, a retired member of any branch of the United States Armed Forces with at least twenty (20) years of service shall be issued a five (5) year license plate in the same form and character as license plates authorized by law to be used on passenger cars.

(b) The plate shall bear the name of that branch of the Armed Forces from which the retired member was retired on a decal strip to be placed on the bottom of the plate, along with a replica of the seal of the United States Department of Defense, encircled by the words Armed Forces Retired, and any other numeric code which the Transportation Cabinet deems necessary. Each application shall be accompanied by proof of previous service in a branch of the United States Armed Forces.

(c) The applicant may be issued license plates for passenger cars as set forth in KRS 186.050(1) or for commercial vehicles as set forth in KRS 186.050(3)(a), but this paragraph shall not be deemed to authorize the operation of a vehicle at a gross laden weight in excess of six thousand (6,000) pounds.

(2) Each original application shall be accompanied by the payment of a fee of twenty-five dollars ($25). Annually thereafter, upon application for renewal, the county clerk shall issue a renewal decal to any applicant upon payment of an eleven dollar and fifty cents ($11.50) state fee and a two dollar ($2) clerk's fee per registration.

(3) Upon sale, transfer, or termination of lease of a vehicle bearing an Armed Forces plate authorized by subsection (1) of this section, the owner or lessee shall return the Armed Forces plate and the certificate of registration to the county clerk. The clerk shall issue a regular license plate and certificate of registration, upon payment of an eleven dollar and fifty cent ($11.50) state fee and a two dollar ($2) clerk's fee.

(4) Any applicant seeking an Armed Forces license plate for a vehicle provided to him pursuant to an occupation shall conform to the requirements of KRS 186.050(14).

(5) The secretary of the Transportation Cabinet shall, in accordance with the provisions of KRS Chapter 13A, promulgate administrative regulations and prescribe forms necessary to carry out the provisions of this section.

The Committee on Transportation reported **HB 293**, **HB 340** and **HB 447** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 293, AN ACT relating to license plates.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

(1) Upon application to the county clerk of the county of his residence, any member of the Marine Corps League shall be issued a five (5) year license plate in the same form and character as license plates authorized by law to be used upon similar private vehicles registered in Kentucky, except that these license plates shall bear the inscription "Marine Corps League," a registration number, and an appropriate standardized insignia, as provided in subsection (2) of this section. Each initial or renewal application shall be accompanied by proof of membership in the Marine Corps League, and the payment of the fees specified in subsection (5) of this section. The Transportation Cabinet shall provide the clerk with a renewal decal, light blue in color with gold numbers, to be issued to applicants seeking renewal of a Marine Corps League license plate in the event a new registration plate is not issued for the current registration year. The renewal decal shall be affixed to the registration plate by the owner.

(2) On the upper portion of the license plate for members of the Marine Corps League, shall be inscribed "Kentucky," in blue, in lieu of the county of residence. Underneath this shall be the words "SEMPER FIDELIS," in white, written on a background logo of red, that includes an outline of the raising of the flag on Iwo Jima on each end. In lieu of the usual registration number there shall be the Marine Corps logo, in gold, followed by four numbers, in blue, starting with the number "0001." The particular license plate numbered 0001 shall be issued in Martin County. At the bottom portion of the plate shall be inscribed "Marine Corps League" in red, in lieu of the words "Bluegrass State," with space for the decal at the right-hand lower corner.

(3) Upon the sale, transfer, or termination of lease of a vehicle licensed as authorized by subsection (1) of this section, the owner or lessee shall remove the Marine Corps League license plate and return it and the certificate of registration to the county clerk. The county clerk shall issue a regular license plate and certificate of registration upon payment of an eleven dollar fifty cent ($11.50) state fee and a two dollar ($2) clerk's fee.

(4) Upon termination of membership in the Marine Corps League, an applicant to whom a Marine Corps League license plate was issued under this section shall, within thirty (30) days, return the Marine Corps League plate to the county clerk of the county of his residence and obtain a regular license plate and certificate of registration in the same manner as set out in subsection (3) of this section.

(5) For the services performed in issuing Marine Corps League license plates, and in annually issuing a current year renewal decal to be affixed to these plates, the county clerk shall receive from each applicant a twenty-five dollar ($25) state fee and a two dollar ($2) clerk's fee. A one dollar ($1) fee shall be charged for the reissuance of each license plate after the sale, transfer, or termination of lease of the vehicle for which it was originally issued.

(6) Any applicant seeking to obtain a license plate according to this section, for a vehicle provided to him pursuant to an occupation shall conform to the requirements set forth in KRS 186.050(14).

(7) The secretary of the Transportation Cabinet shall provide forms to carry out the purpose of this section.

HB 340, AN ACT relating to license plates.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

(1) Upon application to the county clerk of the county of residence, a recipient of a Silver or Bronze Star medal shall be issued a five (5)year license plate upon the payment of a twenty-five dollar ($25) license fee and a two dollar ($2) clerk's fee.

(2) The application shall be accompanied by written proof from the appropriate branch of the United States Armed Forces stating that the applicant is a recipient of a Silver or Bronze Star medal. Annually thereafter, upon application and after payment of an eleven dollar and fifty cent ($11.50) state fee and a two dollar ($2) clerk's fee, the clerk shall issue a decal to renew the vehicle registration. The decal shall be affixed to the five (5) year registration plate.

(3) The plate shall bear the name "Silver Star" or "Bronze Star," a registration number and an appropriate logo to be determined by the Transportation Cabinet. The applicant may purchase one (1) registration plate annually, and it shall be for a vehicle in which the medal holder has total or partial ownership.

(4) Upon sale or transfer of a vehicle bearing a special plate, the owner shall remove the plate and return it, along with certificate of title and registration, to the county clerk. When the special plate is presented to the clerk, he shall reissue it, for a two dollar ($2) clerk's fee, for use on any other vehicle owned by the same person purchasing the Silver or Bronze Star plate for the current period. The license plate and decal on the other vehicle shall be turned in to the county clerk, who shall forward the plate to the Transportation Cabinet.

(5) If the inscriptions on the Silver or Bronze Star plate become indiscernible within five (5) years from the date of issue, the owner may obtain a replacement plate free of charge.

(6) Silver or Bronze Star registration under this section shall expire on December 31 each year.

(7) The secretary of the Transportation Cabinet shall promulgate administrative regulations and prescribe necessary forms to further the purpose of this section. The cabinet shall have received at least five hundred (500) requests before it shall be required to produce Silver or Bronze Star license plates.

HB 447, AN ACT relating to motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.221 is amended to read as follows:

A person shall not operate on any highway, except those highways designated by the secretary of transportation under the provisions of KRS 189.222, or those locally maintained highways under the provisions of KRS 189.222(9), any of the following trucks, trailers, mobile homes, or vehicles:

(1) Any motor truck, semitrailer, trailer, mobile home, or vehicle which exceeds eleven and one-half (11-1/2) feet in height or ninety-six (96) inches in width, including any part of the body or load;

(2) Any motor truck, except a semitrailer truck, which exceeds twenty-six and one half (26-1/2) feet in length, including any part of the body or load;

(3) Any semitrailer truck which exceeds thirty (30) feet in length, including any part of the body or load;

(4) Any truck, semitrailer truck, or truck and trailer unit which exceeds 36,000 pounds gross weight, including the load;

(5) Any truck, semitrailer truck, or tractor-trailer unit which exceeds a gross weight equal to the sum of six hundred (600) pounds per inch of the combined width of the tires upon which the vehicle may be propelled, but no more than thirty-six thousand (36,000) pounds.

(6) Notwithstanding the provisions of this section, any truck hauling building materials to a road construction project on a highway rated less than the maximum weight provided above, may haul up to eighty thousand (80,000) pounds gross weight, including the load, without a permit. This privilege shall extend only to travel between the materials manufacturing site and the road construction project and *shall apply only if the axle weights of the truck do not exceed the requirements of KRS 189.222 and a weight limitation notice posted on any bridge pursuant to KRS 189.231 is not exceeded. This privilege* shall be automatically rescinded upon completion of said project.

The Committee on State Government reported **HJR 26** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HJR 26, A JOINT RESOLUTION directing the establishment of Benny Powell Point on the Kentucky River.

WHEREAS, Benny Powell crossed these earthly bounds in 1992, much to the dismay and sorrow of his many admirers from Danville and the environs of the Kentucky River; and

WHEREAS, Benny Powell was a World War II fighter pilot who was severely injured when he was run over by a German tank; and

WHEREAS, fortunately medical personnel were able to save both his legs but were unable to save one arm which had to be amputated; and

WHEREAS, in the years since World War II Benny Powell made his home in Danville and on the Kentucky River where his friends were legion; and

WHEREAS, Benny Powell, a hardworking man of many talents, crafted his own paddle wheeler, christened the "Little Toot;" complete with a customized calliope with a shortened keyboard to accommodate his single arm; and

WHEREAS, Benny Powell earned a reputation as "one of the nicest people you'd hope to meet," as the attendance at his funeral in 1992 was testament, along with the celebration of Benny Powell Day in Shakertown in the month of August, 1993;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. That as a fitting tribute to Benny Powell, there is hereby established a point at the confluence of the Kentucky River and the Dix River, three-quarters of a mile above Lock Seven and one-half mile above Shaker Landing to be known as Benny Powell Point.

Section 2. That Benny Powell Point is to be formally dedicated by the Kentucky River Authority at an appropriate time in the year 1994.

Section 3. That the Kentucky River Authority is requested to have identified Benny Powell Point on the next printing of the charts of the Kentucky River.

Section 4. That the Clerk of the House of Representatives is directed to transmit a copy of this Resolution to the Kentucky River Authority; to the Army Corps of Engineers, Department of the Army, U.S. Engineer, Box 59, Louisville, Kentucky 40201-0059; and, to David Powell, WLEX TV, Russell Cave Pike, Lexington, Kentucky 40511.

The following members filed requests to have their names added as co-sponsors of Bills: **HB 206**, Representative Simpson; **HB 311, HB 343, HB 353, HB 368**, Representative Marzian; **HB 312**, Representative Palumbo.

Announcements

The Clerk announced the following meetings:

Majority Caucus, upon adjournment, Room 327

Health and Welfare, 8:00 a.m., February 15, 1994 and upon adjournment

Natural Resources and Environment, after Caucus

Budget Review Subcommittee on Natural Resources, upon adjournment of Majority Caucus

Appropriations and Revenue, 10:00 a.m., February 15, 1994

Tourism Development and Energy, upon adjournment of Caucus

Committee on Rules, upon adjournment, Speaker's Office

Adjournment

Representative Stumbo moved that the House adjourn until 9:00 a.m., Friday, February 11, 1994.

On the roll call the vote was **Yeas 86**--Adams, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bryant, Buis, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Jensen, Johnson, Keith, Kerr, Lear, Lee, Lewis, Lindsay, Little, Long, Maggard, Maricle, Marzian, Mason, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riggs, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 3**--Heleringer, LeMaster, Lile.

The motion to adjourn was adopted.

FRIDAY, FEBRUARY 11, 1994

TWENTY-SIXTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Representative James Wayne.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Ackerson, Adams, Brown, Bruce, Bryant, P. Clark, Crenshaw, Curd, Deskins, DeWeese, Farrow, French, Gedling, Hampton, Hancock, Hatcher, Heleringer, Keith, Lear, Little, Lyne, Maggard, Maricle, McElroy, Napier, Riggs, Sanders, Scorsone, Simpson and Stengel.

Representative Stumbo moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Stumbo moved that the reading of the Journal of February 10, 1994 be dispensed with and the same approved. Agreed.

Representative Stumbo moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Stumbo moved that all properly filed co-sponsor requests be approved. Agreed.

Introduction of Bills and Resolutions

HB 541, by Representative Riggs: AN ACT relating to the use, for investigative purposes, by law enforcement agencies of fictitious motor vehicle and motor vehicle operator's licenses, motorcycle operator's licenses; and commercial driver's licenses.

HB 542, by Representative Johnson: AN ACT relating to detention facilities for juveniles.

HB 543, by Representative Treesh: AN ACT relating to crimes and punishments.

HB 544, by Representative Treesh: AN ACT relating to crimes and punishments.

HB 545, by Representative Treesh: AN ACT relating to crimes and punishments.

HB 546, by Representative L. Clark: AN ACT relating to certified public accountants.

HB 547, by Representatives Cave and B. Smith: AN ACT relating to insurance.

HB 548, by Representatives Cave and B. Smith: AN ACT relating to insurance.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Banking and Insurance: **HB 524**

Cities: **HCR 47, HB 525, HB 532**

Elections and Constitutional Amendments: **HB 530**

Health and Welfare: **SB 137, HB 535**

Judiciary: **HB 537, HB 540**

Labor and Industry: **HB 534, HB 536**

Natural Resources and Environment: **HB 526, HB 527, HB 528, HB 529**

State Government: **HB 531**

Tourism Development and Energy: **HB 538**

Transportation: **HB 533, HB 539**

Report of Committees

The Committee on Rules reported the following Consent Bills have been posted for passage in the Regular Orders of the Day, February 14, 1994: **HB 316, HB 318, HB 319, HB 320, HB 321**

The Committee on Rules reported that **HB 229, HB 91, HB 97, HB 304, HB 327, HB 328, HB 329, HR 18, HJR 23, SB 4, SB 91** and **SB 120** have been posted for passage in the Orders of the Day for February 14, 1994.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Counties and Special Districts: **HB 433, HB 450**

Economic Development: **HB 511, HB 512**

The Clerk announced that the following Bills have been withdrawn from Committee consideration:

Counties and Special Districts: **HB 149, HB 214**

Calendar

HB 204, HB 232, HB 272, HB 360, HB 357, HCR 17, SB 27, SB 60, HB 41, HB 201, HB 394, and **SB 11** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Consent Calendar

HB 180, HJR 26, HB 293, HB 340 and **HB 447** taken from the Consent Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Orders of the Day

Representative Stumbo moved that **HB 30** be recommitted to the Committee on Appropriations and Revenue. Agreed.

Representative Stumbo moved that **HB 92** be recommitted to the Committee on Counties and Special Districts.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for the Introduction of Bills and Resolutions and Report of Committees. Agreed.

Floor Amendments

Floor Amendment No. 1 to the Committee Substitute to **HB 91**, by Representative Lindsay:

On page 5, line 13, after "of", by inserting "***four (4) members, three (3) of whom shall be parents and one (1) who may be a parent or a community resident of the school attendance area;***" and placing brackets around and striking through "two (2) parents,";

On page 5, line 13, after "teachers", by inserting "***;***" and placing brackets around and striking through the ",";

On page 5, line 15, after "representatives", by inserting "***or community representative***";

On page 5, line 23, after "parent", by inserting "***and community***";

On page 5, line 24, after "parent" the first time it appears on that line, by inserting "***and community***";

On page 8, between lines 8 and 9, by inserting the following:

"***(k) 1. The school council may establish a traditional track primary program in addition to the primary program established pursuant to KRS 156.160 that may include, but not be limited to, a graded organization, assignment to grade based on student age and ability, and textbooks. If the council establishes a traditional track, the parents shall determine which primary program organization their child attends.***

2. The results from assessments administered pursuant to KRS 158.6453 for students who participated in a traditional track primary program shall not be used to calculate that school's threshold index pursuant to KRS 158.6455 for the fourth grade or eighth grade if applicable."

Floor Amendment No. 1 to **HB 119**, by Representative Lindsay:

On page 1, line 15, after "majority of the", by placing brackets around and striking through "entire", and inserting in lieu thereof the following: "***members present at a meeting of the***"; and

On page 1, line 17, after "***majority of the***", by deleting "***entire***", and inserting in lieu thereof the following: "***members present at a meeting of the***".

Floor Title Amendment to **HB 206**, by Representative Long:

By amending the title to read as follows: "An Act relating to charitable gaming, and declaring an emergency."

Floor Amendment No. 3 to **HB 287**, by Representative Lewis:

On page 7, lines 9-15, by deleting them in their entirety, and inserting in lieu thereof:

"***(9) The text shall permit the placement and use of manufactured homes, 1993 model year and later in agricultural zones, or in residential zones created by map amendment approved after July 15, 1994, subject to compliance with the same regulations applicable to other homes in the same zone. In nonagricultural zones, aesthetic standards may be adopted, limiting roofing or siding material permitted, and requiring perimeter foundation enclosures. Nothing in this subsection shall be construed to affect, modify, or abolish restrictions contained in recorded deeds, covenants, or deed of restrictions or developer's subdivision restrictions. Nothing in this subsection shall remove the authority of the local building inspector to regulate additions to the manufactured home, inspect foundations, or check for aesthetic standards compliance in residential areas.***"

Floor Amendment No. 2 to **HB 287**, by Representative Lewis:

On page 7, lines 9-15, by deleting them in their entirety, and inserting in lieu thereof:

"***(9) The text shall permit the placement and use of manufactured homes, 1993 model year and later in agricultural zones, rural residential zones, or in residential zones created by map amendment approved after July 15, 1994, subject to compliance with the same regulations applicable to other homes in the same zone. In nonagricultural zones, aesthetic standards may be adopted, limiting roofing or siding material permitted, and requiring perimeter foundation enclosures. Nothing in this subsection shall be construed to affect, modify, or abolish restrictions contained in recorded deeds, covenants, or deed of restrictions or developer's subdivision restrictions. Nothing in this subsection shall remove the authority of the local building inspector to regulate additions to the manufactured home, inspect foundations, or check for aesthetic standards compliance in residential areas.***"

Floor Amendment No. 1 to **HB 304**, by Representative Lindsay:

On page 1, line 5, after the ".", by adding "***The statewide assessment program shall not include measurement of a student's ability to become a self-sufficient individual or to become a responsible member of a family, work group, or community.***"

On page 2, after line 14, by adding the following:

"Section 2. KRS 158.6451 is amended to read as follows:

(1) Upon July 13, 1990, the Council on School Performance Standards established by Executive Order 89-151 shall be reconvened by the chairman to frame the following six (6) goals for the schools of the Commonwealth in measurable terms which define the outcomes expected of students:

(a) Schools shall expect a high level of achievement of all students.

(b) Schools shall develop their students' ability to:

1. Use basic communication and mathematics skills for purposes and situations they will encounter throughout their lives;

2. Apply core concepts and principles from mathematics, the sciences, the arts, the humanities, social studies, and practical living studies to situations they will encounter throughout their lives;

3. Become a self-sufficient individual;

4. Become responsible members of a family, work group, or community, including demonstrating effectiveness in community service;

5. Think and solve problems in school situations and in a variety of situations they will encounter in life; and

6. Connect and integrate experiences and new knowledge from all subject matter fields with what they have previously learned and build on past learning experiences to acquire new information through various media sources.

(c) Schools shall increase their students' rate of school attendance.

(d) Schools shall reduce their students' dropout and retention rates.

(e) Schools shall reduce physical and mental health barriers to learning.

(f) Schools shall be measured on the proportion of students who make a successful transition to work, post-secondary education, and the military.

(2) The Council on School Performance Standards shall employ necessary staff and shall be attached to the Department of Education for administrative purposes. Members of the council and its committees may receive reimbursement of actual expenses for attending meetings and may be reimbursed for other actual and necessary expenses incurred in the performance of their duties authorized by the council. The expenses shall be paid out of the appropriation for the council.

(3) *(a)* The Council on School Performance Standards shall establish a number of committees with statewide representation of certified personnel to frame the goals in measurable terms which specify the expected outcomes. The council shall make periodic progress reports and a final report by December 1, 1991, to the Governor, the State Board for Elementary and Secondary Education, and the Legislative Research Commission. After submitting its final report the council shall cease to exist. The State Board for Elementary and Secondary Education shall adopt the goals of the council.

(b) By December, 1994, the State Board for Elementary and Secondary Education shall review and revise the learner outcomes for the goals to assure that all outcomes are measurable.

(4) By July 1, 1993, the State Board for Elementary and Secondary Education shall disseminate to local school districts and schools a model curriculum framework which is directly tied to the goals, outcomes, and assessment strategies developed pursuant to this section and KRS 158.645 and 158.6453. The framework shall provide direction to local districts and schools as they develop their curriculum. The framework shall identify teaching and assessment strategies, instructional material resources, ideas on how to incorporate the resources of the community, a directory of model teaching sites, and alternative ways of using school time.

Section 1. KRS 158.6455 is amended to read as follows:

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

(1) The State Board for Elementary and Secondary Education shall promulgate administrative regulations to establish a system of determining successful schools and dispensing appropriate rewards. The system shall be based on the following:

(a) A school shall be the unit of measure to determine success;

(b) School success shall be determined by measuring a school's improvement over a two (2) year period;

(c) A school shall be rewarded for an increased proportion of successful students, including those students who are at risk of school failure;

(d) A threshold level for school improvement shall be established by the board to determine the amount of success needed for a school to receive a reward. The threshold definition shall establish the percentage of increase required in a school's percentage of successful students as compared to a school's present proportion of successful students, with consideration given to the fact that a school closest to having one hundred percent (100%) successful students will have a lower percentage increase required;

(e) Rewards shall be given to the school on behalf of the full-time, part-time, and itinerant instructional staff of a school who generate the reward when the school achieves at least one percent (1%) gain over its threshold as defined in paragraph (d) of this subsection. Substitute teachers shall not be used in calculating the reward;

(f) Rewards shall be calculated by applying the percentage set by the General Assembly in the biennial budget to the current annual salary of each certified staff person employed in the school on the last working day of the year of the reward. The reward for part-time and itinerant staff shall be calculated for the proportion of time spent in the school. In determining the percentage to be applied to a school for calculation of the rewards for the school's staff, consideration shall be given to the fact that schools already having a high percentage of successful students shall have a lower requirement for a percentage increase in its number of successful students. The staff person's identity in connection to his share of the reward shall be maintained when his share of the reward is deposited to the school's account;

(g) The certified staff members shall by majority rule collectively decide on the ways the reward funds shall be spent.

Each individual staff person shall use the amount he earned in accordance with the decisions made by the total staff. Rewards shall not be added to a staff person's base salary and shall not be defined as compensation for retirement purposes under KRS 161.220(10); and

(h) The Department of Education shall send the school's reward to the local district office for transmittal to the school.

(2) The State Board for Elementary and Secondary Education, after adopting the goals of the Council on School Performance Standards and determining the definition of a successful student, shall adopt by administrative regulation the formula to be used to determine successful schools. The formula shall be a calculus of factors which reflect the school ***goals***[~~outcomes~~] described in KRS 158.6451***, except there shall be no measurement of the goals included in subsection (1)(b)3 and (1)(b)4***.

(3) A school that does not reach its threshold level as defined in paragraph (d) of subsection (1) of this section but maintains the previous proportion of successful students shall be required to develop a school improvement plan and shall be eligible to receive funds from the school improvement fund pursuant to KRS 158.805. A school that does not reach its threshold level but maintains the previous proportion of successful students after the second biennial review shall be required to meet the provisions of subsection (4) of this section.

(4) A school in which the proportion of successful students declines by less than five percent (5%) shall be required to develop a school improvement plan, shall be eligible to receive funds from the school improvement fund, and shall have one (1) or more Kentucky distinguished educators assigned to the school to carry out the duties as described in KRS 158.782. If the school does not meet its original threshold after the next biennial review, the school shall be subject to the requirements of subsection (5) of this section.

(5) ***(a) Except as provided in paragraph (b) of this subsection,*** a school in which the proportion of successful students declines by five percent (5%) or more shall be declared by the State Board for Elementary and Secondary Education to be a "school in crisis." When a school is declared to be a "school in crisis," the following actions shall be required:

1.[~~(a)~~] The full-time and part-time certified staff of that school shall be placed on probation;

2.[~~(b)~~] The principal shall immediately notify the students' parents of the students' right to transfer to a successful school, with procedures for initiating the request;

3.[~~(c)~~] Within thirty (30) days after the declaration by the state board under this subsection or no later than thirty (30) days before the start of the next school year, whichever is later, any student in that school may request and shall be allowed to transfer to a successful school as determined under the provisions of subsection (2) of this section. The superintendent shall select the receiving successful school in the home district or make arrangements with a neighboring district. If two (2) districts cannot agree, the superintendent of the student's resident district shall request the State Board for Elementary and Secondary Education to resolve the issue and make a decision on the placement of the student within thirty (30) days of the request. The board of the district in which the student resides shall be responsible for all tuition and transportation costs incurred as a result of a student transferring from a "school in crisis" to a successful school. If a decline in student enrollment causes overstaffing at the "school in crisis," personnel shall be reduced or transferred pursuant to KRS 161.760 and 161.800.

4.[~~(d)~~] One (1) or more Kentucky distinguished educators shall be assigned to the school by the commissioner of education to carry out the duties as described in KRS 158.782. Notwithstanding any other statute to the contrary, at the end of six (6) months, the Kentucky distinguished educator shall evaluate and make a recommendation to the superintendent regarding the retention, dismissal, or transfer of each full-time and part-time certified staff member. Recommendations for transfer shall conform to any employer-employee bargained contract which is in effect. Recommendations for dismissal shall be binding on the superintendent who shall notify the staff member pursuant to KRS 161.790. This evaluation process shall continue every six (6) months until the school is no longer a "school in crisis" as determined by the State Board for Elementary and Secondary Education; and

5.[~~(e)~~] The school shall be required to develop a school improvement plan and shall be eligible to receive funds from the school improvement fund.

(b) A school qualifying as a "school in crisis" pursuant to paragraph (a) of this subsection on the basis of the 1993-1994 school year assessment shall be subject to subsection (4) of this section until the school's threshold level is calculated for the 1995-1996 school year.

(6) The State Board for Elementary and Secondary Education shall develop a system of rewards and sanctions for certified staff who are not assigned to a school in a local school district. The system shall be analogous to the system described in subsections (1) through (5) of this section. Rewards shall be given to non-school-based staff when the district's proportion of successful students increases above a threshold adopted by the state board and comparable to the threshold adopted for schools. Sanctions shall be imposed when the proportion of successful students in the district declines in the same proportion used to determine school sanctions under subsections (3), (4), and (5) of this section. A school district

that does not meet its threshold shall be required to develop a district improvement plan defined in KRS 158.650.

(7) *(a) Except as provided in paragraph (b) of this subsection,* a school district in which the proportion of successful students declines by five percent (5%) or more shall be assigned one (1) or more Kentucky distinguished educators to assist the system, evaluate personnel, and notwithstanding any other statute to the contrary, make personnel recommendations every six (6) months on retention, dismissal, or transfer. Personnel recommendations shall be made to the superintendent. Recommendations on the superintendent's status shall be made to the local board of education. If the recommendation is to terminate the superintendent, the board shall terminate the contract pursuant to KRS 160.350. If a district has a declining proportion of successful students for two (2) consecutive biennial assessment periods, the district shall be declared an education development district pursuant to KRS 158.685 and the board members and the superintendent shall be removed under the provisions of KRS 156.132 and 156.136.

(b) A school district qualifying for sanctions pursuant to paragraph (a) of this subsection on the basis of the 1993-1994 school year assessment shall be subject to subsection (6) of this section until the district's threshold level is calculated for the 1995-1996 school year.

(8) The State Board for Elementary and Secondary Education shall adopt administrative regulations to establish a process whereby a school shall be allowed to appeal a performance judgment which it considers grossly unfair. The state board may adjust a performance judgment on appeal when evidence of highly unusual circumstances warrants the conclusion that the performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the biennial assessment period which are beyond the control of the school."

Floor Amendment No. 1 to **HB 327**, by Representative Lindsay:

On page 1, line 13, after "of", by inserting "*four (4) members, three (3) of whom shall be parents and one (1) who may be a parent or a community resident of the school attendance area;*" and placing brackets around and striking through "two (2) parents,";

On page 1, line 13, after "teachers", by inserting "*;*" and placing brackets around and striking through the ",";

On page 1, line 15, after "representatives", by inserting "*or community representative*";

On page 1, line 23, after "parent", by inserting "*and community*";

On page 1, line 24, after "parent", by inserting "*and community*";

On page 4, between lines 16 and 17, by inserting the following:

"*(k) 1. The school council may establish a traditional track primary program in addition to the primary program established pursuant to KRS 156.160 that may include, but not be limited to, a graded organization, assignment to grade based on student age and ability, and textbooks. If the council establishes a traditional track, the parents shall determine which primary program organization their child attends.*

2. The results from assessments administered pursuant to KRS 158.6453 for students who participated in a traditional track primary program shall not be used to calculate that school's threshold index pursuant to KRS 158.6455 for the fourth grade or eighth grade if applicable."

Floor Amendment No. 2 to **HB 327**, by Representative Moberly:

On page 2, line 2, after "purpose.", by inserting "*A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected, but the terms shall not exceed two (2) years nor be consecutive.*";

On page 6, on lines 9, 16, 17, and 18, by deleting the new language.

Announcements

The Clerk announced the following meetings:

Committee on Rules, upon adjournment, Speaker's Office

Subcommittee Chairs of the Committee on Appropriations and Revenue, canceled

Adjournment

Representative Stumbo moved that the House adjourn until 4:00 p.m., February 14, 1994.

On the roll call the vote was **Yeas 53**--Adkins, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Burch, Butler, Cave, L. Clark, Clarke, Coleman, Cyrus, Damron, Farley, Ford, Fox, Geveden, Graham, Harper, Johnson, Lee, Lindsay, Long, Marzian, Mason, Moberly, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riner, Scott, Shacklette, B. Smith, R. Smith, Stacy, Stumbo, Todd, Trapp, Treesh, Wayne, Worthington, Yates, Zimmerman. **Nays 3**--Jensen, LeMaster, Lile.

The motion to adjourn was adopted.

MONDAY, FEBRUARY 14, 1994

TWENTY-SEVENTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend Mark Hopper, First Baptist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Ackerson, Hampton and Keith.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of February 11, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 146, SB 147** and **HB 19**. (Time: 4:05 p.m.)

Message received in regard to **HJR 13**: The Senate has passed **HJR 13** with Senate Committee Amendment and respectfully requests concurrence of this Honorable Body.

Introduction of Bills and Resolutions

HB 549, by Representatives Trapp and Riggs: AN ACT relating to the creation of safety and security department by school boards for their school districts.

HB 550, by Representatives Trapp and Riggs: AN ACT relating to law enforcement officers.

HB 551, by Representative B. Smith: AN ACT relating to insurance.

HB 552, by Representative Stengel: AN ACT relating to deputy sheriff merit boards.

HB 553, by Representative Kerr: AN ACT relating to the ownership and conveyance of property.

HB 554, by Representative Scorsone: AN ACT relating to termination of parental rights.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Banking and Insurance: **HB 547, HB 548**

Business Organizations and Professions: **HB 546**

Judiciary: **HB 542, HB 543, HB 544, HB 545**

Transportation: **HB 541**

Report of Committees

The Committee on Rules reported the following Consent Bills have been posted for passage in the Regular Orders of the Day, February 15, 1994: **HB 447, HJR 26**

The Committee on Rules reported that **HB 256, HB 232, HB 272, HB 357, HB 360, HCR 17, SB 27** and **SB 60** have been posted for passage in the Orders of the Day for February 15, 1994.

The Committee on Rules reported that the following Bill has been recommitted:

Judiciary: **HB 361**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Appropriations and Revenue: **SB 22, HB 518, HB 487, HB 353**

Education: **SB 2, SB 12, SB 15, SB 24, SB 40, SB 50, SB 62, HB 312, HB 458, HB 187**

The Clerk announced that the following Bills have been withdrawn from Committee consideration:

Counties and Special Districts: **HB 306, HB 433, HB 450**

Report of Committees (Continued)

The Committee on Natural Resources and Environment reported **HB 368**, with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 368, AN ACT relating to conservation of natural resources through heritage land conservation and environmental education and providing funding therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 146.560 is amended to read as follows:

(1) There is hereby established a Kentucky Heritage Land Conservation Fund Board, referred to hereafter as "the board", which shall administer the Kentucky Heritage Land Conservation Fund established in KRS 146.570 and shall review and approve all grants payable from the fund. The board shall consist of the ***following members:***

(a) The commissioner of the Department of Parks or a designee;

(b) The director of the Kentucky Nature Preserves Commission or a designee;

(c) The commissioner of the Department for Natural Resources or a designee;

(d) The commissioner of the Department of Fish and Wildlife Resources or a designee;

(e) The chairperson of the Environmental Council or a designee;

(f) One (1) person appointed by the Governor, from two (2) persons nominated by the Kentucky Chapter of the Nature Conservancy;

(g) One (1) person appointed by the Governor, from two (2) persons nominated by the League of Kentucky Sportsmen;

(h) Two (2) persons appointed by the Governor, from four (4) persons recognized for their expertise in natural resource issues and nominated by the Kentucky Academy of Sciences;

(i) One (1) person appointed by the Governor, from two (2) persons nominated by the Kentucky Association of Conservation Districts; and

(j) One (1) person appointed by the Governor, from three (3) persons nominated, one (1) by the Kentucky Audubon Council, one (1) by the Cumberland Chapter of the Sierra Club, and one (1) by the Kentucky Conservation Committee [~~commissioner of the Department of Agriculture, the commissioner of the Department of Fish and Wildlife Resources, the commissioner of the Department of Parks, the director of the Kentucky Nature Preserves Commission, the secretary of the Natural Resources and Environmental Protection Cabinet, and the secretary of the Tourism Cabinet, or their appointees, and two (2) members from the Kentucky General Assembly representing the House and Senate and named by the Legislative Research Commission~~].

The board shall receive staff support from the ***Natural Resources and Environmental Protection Cabinet and the*** Department of Fish and Wildlife Resources. The Capital Construction Committee shall maintain legislative oversight authority in the approval of all acquisitions provided for under KRS 146.565. ***Of the six (6) members identified in paragraphs (f) to (j) of this subsection and first appointed, two (2) shall continue in office for terms of one (1) year, two (2) for terms of two (2) years, and two (2) for terms of three (3) years, as the Governor designates. At the expiration of the original terms and for all succeeding terms, the Governor shall appoint a successor to the board for a term of three (3) years in each case. Members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term. The Governor shall appoint a chairperson for the board.***

(2) The board[~~, in conjunction with the Department of Fish and Wildlife Resources,~~] shall promulgate ***in accordance with***

the provisions of KRS Chapter 13A [~~such~~] administrative regulations as are deemed necessary for application for funds from ***the*** [~~state~~] agencies ***identified in KRS 146.570***, review ***and approval*** of proposed projects, and ***review and*** approval of grants. Grants shall be made in amounts, for purposes, and to ***the*** [~~such state~~] agencies ***identified in KRS 146.570*** as meet the priorities for acquisition which are:

(a) Natural areas that possess unique features such as habitat for rare and endangered species;

(b) Areas important to migratory birds;

(c) Areas that perform important natural functions that are subject to alteration or loss; or

(d) Areas to be preserved in their natural state for public use, outdoor recreation and education.

The board shall ***promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A on*** [~~develop~~] acquisition [~~guidelines~~] based on these priorities and property costs seeking to maximize the greatest public benefit by taking advantage of those priority areas available below fair market value and where public or private funds are available on a matching basis. The board shall expend the whole or any part of the principal ***and interest*** as needed. KRS 146.550 to 146.570 shall not allow the use of condemnation powers and shall only allow acquisition of land from willing sellers.

Section 2. KRS 146.565 is amended to read as follows:

Agencies identified in KRS 146.570 [~~State agencies~~] may acquire natural areas and wetlands as defined in KRS 146.550 as well as acquire access and buffer land deemed necessary by the Kentucky Heritage Land Conservation Fund Board established by KRS 146.560. Acquisition of land and expenditure of funds using proceeds provided by KRS 146.570 shall be approved by the board prior to such action.

Section 3. KRS 146.570 is amended to read as follows:

(1) There is hereby established in the State Treasury a fund entitled "Kentucky Heritage Land Conservation Fund." The fund shall primarily receive state appropriations, gifts, grants, federal funds, and tax receipts. The fund shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. ***Moneys in the fund not expended at the end of a fiscal year shall be carried forward to the next fiscal year, and the fund shall not lapse. Moneys in the fund shall be placed in an interest-bearing account.***

(2) Moneys in the fund shall be used exclusively for the purposes of acquisition and ***management*** [~~maintenance~~] of lands as defined in KRS ***146.560. Each recipient of moneys shall develop and implement a resource management plan for each tract acquired, and shall allocate at least ten percent (10%) of moneys received for management of lands acquired. Lands acquired shall be maintained in perpetuity for the purposes set out in KRS 146.560*** [~~146.550 with a cap on funds from KRS 146.550 to 146.570 for maintenance of no more than one percent (1%) of the purchase price per area~~].

(3) Moneys in the fund shall be allocated as follows:

(a) The Department of Parks shall receive ten percent (10%);

(b) The Department of Fish and Wildlife Resources shall receive ten percent (10%);

(c) The Natural Resources and Environmental Protection Cabinet, Division of Forestry, shall receive ten percent (10%);

(d) Ten percent (10%) shall be allocated for wild rivers corridors established by the Kentucky Wild Rivers Act, KRS 146.200 to 146.360, and any administrative regulations promulgated pursuant thereto;

(e) The Nature Preserves Commission shall receive ten percent (10%); and

(f) The board shall receive the remaining fifty percent (50%), for allocation to state agencies, local governments, and state colleges and universities.

Section 4. KRS 132.020 is amended to read as follows:

(1) An annual ad valorem tax for state purposes of thirty-one and one-half cents ($0.315) upon each one hundred dollars ($100) of value of all real property directed to be assessed for taxation, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 directed to be assessed for taxation, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all tobacco directed to be assessed for taxation, and twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of all money in hand, shares of stock, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, except as otherwise provided in subsection (2) of this section, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of unmanufactured agricultural products, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all livestock and domestic fowl, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all tangible personal property

located in a foreign trade zone as designated under 19 U.S.C. Sec. 81, fifteen cents ($0.15) upon machinery of individuals or corporations actually engaged in manufacturing, fifteen cents ($0.15) upon commercial radio, television and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna, fifteen cents ($0.15) upon property which has been certified as a pollution control facility as defined in KRS 224.01-300, one-tenth of one cent ($0.001) upon property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390, twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043, and forty-five cents ($0.45) upon each one hundred dollars ($100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed except as provided in subsection (2) of this section and KRS 132.030, 132.050, 132.200, 136.270, 136.300, 136.320, and other sections providing a different tax rate for particular property.

(2) An annual ad valorem tax for state purposes of one and one-half cents ($0.015) upon each one hundred dollars ($100) of value shall be paid upon the following classes of intangible personal properties, when such intangible personal properties have not acquired a taxable situs without this state:

(a) Accounts receivable, notes, bonds, credits, nondomestic bank deposits, and any other intangible property rights arising out of or created in the course of regular and continuing business transactions substantially performed outside this state;

(b) Patents, trademarks, copyrights, and licensing or royalty agreements, relating thereto; and

(c) Shares of capital stock of any affiliated company as defined in subsection (3) of this section and notes, bonds, accounts receivable, and all other intercompany intangible personal property due from such company.

(3) "Affiliated company" shall mean a parent corporation or subsidiary corporation, and any corporation principally engaged in business outside the United States in which the owner or the person assessed directly or indirectly owns or controls not less than ten percent (10%) of the outstanding voting stock.

(4) With respect to the intangible properties taxed pursuant to subsection (2) of this section, no other ad valorem tax shall be levied by the state or any county, city, school, or other taxing district on such intangible properties, or directly or indirectly against the owner with respect thereto.

(5) Thirty cents ($0.30) of the thirty-one and one-half cents ($0.315) state tax rate on real property and thirty cents ($0.30) of the forty-five cents ($0.45) state tax on tangible personalty subject to local taxation shall be considered as local school district tax levies for purposes of computing any direct payments of state or federal funds to said districts as replacement for ad valorem taxes lost on property acquired by a governmental agency. Should the equivalency ever be less than thirty cents ($0.30), as certified by the Department of Education, the direct payments shall be reduced proportionately.

(6) The provisions of subsection (1) of this section notwithstanding, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that such increase exceeds the preceding year's assessment by more than four percent (4%). In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.

(7) By July 1 each year, the Revenue Cabinet shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (5) of this section and certify the rate to the county clerks for their use in preparing the tax bills. In the event the assessments for all counties have not been certified by July 1, the cabinet shall, when real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been certified, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.

(8) In the event that the tax rate set by the cabinet as provided in subsection (6) of this section produces more than a four percent (4%) increase in real property tax revenues, the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.

(9) ***The provisions of subsection (6) of this section notwithstanding, the assessed value of unmined coal certified by the Revenue Cabinet after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (6) of this section. The calculated rate shall, however, be applied to unmined coal property and the state revenue shall be devoted to the program described in KRS 146.550 through 146.570.***

(10) Effective on or after January 1, 1990, an ad valorem tax for state purposes of five cents ($0.05) upon each one hundred dollars ($100) of value shall be paid upon goods held for sale in the regular course of business and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business.

(11)[~~(10)~~] An ad valorem tax for state purposes of ten cents ($0.10) per one hundred dollars ($100) of assessed value shall be paid on the operating property of railroads or railway companies that operate solely within the Commonwealth.

Section 5. KRS 224.10-250 is amended to read as follows:

The first one hundred fifty thousand dollars ($150,000) of civil penalties collected per fiscal year by the cabinet or the Attorney General on its behalf under the provisions of KRS 224.99-010 shall be paid to the State Treasury and credited to the Environmental Council for the purposes set out in KRS 157.915. All *additional civil penalties* [~~moneys~~] collected by the cabinet, or the Attorney General on its behalf, under the provisions of *KRS 224.99-010* [~~this chapter~~] shall be paid into the State Treasury and credited to the *Kentucky Heritage Land Conservation Fund established by KRS 146.570* [~~general expenditure fund~~].

SECTION 6. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

(1) Any owner of a motor vehicle required to be registered under the provisions of KRS 186.050(1) or (3)(a) may in addition to registration under KRS 186.050(1) or (3)(a) obtain a two (2) year environmental license plate. Application for an environmental license plate shall be taken by the county clerk and transmitted to the Transportation Cabinet on or before September 1 preceding the year in which the plate or renewal thereof is to be issued. Application shall include the payment of a thirty-five dollar ($35) environmental license plate fee, a twelve dollar ($12.00) registration and reflective plate fee, and a two dollar ($2.00) clerk's fee. The application and fee shall be immediately forwarded to the cabinet. Environmental license plates issued under this section shall expire December 31 each year.

(2) Environmental license plates shall be developed, except that a minimum of one thousand (1,000) requests shall be received before the cabinet shall be required to print an environmental license plate. License plates shall be the color and design selected by the Kentucky Heritage Land Conservation Fund Board. The board may select up to three (3) colors and designs. The name "Kentucky" and the expiration date shall appear on the environmental license plate. The cabinet may use any combination of letters or numerals as needed in the design, or the application for an environmental license plate may be combined with a request that the plate be a personalized plate.

(3) The cabinet shall send the environmental license plate to the county clerk in the county in which the applicant would be required to register the motor vehicle. The county clerk shall issue the environmental license plate and receive forty-nine dollars ($49.00), of which two dollars ($2) shall constitute the county clerk's fee and twenty-two dollars ($22.00) shall constitute the cabinet's fee. The remaining twenty-five dollars ($25.00) shall be remitted by the county clerk to the State Treasurer for deposit into the Kentucky Heritage Land Conservation Fund established by KRS 146.570. Upon application to the county clerk and payment of a twelve dollar ($12.00) registration and reflective plate fee and a two dollar ($2.00) county clerk's fee, the clerk shall issue a current year renewal decal to the applicant.

(4) (a) Upon the sale or transfer of the motor vehicle bearing an environmental license plate, the owner shall remove the plate and return it and the certificate of title and registration to the county clerk. The clerk shall issue a regular license plate and certificate of title and registration. This vehicle may then be transferred as provided by KRS Chapters 186 and 186A.

(b) When the environmental license plate has been presented to the clerk, he shall reissue it upon payment of a one dollar ($1) clerk's fee, for use on any other vehicle of the same classification and category owned by the same person purchasing the plate for the current license period. The license plate and decal on this other vehicle shall be turned in to the county clerk, who shall forward the plate to Frankfort.

(5) If an environmental license plate deteriorates, if the owner has not transferred the vehicle during the current license period, the owner may obtain a new environmental license plate free of charge.

(6) The secretary of the cabinet may promulgate in accordance with provisions of KRS Chapter 13A those administrative regulations as the secretary deems necessary to further the purposes of this section.

The Committee Substitute to **HB 368** is as follows:

HB 368, AN ACT relating to conservation of natural resources through heritage land conservation and environmental education and providing funding therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 146.560 is amended to read as follows:

(1) There is hereby established a Kentucky Heritage Land Conservation Fund Board, referred to hereafter as "the board", which shall administer the Kentucky Heritage Land Conservation Fund established in KRS 146.570 and shall review and approve all grants payable from the fund. The board shall consist of the *following members:*

(a) The commissioner of the Department of Parks or a designee;

(b) The director of the Kentucky Nature Preserves Commission or a designee;

(c) The commissioner of the Department for Natural Resources or a designee;

(d) The commissioner of the Department of Fish and Wildlife Resources or a designee;

(e) The chairperson of the Environmental Council or a designee;

(f) One (1) person appointed by the Governor, from two (2) persons nominated by the Kentucky Chapter of the Nature Conservancy;

(g) One (1) person appointed by the Governor, from two (2) persons nominated by the League of Kentucky Sportsmen;

(h) Two (2) persons appointed by the Governor, from four (4) persons recognized for their expertise in natural resource issues and nominated by the Kentucky Academy of Sciences;

(i) One (1) person appointed by the Governor, from three (3) persons nominated, one (1) by the Kentucky Farm Bureau, one (1) by the Commissioner of the Department of Agriculture, and one (1) by the Kentucky Association of Conservation Districts;

(j) One (1) person appointed by the Governor, from three (3) persons nominated, one (1) by the Kentucky Audubon Council, one (1) by the Cumberland Chapter of the Sierra Club, and one (1) by the Kentucky Conservation Committee; and

(k) One (1) person appointed by the Governor with at least five (5) years of experience in natural resources land acquisition [~~commissioner of the Department of Agriculture, the commissioner of the Department of Fish and Wildlife Resources, the commissioner of the Department of Parks, the director of the Kentucky Nature Preserves Commission, the secretary of the Natural Resources and Environmental Protection Cabinet, and the secretary of the Tourism Cabinet, or their appointees, and two (2) members from the Kentucky General Assembly representing the House and Senate and named by the Legislative Research Commission~~].

The board shall receive staff support from the ***Natural Resources and Environmental Protection Cabinet and the*** Department of Fish and Wildlife Resources. The Capital Construction Committee shall maintain legislative oversight authority in the approval of all acquisitions provided for under KRS 146.565. ***Of the seven (7) members identified in paragraphs (f) to (k) of this subsection and first appointed, two (2) shall continue in office for terms of one (1) year, two (2) for terms of two (2) years, and three (3) for terms of three (3) years, as the Governor designates. At the expiration of the original terms and for all succeeding terms, the Governor shall appoint a successor to the board for a term of three (3) years in each case. Members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term. The Governor shall appoint a chairperson for the board.***

(2) The board[~~, in conjunction with the Department of Fish and Wildlife Resources,~~] shall promulgate ***in accordance with the provisions of KRS Chapter 13A*** [~~such~~] administrative regulations as are deemed necessary for application for funds from ***the*** [~~state~~] agencies ***identified in KRS 146.570***, review ***and approval*** of proposed projects, and ***review and*** approval of grants. Grants shall be made in amounts, for purposes, and to ***the*** [~~such state~~] agencies ***identified in KRS 146.570*** as meet the priorities for acquisition which are:

(a) Natural areas that possess unique features such as habitat for rare and endangered species;

(b) Areas important to migratory birds;

(c) Areas that perform important natural functions that are subject to alteration or loss; or

(d) Areas to be preserved in their natural state for public use, outdoor recreation and education.

The board shall ***promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A on*** [~~develop~~] acquisition [~~guidelines~~] based on these priorities and property costs seeking to maximize the greatest public benefit by taking advantage of those priority areas available below fair market value and where public or private funds are available on a matching basis. The board shall expend the whole or any part of the principal ***and interest*** as needed. KRS 146.550 to 146.570 shall not allow the use of condemnation powers and shall only allow acquisition of land from willing sellers.

Section 2. KRS 146.565 is amended to read as follows:

Agencies identified in KRS 146.570 [~~State agencies~~] may acquire natural areas and wetlands as defined in KRS 146.550 ***and shall*** [~~as well as~~] acquire ***any*** access and buffer land deemed necessary by the Kentucky Heritage Land Conservation Fund Board established by KRS 146.560. Acquisition of land and expenditure of funds using proceeds provided by KRS 146.570 shall be approved by the board prior to such action.

Section 3. KRS 146.570 is amended to read as follows:

(1) There is hereby established in the State Treasury a fund entitled "Kentucky Heritage Land Conservation Fund." The fund shall primarily receive state appropriations, gifts, grants, federal funds, and tax receipts. The fund shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. ***Moneys in the fund not expended at the end of a fiscal year shall be carried forward to the next fiscal year, and the fund shall not lapse. Moneys in the fund shall be placed in an interest-bearing account.***

(2) Moneys in the fund shall be used exclusively for the purposes of acquisition and ***management*** [~~maintenance~~] of lands as defined in KRS ***146.560. Each recipient of moneys shall develop and implement a resource management plan for***

each tract acquired, and shall allocate at least ten percent (10%) of moneys received for management of lands acquired. Lands acquired shall be maintained in perpetuity for the purposes set out in KRS 146.560 ~~[146.550 with a cap on funds from KRS 146.550 to 146.570 for maintenance of no more than one percent (1%) of the purchase price per area~~].

(3) Moneys in the fund shall be allocated as follows:

(a) The Department of Parks shall receive ten percent (10%);

(b) The Department of Fish and Wildlife Resources shall receive ten percent (10%);

(c) The Natural Resources and Environmental Protection Cabinet, Division of Forestry, shall receive ten percent (10%);

(d) Ten percent (10%) shall be allocated for wild rivers corridors established by the Kentucky Wild Rivers Act, KRS 146.200 to 146.360, and any administrative regulations promulgated pursuant thereto;

(e) The Nature Preserves Commission shall receive ten percent (10%); and

(f) The board shall receive the remaining fifty percent (50%), for allocation to state agencies, local governments, and state colleges and universities.

Section 4. KRS 132.020 is amended to read as follows:

(1) An annual ad valorem tax for state purposes of thirty-one and one-half cents ($0.315) upon each one hundred dollars ($100) of value of all real property directed to be assessed for taxation, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 directed to be assessed for taxation, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all tobacco directed to be assessed for taxation, and twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of all money in hand, shares of stock, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, except as otherwise provided in subsection (2) of this section, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of unmanufactured agricultural products, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all livestock and domestic fowl, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all tangible personal property located in a foreign trade zone as designated under 19 U.S.C. Sec. 81, fifteen cents ($0.15) upon machinery of individuals or corporations actually engaged in manufacturing, fifteen cents ($0.15) upon commercial radio, television and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna, fifteen cents ($0.15) upon property which has been certified as a pollution control facility as defined in KRS 224.01-300, one-tenth of one cent ($0.001) upon property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390, twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043, and forty-five cents ($0.45) upon each one hundred dollars ($100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed except as provided in subsection (2) of this section and KRS 132.030, 132.050, 132.200, 136.270, 136.300, 136.320, and other sections providing a different tax rate for particular property.

(2) An annual ad valorem tax for state purposes of one and one-half cents ($0.015) upon each one hundred dollars ($100) of value shall be paid upon the following classes of intangible personal properties, when such intangible personal properties have not acquired a taxable situs without this state:

(a) Accounts receivable, notes, bonds, credits, nondomestic bank deposits, and any other intangible property rights arising out of or created in the course of regular and continuing business transactions substantially performed outside this state;

(b) Patents, trademarks, copyrights, and licensing or royalty agreements, relating thereto; and

(c) Shares of capital stock of any affiliated company as defined in subsection (3) of this section and notes, bonds, accounts receivable, and all other intercompany intangible personal property due from such company.

(3) "Affiliated company" shall mean a parent corporation or subsidiary corporation, and any corporation principally engaged in business outside the United States in which the owner or the person assessed directly or indirectly owns or controls not less than ten percent (10%) of the outstanding voting stock.

(4) With respect to the intangible properties taxed pursuant to subsection (2) of this section, no other ad valorem tax shall be levied by the state or any county, city, school, or other taxing district on such intangible properties, or directly or indirectly against the owner with respect thereto.

(5) Thirty cents ($0.30) of the thirty-one and one-half cents ($0.315) state tax rate on real property and thirty cents ($0.30) of the forty-five cents ($0.45) state tax on tangible personalty subject to local taxation shall be considered as local school

district tax levies for purposes of computing any direct payments of state or federal funds to said districts as replacement for ad valorem taxes lost on property acquired by a governmental agency. Should the equivalency ever be less than thirty cents ($0.30), as certified by the Department of Education, the direct payments shall be reduced proportionately.

(6) The provisions of subsection (1) of this section notwithstanding, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that such increase exceeds the preceding year's assessment by more than four percent (4%). In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.

(7) By July 1 each year, the Revenue Cabinet shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (5) of this section and certify the rate to the county clerks for their use in preparing the tax bills. In the event the assessments for all counties have not been certified by July 1, the cabinet shall, when real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been certified, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.

(8) In the event that the tax rate set by the cabinet as provided in subsection (6) of this section produces more than a four percent (4%) increase in real property tax revenues, the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.

(9) *The provisions of subsection (6) of this section notwithstanding, the assessed value of unmined coal certified by the Revenue Cabinet after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (6) of this section. The calculated rate shall, however, be applied to unmined coal property and the state revenue shall be devoted to the program described in KRS 146.550 through 146.570 except that four hundred thousand dollars ($400,000) of the state revenue shall be paid annually to the State Treasury and credited to the Coal Marketing and Export Council for the purpose of public education of coal related issues.*

(10) Effective on or after January 1, 1990, an ad valorem tax for state purposes of five cents ($0.05) upon each one hundred dollars ($100) of value shall be paid upon goods held for sale in the regular course of business and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business.

(11)[~~(10)~~] An ad valorem tax for state purposes of ten cents ($0.10) per one hundred dollars ($100) of assessed value shall be paid on the operating property of railroads or railway companies that operate solely within the Commonwealth.

Section 5. KRS 224.10-250 is amended to read as follows:

The first one hundred fifty thousand dollars ($150,000) of civil penalties collected per fiscal year by the cabinet or the Attorney General on its behalf under the provisions of KRS 224.99-010 shall be paid to the State Treasury and credited to the Environmental Council for the purposes set out in KRS 157.915. All *additional civil penalties* [~~moneys~~] collected by the cabinet, or the Attorney General on its behalf, under the provisions of *KRS 224.99-010* [~~this chapter~~] shall be paid into the State Treasury and credited to the *Kentucky Heritage Land Conservation Fund established by KRS 146.570* [~~general expenditure fund~~].

SECTION 6. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

(1) Any owner of a motor vehicle required to be registered under the provisions of KRS 186.050(1) or (3)(a) may in addition to registration under KRS 186.050(1) or (3)(a) obtain a two (2) year environmental license plate. Application for an environmental license plate shall be taken by the county clerk and transmitted to the Transportation Cabinet on or before September 1 preceding the year in which the plate or renewal thereof is to be issued. Application shall include the payment of a thirty-five dollar ($35) environmental license plate fee, a twelve dollar ($12.00) registration and reflective plate fee, and a two dollar ($2.00) clerk's fee. The application and fee shall be immediately forwarded to the cabinet. Environmental license plates issued under this section shall expire December 31 each year.

(2) Environmental license plates shall be developed, except that a minimum of one thousand (1,000) requests shall be received before the cabinet shall be required to print an environmental license plate. License plates shall be the color and design selected by the Kentucky Heritage Land Conservation Fund Board. The board may select up to three (3) colors and designs. The name "Kentucky" and the expiration date shall appear on the environmental license plate. The cabinet may use any combination of letters or numerals as needed in the design, or the application for an environmental license plate may be combined with a request that the plate be a personalized plate.

(3) The cabinet shall send the environmental license plate to the county clerk in the county in which the applicant would be required to register the motor vehicle. The county clerk shall issue the environmental license plate and receive forty-nine dollars ($49.00), of which two dollars ($2) shall constitute the county clerk's fee and twenty-two dollars ($22.00) shall constitute the cabinet's fee. The remaining twenty-five dollars ($25.00) shall be remitted by the county clerk to the State Treasurer for deposit into the Kentucky Heritage Land Conservation Fund established by KRS

146.570. Upon application to the county clerk and payment of a twelve dollar ($12.00) registration and reflective plate fee and a two dollar ($2.00) county clerk's fee, the clerk shall issue a current year renewal decal to the applicant.

(4) (a) Upon the sale or transfer of the motor vehicle bearing an environmental license plate, the owner shall remove the plate and return it and the certificate of title and registration to the county clerk. The clerk shall issue a regular license plate and certificate of title and registration. This vehicle may then be transferred as provided by KRS Chapters 186 and 186A.

(b) When the environmental license plate has been presented to the clerk, he shall reissue it upon payment of a one dollar ($1) clerk's fee, for use on any other vehicle of the same classification and category owned by the same person purchasing the plate for the current license period. The license plate and decal on this other vehicle shall be turned in to the county clerk, who shall forward the plate to Frankfort.

(5) If an environmental license plate deteriorates, if the owner has not transferred the vehicle during the current license period, the owner may obtain a new environmental license plate free of charge.

(6) The secretary of the cabinet may promulgate in accordance with provisions of KRS Chapter 13A those administrative regulations as the secretary deems necessary to further the purposes of this section.

Orders of the Day

Representative Stumbo moved that **HB 195** be recommitted to the Committee on Health and Welfare. Agreed.

HB 370 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Coleman moved that **HB 370** be passed.

On the roll call the vote was: Yeas 91, Nays 0. (See February 14 , 1994 roll call on **HB 370** - Appendix)

HB 370 was passed and the title agreed to.

Representative Coleman moved that the vote by which **HB 370** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 231, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative L. Clark moved the adoption of the Committee Substitute to **HB 231**. Agreed.

Representative L. Clark moved that **HB 231**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 89, Nays 0. (See February 14, 1994 roll call on **HB 231** - Appendix)

HB 231, by way of Committee Substitute, was passed and the title agreed to.

Representative L. Clark moved that the vote by which **HB 231**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments

Floor Amendment No. 1 to **HB 229**, by Representative Collins:

On page 11, line 20, by adding after "Section 3." the following:

"KRS 78.540 is amended to read as follows:

Membership in the system shall consist of the following:

(1) All persons who become employees of a participating county after the date the county first participates in the system, except a person who did not elect membership pursuant to KRS 61.545(3), and except that mayors and members of city legislative bodies*, and county judges/executive and members of fiscal courts,* may decline prior to their participation in the system and city managers or other appointed local government executives who participate in a retirement system, other than Social Security, which operates in more than one (1) state, may decline prior to their participation in the system;

(2) All persons who are employees of a county on the date the county first participates in the system, either in service or on authorized leave from service, and who elect within thirty (30) days next following the county's participation, or in the

case of persons on authorized leave, within thirty (30) days of their return to active service, to become members and thereby agree to make contributions as provided in KRS 78.520 to 78.852; and

(3) All persons electing coverage in the system under KRS 78.530(3)(d).

(4) The provisions of subsections (1) and (2) of this section notwithstanding, cities which participate in the CERS and close existing local pension systems to new, or all members pursuant to the provisions of KRS 78.530, 95.520, 95.621 or 95.852 shall not be required to provide membership in the County Employees Retirement System to employees in any employee category not covered by a city pension system at the date of participation.

(5) Membership in the system shall not include those employees who are simultaneously contributing to another public retirement fund within Kentucky other than those administered by the Kentucky Retirement Systems.

Section 4.".

Floor Amendment No. 1 to the Committee Substitute to **HB 115**, by Representative Damron:

On page 6, line 22 by inserting "***a***" after the word "***and***", and deleting "***an adult***"; and

On page 6, line 24 by deleting "***If the***"; and

On page 6, delete lines 25, 26 and 27; and

On page 7, delete "***employee as prescribed by the Education Professional Standards Board***"

Floor Amendment No. 1 to the Committee Substitute to **HB 232**, by Representative Kerr:

On page 1, line 3, following "***KRS 521.010,***" to add ***or victim of a crime is bitten by, suffers a puncture wound caused by, or***"; and

On page 2, between lines 1 and 2 to add the following:

"***(5) The provisions of subsections (1) to (4) of this section shall apply to juveniles falling within any category specified in subsections (1) to (4) of this section as well as to adults.***"

Orders of the Day (Continued)

HB 175 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Wayne moved that **HB 175** be passed.

On the roll call the vote was: Yeas 92, Nays 0. (See February 14 , 1994 roll call on **HB 175** - Appendix)

HB 175 was passed and the title agreed to.

Representative Wayne moved that the vote by which **HB 175** was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 322**, by Representative R. Smith:

On page 3, line 15, before "**(1)**", by inserting the following:

"***The provisions of Sections 2, 3, 4, and 17 of this Act shall not apply to the promulgation of an administrative regulation that is limited to compliance with the drafting and format requirements of Sections 12 and 13 of this Act.***

SECTION 3. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:"; and

Renumber remaining sections accordingly; and

On page 3, line 25, by deleting the colon after "**hearing**"; and

On page 3, line 26, by deleting "**1.**"; and

On page 4, line 2, by deleting the semicolon and inserting a colon in lieu thereof; and

On page 4, line 3, by deleting "**2.**", and inserting "***1.***" in lieu thereof; and

On page 4, line 5, by deleting "**3**", and inserting "***2.***" in lieu thereof.

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 52** has been examined and found correctly enrolled . Said Bill was read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -4:18 p.m.)

HB 52 delivered to the Senate and signed by the President. Delivered to the Governor on February 14 at 4:28 p.m.

Orders of the Day (Continued)

HB 289, with Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Mason moved that **HB 289** be passed.

Representative Heleringer moved the adoption of Floor Amendment No. 2 to **HB 289**.

Representative Deskins inquired if Floor Amendment No. 2 to **HB 289** was germane.

The Speaker ruled that Floor Amendment No. 2 to **HB 289** was germane.

The motion to adopt Floor Amendment No. 2 to **HB 289** was rejected.

Representative Heleringer moved the adoption of Floor Amendment No. 1 to **HB 289**.

On the roll call to adopt Floor Amendment No. 1 to **HB 289** the vote was **Yeas 48**--Allen, Altman, Barrows, Bryant, Buis, Butler, Callahan, Cave, P. Clark, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, French, Gedling, Gee, Hancock, Harper, Hatcher, Heleringer, Jensen, Johnson, Kerr, Lewis, Lile, Lindsay, Lyne, Maricle, Mullinix, Napier, Noland, Rasche, Reinhardt, Riner, Sanders, Simpson, B. Smith, Stengel, Todd, Trapp, Treesh, Turner, Walton, Worthington, Yates, Zimmerman. **Nays 47**--Adams, Adkins, Arnold, Bentley, Bondurant, Bowling, Brown, Bruce, Burch, L. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Deskins, Fox, Geveden, Graham, Gray, Lee, LeMaster, Little, Long, Maggard, Marzian, Mason, McElroy, Moberly, Morris, Nelson, Nesler, Northup, Nunn, Palumbo, Rapier, Richards, Ridley, Riggs, Scorsone, Scott, Shacklette, R. Smith, Stacy, Stumbo, Wayne.

Floor Amendment No. 1 to **HB 289** was adopted.

Representative Mason moved that **HB 289**, as amended, be passed.

Representative Northup moved that **HB 289**, as amended, be laid on the Clerk's Desk.

On the roll call to lay **HB 289**, as amended, on the Clerk's Desk the vote was **Yeas 18**--Buis, Cave, P. Clark, DeWeese, Heleringer, Jensen, Johnson, Lile, Lyne, Mullinix, Napier, Northup, Reinhardt, Riner, Sanders, Todd, Treesh, Zimmerman. **Nays 64**--Adams, Adkins, Allen, Altman, Barrows, Bentley, Bondurant, Bowling, Bryant, Burch, Butler, Callahan, L. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, Donnermeyer, Farrow, Ford, Fox, French, Geveden, Graham, Gray, Hancock, Hatcher, Kerr, Lee, LeMaster, Lewis, Little, Long, Maggard, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Nesler, Nunn, Palumbo, Rapier, Rasche, Richards, Ridley, Riggs, Scorsone, Scott, Shacklette, Simpson, B. Smith, R. Smith, Stacy, Stengel, Stumbo, Trapp, Turner, Wayne, Yates.

The motion that **HB 289**, as amended, be laid on the Clerk's Desk was rejected.

Representative Mason moved that **HB 289**, as amended, be passed.

On the roll call the vote was: Yeas 45, Nays 47. (See February 14, 1994 roll call on **HB 289** - Appendix)

HB 289, as amended, was defeated.

Floor Amendments (Continued)

Floor Amendment No. 4 to **HB 287**, by Representative Lewis:

On page 7, lines 9 through 15, by deleting them in their entirety and inserting and underlining in lieu thereof:

"***(9) The text shall permit the placement and use of manufactured homes, 1993 model year or later in all agricultural zones, or in all rural residential zones subject to compliance with the same regulations applicable to other homes in the same zone. In nonagricultural zones, aesthetic standards may be adopted, limiting roofing or siding material permitted, and requiring perimeter foundation enclosures. Nothing in this subsection shall be construed to affect, modify, or abolish restrictions contained in past or present recorded deeds, covenants, or deed of restrictions or developer's subdivision restrictions. Nothing in this subsection shall remove the authority of local building inspectors to regulate additions to manufactured homes, inspect foundations, or check for compliance to aesthetic***

standards in residential areas."

Floor Amendment No. 2 to the Committee Substitute to **HB 115**, by Representative Riner:

On page 6, line 21, by deleting all of the line following "(4)" and all of page 6, lines 22 to 27, and all of page 7, lines 1 to 4, and inserting in lieu thereof the following: "***The Education Professional Standards Board shall permanently revoke the certificate of any certified employee who is convicted of or pleads guilty to a felony or Class A misdemeanor proscribed by KRS Chapter 510, 529, or 531, or KRS 530.020, 530.064, or 530.065, if the offense is based on conduct involving the certified employee and a child under twelve (12) years of age.***"; and

On page 14, line 1, by inserting after "***the board.***" the following: "***The board shall permanently revoke the license of any physician who is convicted of or pleads guilty to a felony or Class A misdemeanor proscribed by KRS Chapter 510, 529, or 531, or KRS 530.020, 530.064, or 530.065, if the offense is based on conduct involving the physician and a child under twelve (12) years of age.***"; and

On page 20, line 11, by inserting after "***the board.***" the following: "***The board shall permanently revoke the license of any nurse who is convicted of or pleads guilty to a felony or Class A misdemeanor proscribed by KRS Chapter 510, 529, or 531, or KRS 530.020, 530.064, or 530.065, if the offense is based on conduct involving the nurse and a child under twelve (12) years of age.***"; and

On page 28, line 11, by inserting after "***the board.***" the following: "***The board shall permanently revoke the license or certificate of any licensee or certificate holder who is convicted of or pleads guilty to a felony or Class A misdemeanor proscribed by KRS Chapter 510, 529, or 531, or KRS 530.020, 530.064, or 530.065, if the offense is based on conduct involving the licensee or certificate holder and a child under twelve (12) years of age.***"; and

On page 31, line 20, by inserting after "***the board.***" the following: "***The board shall permanently revoke the license or certificate of any social worker who is convicted of or pleads guilty to a felony or Class A misdemeanor proscribed by KRS Chapter 510, 529, or 531, or KRS 530.020, 530.064, or 530.065, if the offense is based on conduct involving the social worker and a child under twelve (12) years of age.***"

Floor Amendment No. 3 to **HB 327**, by Representative Lindsay:

On page 4, between lines 16 and 17, by inserting the following:

"***(k) 1. The school council may establish a traditional track primary program in addition to the primary program established pursuant to KRS 156.160 that may include, but not be limited to, a graded organization, assignment to grade based on student age and ability, and textbooks. If the council establishes a traditional track, the parents shall determine which primary program organization their child attends.***

2. The results from assessments administered pursuant to KRS 158.6453 for students who participated in a traditional track primary program shall not be used to calculate that school's threshold index pursuant to KRS 158.6455 for the fourth grade or eighth grade if applicable."

Floor Amendment No. 4 to **HB 327**, by Representative Lindsay:

On page 1, line 13, after "of", by inserting "***four (4) members, three (3) of whom shall be parents and one (1) who may be a parent or a community resident of the school attendance area;***" and placing brackets around and striking through "two (2) parents,";

On page 1, line 13, after "teachers", by inserting "***;***" and placing brackets around and striking through the ",";

On page 1, line 15, after "representatives", by inserting "***or community representative***";

On page 1, line 23, after "parent", by inserting "***and community***";

On page 1, line 24, after "parent", by inserting "***and community***";

Floor Amendment No. 3 to the Committee Substitute to **HB 91**, by Representative Lindsay:

On page 8, between lines 8 and 9, by inserting the following:

"***(k) 1. The school council may establish a traditional track primary program in addition to the primary program established pursuant to KRS 156.160 that may include, but not be limited to, a graded organization, assignment to grade based on student age and ability, and textbooks. If the council establishes a traditional track, the parents shall determine which primary program organization their***

child attends.

2. The results from assessments administered pursuant to KRS 158.6453 for students who participated in a traditional track primary program shall not be used to calculate that school's threshold index pursuant to KRS 158.6455 for the fourth grade or eighth grade if applicable."

Floor Amendment No. 2 to the Committee Substitute to **HB 91**, by Representative Lindsay:

On page 5, line 13, after "of", by inserting "***four (4) members, three (3) of whom shall be parents and one (1) who may be a parent or a community resident of the school attendance area;***" and placing brackets around and striking through "two (2) parents,";

On page 5, line 13, after "teachers", by inserting "***;***" and placing brackets around and striking through the ",";

On page 5, line 15, after "representatives", by inserting "***or community representative***";

On page 5, line 23, after "parent", by inserting "***and community***";

On page 5, line 24, after "parent" the first time it appears on that line, by inserting "***and community***";

Floor Amendment No. 4 to the Committee Substitute to **HB 206**, by Representative Donnermeyer:

On page 4, line 6, after the number "***(18)***", by deleting "***casino-type***", and inserting in lieu thereof the words "***Special limited charitable***";

On page 4, line 7 by deleting the phrase "***slot machines,***";

On page 4, lines 8 and 9, after the word "***chance***" on line 8, by deleting the phrase "***customarily played in a gambling casino,***";

On page 4, line 9, after the word "***identified***" by deleting the word "***and***" and inserting in lieu thereof a comma "***,***";

On page 4, line 9, after the word "***defined***" by inserting the phrase "***, and approved***";

On page 4, line 10, after the word "***division***" by inserting the following:

"***, but shall not include slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races***";

On page 11, line 7, after the word "***involve***", by deleting the words "***casino-type***", and inserting in lieu thereof the words, "***special limited charitable***".

On page 17, line 3, after the word "***which***", by deleting the words "***casino-type***", and inserting in lieu thereof the words, "***special limited charitable***";

On page 17, line 4, after the word "***division.***", by deleting the words "***Types of events which fall into this category include***", and on line 5 by deleting the words, "***casino nights, Las Vegas nights, and Monte Carlo nights.***";

On page 17, line 7, after the word "***from***", by deleting the words, "***casino-type***", and inserting in lieu thereof the words, "***special limited charitable***";

On page 17, line 9, after the word "***from***", by deleting the words "***casino-type***", and inserting in lieu thereof the words, "***special limited charitable***";

On page 17, line 12, after the word "***any***", by deleting the words, "***casino-type***", and inserting in lieu thereof the words, "***special limited charitable***"; and

On page 21, line 8, after the word "***which***", by deleting the words "***casino-type***" and inserting in lieu thereof the words "***special limited charitable***".

Floor Amendment No. 5 to **HB 339**, by Representative Johnson:

On page 1, lines 14 to 25, to delete the same; and

On page 2, lines 1 to 27, to delete the same; and

On page 3, lines 1 to 27, to delete the same; and

On page 4, lines 1 to 27, to delete the same; and

On page 5, lines 1 to 27, to delete the same; and

On page 6, lines 1 to 8, to delete the same; and

On page 6, line 9, to delete "7" and to insert in lieu thereof "2"; and

On page 6, line 18, to delete "8" and to insert in lieu thereof "3"; and

On page 6, line 24, to delete "***Section 2 of this Act***"; and

On page 6, line 24, to delete the brackets from around, and the strikethrough of, "KRS 64.055"; and

On page 7, lines 1 to 3, to delete the same; and

On page 7, line 4, to delete "10" and to insert in lieu thereof "4".

Orders of the Day (Continued)

HB 395 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Report On Enrolled Bills (Continued)

The Committee on Enrollment reported that **HB 19** has been examined and found correctly enrolled. Said Bill was read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -5:07 p.m.)

HB 19 delivered to the Senate and signed by the President. Delivered to the Governor on February 14, 1994 at 5:14 p.m.

Orders of the Day (Continued)

Representative Farrow moved that **HB 395** be passed.

On the roll call the vote was: Yeas 94, Nays 1. (See February 14 , 1994 roll call on **HB 395** - Appendix)

HB 395 was passed and the title agreed to.

Representative Farrow moved that the vote by which **HB 395** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 400, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Barrows moved the adoption of the Committee Substitute to **HB 400**. Agreed.

Representative Barrows moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 400**. Agreed.

Representative Barrows moved that **HB 400**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 93, Nays 0. (See February 14, 1994 roll call on **HB 400** - Appendix)

HB 400, by way of Committee Substitute as amended, was passed and the title agreed to.

Representative Stumbo moved that the vote by which **HB 400**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 407 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lee moved that **HB 407** be passed.

On the roll call the vote was: Yeas 91, Nays 0. (See February 14 , 1994 roll call on **HB 407** - Appendix)

HB 407 was passed and the title agreed to.

Representative Lee moved that the vote by which **HB 407** was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 3 to **HB 289**, by Representative Riner:

On page 1, line 13 following "well-being." to add "***Except in cases which would endanger the life or cause serious physical injury.***"; and

On page 1, line 13 to delete the bracket "[" preceeding "A" and to delete all strike throughs on that line; and

On page 1, line 14 through 17, to delete the strike throughs

On page 1, line 17, following "child" to delete the bracket "]"; and

On page 1, line 16, following "child" to add "***, causes the child to be circumcised by a medical doctor, or permits home birth of a child***"; and

On page 1, line 17, following "child" to add "***. Likewise, a child shall not be considered to be an abused or neglected child when the parent or other person exercising custodial control or supervision of a child legitimately:***

(a) Spanks, paddles, or otherwise disciplines a child provided that serious physical injury or death are not a probable result of the discipline;

(b) Restricts the child's intake of certain types of food for medical or religious reasons

(c) Restricts the child's associates, travel, time away from home, or means of entertainment in an effort to provide discipline or a proper environment for the child;

(d) Requires the child to perform domestic chores in the home, including but not limited to dish washing, cleaning, keeping his quarters neat, and performing other tasks related to domestic chores;

(e) Requires the child to perform other work which he is physically able to do, provided the work does not interfere with the child's education or violate the provisions of KRS Chapter 336;

(f) Home schools or home educates a child; or

(g) Fails to provide adequate food, clothing, shelter, education, or medical care solely by reason of poverty, or having a recognized form of disability which hinders the parent from being fully able to care for the child but not to the extent that the child is in danger of death or serious physical injury"

Floor Title Amendment to **HB 289**, by Representative Riner:

Delete the title appearing thereon and insert in lieu thereof "AN ACT relating to the health and welfare of children."

Orders of the Day (Continued)

HB 327, with Committee Amendments and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Moberly moved the adoption of Committee Amendment No. 1 to **HB 327**. Agreed.

Representative Moberly moved the adoption of Floor Amendment No. 2 to **HB 327**. Agreed.

Representative Moberly moved that **HB 327**, as amended, be passed.

On the roll call the vote was: Yeas 91, Nays 1. (See February 14, 1994 roll call on **HB 327** - Appendix)

HB 327, as amended, was passed and the title agreed to.

Representative Moberly moved that the vote by which **HB 327**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 328 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Moberly moved that **HB 328** be passed.

On the roll call the vote was: Yeas 93, Nays 0. (See February 14 , 1994 roll call on **HB 328** - Appendix)

HB 328 was passed and the title agreed to.

Representative Moberly moved that the vote by which **HB 328** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 329, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Moberly moved the adoption of the Committee Substitute to **HB 329**. Agreed.

Representative Moberly moved that **HB 329**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 81, Nays 2. (See February 14, 1994 roll call on **HB 329** - Appendix)

HB 329, by way of Committee Substitute, was passed and the title agreed to.

Representative Moberly moved that the vote by which **HB 329**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HR 18 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Ridley moved that **HR 18** be adopted.

HR 18 was adopted.

HJR 23 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rasche moved that **HJR 23** be adopted.

On the roll call the vote was: Yeas 94, Nays 0. (See February 14 , 1994 roll call on **HJR 23** - Appendix)

HJR 23 was adopted.

Representative Rasche moved that the vote by which **HJR 23** was adopted be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Representative Stumbo moved that the three day posting requirement be waived on **HB 487** and **SB 22**. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 555, by Representative Scorsone: AN ACT relating to alcohol and other drug abuse.

HB 556, by Representative Geveden: AN ACT relating to disaster and emergency services.

HB 557, by Representatives Geveden and Bowling: AN ACT relating to school athletics.

HB 558, by Representative Little: AN ACT relating to the extended weight coal and coal by-products haul road system.

HB 559, by Representative Collins: AN ACT relating to Civil Air Patrol.

HB 560, by Representative Hancock: AN ACT relating to crime stoppers organizations and providing a mechanism for their funding.

HB 561, by Representatives Lear and Maggard: AN ACT relating to the support and development of Kentucky's wood products industry and the financing thereof.

HB 562, by Representative Ford: AN ACT relating to insurance.

HB 563, by Representative Coleman: AN ACT relating to controlled substances.

HB 564, by Representative French: AN ACT relating to installations which cross county roads.

HB 565, by Representative Butler: AN ACT relating to the defense of employees by local governments.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills and Resolution have been posted for Committee consideration:

Judiciary: **HB 345, HB 388, HB 389, HB 390, HB 392, HB 396, HB 476**

Natural Resources and Environment: **HB 338, HB 330, HB 331, HB 377, HB 379, HB 385, HB 399, HB 387, HB 529, HB 439, HB 503, HB 484, HB 526, HB 527, HB 528**

Appropriations and Revenue: **HB 223, HB 224**

Labor and Industry: **HB 470**

Cities: **HB 249, HB 478, HB 504, HB 505, HB 508, HB 525, HB 532, HCR 47**

Business Organizations and Professions: **HB 386**

Motions, Petitions and Communications (Continued)

Representative Lindsay moved that **HB 212** be withdrawn. Agreed.

Representative Mullinix moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Mullinix moved that he be recorded as voting "yea" on **HB 231** and **HB 175**. Agreed.

Representative Farrow moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Farrow moved that he be recorded as voting "nay" on **HB 289**. Agreed.

Representative Barrows moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Barrows moved that he be recorded as voting "yea" on **HB 329**. Agreed.

Representative Morris moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Morris moved that he be recorded as voting "yea" on **HB 329**. Agreed.

Representative Todd moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Todd moved that his vote be changed from "yea" to "nay" on **HB 289**. Agreed.

Representative Farrow moved the adoption of the following **Legislative Citation No. 61**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds your effort and offers its sincerest congratulations to the "Georgetown Tigers Basketball Team". Making history by becoming the first time ever basketball team from Georgetown College, Georgetown, Kentucky to reign number 1 in the NAIA Division 1 Basketball is quite a fulfillment. Your energy and dedication to basketball as team members have been rewarded. The Tigers have brought a great source of pride to Georgetown College. The House of Representatives joins with Representative Mark Farrow in honoring you on your many achievements and wishes you every success as you further your academic and athletic careers.

Representative Ballard moved the adoption of the following **Legislative Citation No. 60**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in honor of Maude Cornette in recognition of her 100th Birthday February 16, 1994. The entire membership joins Representative Eddie Ballard, your family and dearest friends in extending its very best birthday wishes on the memorable occasion.

Representative Ballard moved the adoption of the following **Legislative Citation No. 59**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes Foster Parents Appreciation Day for the open hearts and safe homes you have provided for precious delicate children in times of despair is commendable. The entire membership joins Representative Eddie Ballard in thanking you, foster parents, for the devotion and energy you give to Kentucky's most valuable resource, our children.

Representative Hancock moved the adoption of the following **Legislative Citation No. 56**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors Faye Moss Roberts in recognition of the many years of devoted service as Secretary to the Commissioner Department of Insurance. Your kindness, sense of humor and proficient secretarial skills have made you a cherished employee and friend. The entire membership joins Representative Hank Hancock in extending its very best wishes on this memorable occasion.

Representative L. Clark moved the adoption of the following **Legislative Citation No. 62**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby commends the Kentucky National Guard. The entire membership joins Representative Larry Clark in commending the entire branch of the Kentucky National Guard for the fine job done statewide in assisting citizens through-out Kentucky during the record breaking winter Storm of January, 1994.

The following members filed requests to have their names added as co-sponsors to Bills under rules previously suspended: **HB 138**, Representative Lile; **HB 187**, Representative Worthington; **HB 231**, Representative Nelson; **HB 329, HB 537, HB 540**, Representative Treesh; **HB 368**, Representative Wayne; **HB 408**, Representative Long; **HB 484**, Representative DeWeese; **HB 525, HB 526, HB 537, HB 539, HB 540**, Representative Donnermeyer; **HB 539**, Representative Geveden; **HB 546**, Representative Harper.

Announcements

The Clerk announced the following meetings:

Agriculture and Small Business, 9:00 a.m., February 15, 1994, Room 125

Subcommittee on Transportation, 8:30 a.m., February 15, 1994

Banking and Insurance, 10:00 a.m., February 15, 1994, Room 125

Appropriations and Revenue, 10:00 a.m., February 15, 1994

Health and Welfare, 8:00 a.m., February 15, 1994

Counties and Special Districts, February 15, 1994, Room 131

Chairs of Committee on Transportation, Transportation Budget Subcommittee of Appropriations and Revenue, Public Hearing, February 17, 1994, upon adjournment

Banking and Insurance, canceled, February 16, 1994

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Tuesday, February 15, 1994.

On the roll call the vote was **Yeas 84**--Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bruce, Bryant, Buis, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hancock, Hatcher, Jensen, Johnson, Kerr, Lee, Lindsay, Lyne, Maggard, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 3**--LeMaster, Lile, Riggs.

The motion to adjourn was adopted.

TUESDAY, FEBRUARY 15, 1994

TWENTY-EIGHTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend Chuck Ellestad, Church of the Ascension, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Hampton, Harper and Keith.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of February 14, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 88, SB 92, SB 107, SB 148, SB 162, HB 35, HB 40, HB 74,** and **HB 244**. (Time: 2:05 p.m.)

Introduction of Bills and Resolutions

HB 566, by Representatives Mason and Crenshaw: AN ACT relating to the Kentucky Commission for the Deaf and Hard of Hearing.

HB 567, by Representative B. Smith: AN ACT relating to water utilities.

HB 568, by Representative Johnson: AN ACT relating to the Court of Justice and declaring an emergency.

HB 569, by Representative Rapier: AN ACT relating to small and farm wineries.

HB 570, by Representative Burch: AN ACT relating to children committed to the Cabinet for Human Resources.

HB 571, by Representatives Nesler, Arnold, Adams and French: AN ACT relating to county officials.

Representative Marzian moved that the rules be suspended to introduce guests. Agreed.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Banking and Insurance: **HB 551, HB 562**

Counties and Special Districts: **HB 552, HB 564, HB 565**

Economic Development: **HB 561**

Education: **HB 549, HB 550, HB 557**

Health and Welfare: **HB 555, HB 563**

Judiciary: **HB 553, HB 554, HB 560**

State Government: **HB 556, HB 559**

Transportation: **SB 146, SB 147, HB 558**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills and Resolutions have been posted for Committee consideration:

Elections and Constitutional Amendments: **SB 1**

Transportation: **HB 225, HB 492, HB 533, SB 85, SB 106, SJR 13, SJR 27**

Health and Welfare: **HB 485**

Agriculture and Small Business: **HB 482, HB 519**

Report of Committees

The Committee on Agriculture and Small Business reported **HB 436** and **HB 452**, with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 436, AN ACT relating to grain.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 251.650 is amended to read as follows:

(1) All assessments by the department pursuant to KRS 251.640 shall be held by the corporation in trust in the Kentucky grain insurance fund for carrying out the purposes of KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740. These funds shall be invested and reinvested in U.S. Treasury obligations at the discretion of the corporation, and the interest from these investments shall be deposited to the credit of the fund and shall be available for the same purposes as all other money deposited in the fund. The money in the fund shall not be available for any purpose other than the payment of claims pursuant to KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740, and shall not be transferred to any fund other than the grain indemnity trust fund, which is hereby created. This limiting and nontransferability provision shall not be severable from the whole of KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740; and if such provision is held invalid, repealed or substantially amended, KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740 shall immediately become invalid, and to this end, such provision is declared to be nonseverable.

(2) Notwithstanding the provisions of subsection (1) of this section, the board may authorize the investment of funds for the Kentucky grain insurance fund through the Kentucky Commission for Investments in any guaranteed security or other guaranteed investment recommended by the commission if the board determines such recommendation would maximize the interest or income to the fund.

(3) The board is authorized to pay from the interest or income produced by the investing of the Kentucky grain insurance fund the ordinary management and investment fees assessed pursuant to statute or administrative regulation.

(4) Notwithstanding the provisions of subsection (1) of this section, the board may authorize the payment of legal fees, in actions brought against the Kentucky Grain Insurance Fund, exclusively from the interest or income earned from the investment of the Kentucky Grain Insurance Fund. All legal expenses incurred must be approved for payment by the board.

HB 452, AN ACT relating to pesticides.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 217.570 is amended to read as follows:

(1) Every pesticide distributed within the state or delivered for transportation or transported in intrastate commerce or between points within the state through points outside the state shall be registered with the department; provided, that registration is not required if a pesticide is shipped from one (1) plant or warehouse to another plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of KRS 217.542 to 217.630; or if the pesticide is distributed under the provisions of an experimental use permit issued under the provisions of KRS 217.542 to 217.630 or an experimental use permit issued by EPA. All registrations shall expire on the thirty-first day of December of the calendar year for which they were issued.

(2) The applicant for registration shall file with the department, a statement containing:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;

(b) The name of the pesticide and its EPA registration number;

(c) A complete copy of the labeling accompanying the pesticide and a statement of all claims made or to be made for it including directions for use and a request that the pesticide be classified for nonrestricted use, for restricted use, or for both as provided for in FIFRA. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered; provided, that upon request a copy of all labels shall be furnished;

(d) Other necessary information as specified by the department on the application for registration form;

(e) The department may require a full description of the tests made and results thereof upon which the claims are based on any pesticide not registered pursuant to Section 3 of FIFRA, or on any pesticide on which restrictions are being considered.

(3)***(a)*** The applicant desiring to register a pesticide in this state shall make application on forms furnished by the department, and, for the purposes ***identified in paragraph (b) of this subsection*** ~~[of defraying expenses connected with the enforcement of KRS 217.542 to 217.630]~~, shall pay to the department an annual ~~[inspection]~~ fee of ***one hundred twenty-five dollars ($125)*** ~~[twenty dollars ($20)]~~ for each and every brand or grade to be offered for sale in this state. There shall be issued to the registrant by the department a license entitling the registrant to sell all duly registered brands in this state until the expiration of the license;

(b) The annual fees received by the department shall be used as follows:

1. An amount not to exceed one hundred thousand dollars ($100,000) annually for Kentucky Agriculture and Environment in the Classroom, a program administered by the department.

2. An amount not to exceed two hundred thousand dollars ($200,000) for a farm chemical and container disposal program administered by the department.

3. An amount not to exceed five hundred fifty thousand dollars ($550,000) for a cost-sharing program between the department and the Cabinet for Natural Resources and Environmental Protection, Division of Conservation, for the use of farmers in implementing agricultural production practices that protect the quality of soil and water resources.

4. Any remaining funds shall be used in defraying expenses incurred in the enforcement of KRS 217.542 to 217.630.

(4) The department, when necessary in the administration of KRS 217.542 to 247.630, may require the submission of the complete formula of any pesticide including the active and inert ingredients;

(5) The department may refuse to register, or to cancel the registration of, any brand of pesticide as herein provided, upon satisfactory proof that the registrant has been guilty of fraudulent and deceptive practices in evasions or attempted evasions of the provisions of KRS 217.542 to 217.630 or any rules and regulations promulgated thereunder; provided, that no registration shall be revoked or refused until the registrant shall have been given a hearing by the department;

(6) Registrants desiring to renew registrations shall file with the department an application for renewal prior to January 1. Any registration in effect on the 31st day of December and for which a renewal application has been made and the proper fee paid shall continue in full force and effect until such time as the department has notified the applicant that the registration has been renewed, or denied;

(7) If the renewal of a pesticide registration is not filed prior to January 15 of any year, or if a new product is sold or offered for sale prior to registration an additional fee of ten dollars ($10) shall be assessed and added to the original fee before the registration of that pesticide is renewed or a new registration is accepted; provided, that such additional fee shall not apply if the applicant furnishes an affidavit certifying that he did not distribute such unregistered pesticides during the period of nonregistration. The payment of such additional fee is not a bar to any prosecution for doing business without proper registry;

(8) Upon certification by the administrator of EPA to register pesticides pursuant to Section 24(c) of FIFRA, the department may register such pesticides if it determines that:

(a) Its composition is such as to warrant the proposed claims for it;

(b) Its labeling and other material required to be submitted meet with the requirements of KRS 217.542 to 217.630;

(c) It will perform its intended function, and when used in accordance with widespread and commonly recognized practice, will not cause unreasonable adverse effects on the environment; and

(d) Provided that the registration is not disapproved by the administrator of EPA.

The Committee Amendment No. 1 to **HB 452** is as follows:

On page 2, line 22 delete the word, "***between***" and insert in lieu thereof the word, "***through***"

The Committee on Appropriations and Revenue reported **HB 127**, with Committee Substitutes attached thereto, with the expression of opinion that the same should pass. Ordered referred to the Committee on Rules.

The Committee Substitute No. 2 to **HB 127** is as follows:

HB 127, AN ACT relating to health care reform.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 17 of this Act unless the context otherwise requires:

(1) "Benefit" means the receipt of money, goods, or anything of pecuniary value from the medical assistance program.

(2) "Fraud" means an intentional deception or misrepresentation made by a recipient or a provider with the knowledge that the deception could result in some unauthorized benefit to the recipient or provider or to some other person. It includes any act that constitutes fraud under applicable federal or state law.

(3) "Immediate family member" means a parent, grandparent, spouse, child, step-child, father-in-law, mother-in-law, son-in-law, daughter-in-law, sibling, brother-in-law, sister-in-law, or grandchild.

(4) "Intentional" or "intentionally" means, with respect to a result or to conduct described by a statute defining an offense, that a person's conscious objective is to cause that result or to engage in that conduct.

(5) "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware that his conduct is of that nature or that the circumstance exists.

(6) "Medical assistance program" means the program of medical assistance as administered by the Cabinet for Human Resources in compliance with Title XIX of the federal Social Security Act and any administrative regulations related thereto.

(7) "Provider" means an individual, company, corporation, association, facility, or institution which is providing or has been approved to provide medical services, goods, or assistance to recipients under the medical assistance program.

(8) "Provider abuse" means, with reference to a health care provider, practices that are inconsistent with sound fiscal, business, or medical practices, and that result in unnecessary cost to the medical assistance program established pursuant to this chapter, or that result in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes practices that result in unnecessary cost to the medical assistance program.

(9) "Recipient" means any person receiving or who has received medical assistance benefits.

(10) "Recipient abuse" means, with reference to a medical assistance recipient, practices that result in unnecessary cost to the medical assistance program or the obtaining of goods, equipment, medicines, or services that are not medically necessary, or that are excessive, or constitute flagrant overuse or misuse of medical assistance program benefits for which the recipient is covered.

(11) "Wantonly" means, with respect to a result or to a circumstance described by a statute defining an offense, that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts wantonly with respect thereto.

SECTION 2. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

It shall be the responsibility of the Cabinet for Human Resources and the Department for Medicaid Services to control recipient and provider fraud and abuse by:

(1) Informing recipients and providers as to the proper utilization of medical services and methods of cost containment;

(2) Establishing appropriate checks and audits within the Medicaid Management Information System to detect possible instances of fraud and abuse;

(3) Sharing information and reports with other departments within the Cabinet for Human Resources, the Office of the Attorney General, and any other agencies that are responsible for recipient or provider utilization review; and

(4) Instituting other measures necessary or useful in controlling fraud and abuse.

SECTION 3. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) To implement provisions of this section, the Commissioner of the Department for Medicaid Services shall create, no later than July 30, 1994, a Recipient Utilization Review Committee with the authority to:

  (a) Review individual recipient utilization or program benefits, recipient medical records, and other additional information or data necessary to make a decision;

  (b) Determine if a recipient has utilized the program or services in a fraudulent or abusive manner;

  (c) Refer cases of suspected recipient fraud to the Office of the Inspector General in the Cabinet for Human Resources;

  (d) Institute administrative actions to restrict or revoke the recipient's participation in the medical assistance program; and

  (e) Initiate actions to recover the value of benefits received by the recipient which were determined to be related to fraudulent or abusive activities.

(2) The Recipient Utilization Review Committee shall be composed of five (5) members as follows: one (1) licensed physician, one (1) representative from the same program benefit area that is the subject of the review, one (1) recipient or representative of medical assistance benefits, one (1) representative of the Surveillance and Utilization Review Subsystems Unit, as required under Title XIX of the Social Security Act, and the commissioner of the Department for Health Services, who shall serve by virtue of his or her office.

(3) A medical assistance recipient whose eligibility has been revoked due to defrauding the medical assistance program shall not be eligible for future medical assistance services for a period of not more than one (1) year or until full restitution has been made to the Department for Medicaid Services, whichever comes first.

(4) When a medical assistance recipient whose eligibility has been revoked due to defrauding of the medical assistance program reapplies for coverage, during the period of revocation, due to pregnancy, a communicable disease or other condition that creates a risk to public health, or a condition which if not treated could result in immediate grave bodily harm, the recipient utilization review committee for the Department for Medicaid Services may change the revoked status of the previously eligible recipient to restricted status if it has been determined that it would be in the best interest of the previously eligible medical assistance recipient to receive coverage for medical assistance services and the person is otherwise eligible. If this change in status is granted, the case shall be reconsidered by the recipient utilization review committee within sixty (60) days after the restricted status takes effect.

(5) Upon determination by the Recipient Utilization Review Committee of the Department for Medicaid Services that a medical assistance recipient has abused the benefits of the medical assistance program, the recipient shall immediately be assigned and restricted to a managed care primary physician designated by the Department for Medicaid Services. Except in the case of an emergency as defined by the recipient utilization review committee and set forth by the Cabinet for Human Resources in an administrative regulation promulgated pursuant to KRS Chapter 13A, the restricted recipient shall be eligible to receive covered services only upon presenting to a participating provider, prior to the receipt of services, a dated written referral by the assigned managed care primary physician. Any participating provider who provides services to a medical assistance recipient in violation of the provisions of this subsection shall not be eligible for reimbursement for any services rendered.

(6) The Cabinet for Human Resources shall request any waivers of federal law that are necessary to implement the provisions of this section.

(7) The provisions of paragraphs (d) and (e) of subsection (1) of this section and of subsections (3), (4), and (5) of this section shall have no force or effect until and unless the requested waivers are granted.

(8) Nothing in this section shall authorize the Cabinet for Human Resources to waive the recipient's or provider's rights to prior notice and hearing as guaranteed by federal law.

(9) All complaints received by the Department for Medical Services, the Office of Inspector General, the Office of the Attorney General, or by personnel of the Cabinet for Human Resources concerning possible fraud or abuse by a medical assistance recipient shall be forwarded immediately to the Recipient Utilization Review Committee for its consideration. Any cases of possible recipient fraud or abuse uncovered by personnel of the Cabinet for Human Resources or by providers shall also be referred immediately to the Recipient Utilization Review Committee for its review. Records shall be kept of all cases, including records of disposition, considered by the Recipient Utilization Review Committee.

SECTION 4. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

Any provider agreeing to participate as a managed care primary physician of the state's medical assistance program shall be responsible for prior approval of all medical related services and goods, except transportation, of recipients assigned to the primary physician's care. No primary physician may delegate that primary physician's authority to anyone except a provider designated by the managed care primary physician to temporarily be responsible for the primary physician's managed care patients during the primary physician's absence. The temporarily designated provider shall be approved by the Department for Medicaid Services. Procedures for delegation of authority to a temporarily designated provider shall be approved by the Department for Medicaid Services in accordance with any applicable federal laws or regulations.

SECTION 5. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) Any provider presented with a request for an emergency service, for a nonlife-threatening condition or a condition that would not result in irreparable harm, by a Medicaid recipient participating in a managed care program but not in a restricted Medicaid status, shall not provide the service on an emergency basis unless the provider first makes a reasonable effort to contact the recipient's designated managed care primary physician for prior approval. Any provider presented with a request for an emergency service, due to a life-threatening condition or a condition that would result in irreparable harm, by a Medicaid recipient participating in a managed care program but not in a restricted Medicaid status, may provide the service without prior approval from the recipient's designated managed care primary physician.

(2) For the purposes of implementing Sections 3, 4, and 5 of this Act, the Department for Medicaid Services, in consultation with the Recipient Utilization Review Committee, shall in conformity with the federal Emergency

Medical Treatment and Active Labor Act (42 U.S.C. sec. 1395dd, as amended) and any other applicable federal law, and in administrative regulation promulgated pursuant to KRS Chapter 13A, define an emergency service, irreparable harm, immediate grave bodily harm, life-threatening condition, and nonlife-threatening condition.

SECTION 6. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) Except as otherwise provided in KRS 205.510 to 205.630, no provider shall knowingly solicit, receive, or offer any remuneration (including any kickback, bribe, or rebate) for furnishing medical assistance benefits or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made pursuant to Title XIX of the Social Security Act.

(2) (a) No provider shall knowingly make, offer, or receive a payment, a rebate of a fee, or a charge for referring a recipient to another provider for furnishing of benefits.

(b) Any conduct or activity which does not violate or which is protected under the provisions of 42 U.S.C. sec. 1395nn or 42 U.S.C. sec. 1320A-7b(b), as amended, or federal regulations promulgated under those statutes, shall not be deemed to violate the provisions of Sections 1 to 17 of this Act and the conduct or activity shall be accorded the same protections allowed under federal law and regulation.

(3) Any person who violates subsection (1) or (2) of this section shall be guilty of a Class A misdemeanor unless the combination or aggregation of offenses is valued at three hundred dollars ($300) or more, in which case it shall be a Class D felony. In addition to any other penalty authorized by law, any person who violates the provisions of subsection (2)(a) of this section shall not be entitled to bill or collect from the recipient or any third party payor and shall repay any payments due the Commonwealth for services provided which were related to the referral.

SECTION 7. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) No person shall knowingly or wantonly devise a scheme or plan a scheme or artifice, or enter into an agreement, combination, or conspiracy to obtain or aid another in obtaining payments from any medical assistance program under this chapter by means of any fictitious, false, or fraudulent application, claim, report, or document submitted to the Cabinet for Human Resources, or intentionally engage in conduct which advances the scheme or artifice.

(2) No person shall intentionally, knowingly, or wantonly make, present, or cause to be made or presented to an employee or officer of the Cabinet for Human Resources any false, fictitious, or fraudulent statement, representation, or entry in any application, claim, report, or document used in determining rights to any benefit or payment.

(3) No person shall, with intent to defraud, knowingly make, or induce, or seek to induce the making of a false statement or false representation of a material fact with respect to the conditions or operations of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, as a hospital, skilled nursing facility, intermediate care facility, home health agency, or other provider of services to the medical assistance program.

(4) No person shall, in any matter within the jurisdiction of the Cabinet for Human Resources under this chapter, knowingly falsify, conceal, or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry.

(5) Any person who violates subsections (1) and (2) of this section shall be guilty of a Class A misdemeanor unless the sum total of benefits or payments claimed in any application, claim, report, or document, or in any combination or aggregation thereof, is valued at three hundred dollars ($300) or more in which case it shall be a Class D felony. Any person who violates the provisions of subsection (3) of this section shall be guilty of a Class C felony. Any person who violates the provisions of subsection (4) of this section shall be guilty of a Class D felony.

SECTION 8. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) Any person who knows or has reasonable cause to believe that a violation of this chapter has been or is being committed by any person, corporation, or entity, shall report or cause to be reported to the state Medicaid Fraud Control Unit, or the Medicaid Fraud and Abuse hotline, the following information, if known:

(a) The name and address of the offender;

(b) The offender's place of employment;

(c) The nature and extent of the violation;

(d) The identity of the complainant; and

(e) Any other information that the receiving person reasonably believes might be helpful in investigation of the alleged fraud, abuse, or misappropriation.

The state Medicaid Fraud Control Unit shall periodically publicize the provisions of this subsection.

(2) The identity of any person making a report under this section shall be considered confidential by the receiving party. Any person making a report under this section regarding the offenses of another shall not be liable in any civil or

criminal action based on the report if it was made in good faith.

(3) No employer shall, without just cause, discharge or in any manner discriminate or retaliate against any person who in good faith makes a report required or permitted by Sections 1 to 17 of this Act, testifies, or is about to testify, in any proceeding with regard to any report or investigation. Any individual injured by any act in violation of the provisions of this subsection shall have a civil cause of action in Circuit Court to enjoin further violations, and to recover the actual damages sustained, together with the costs of the lawsuit, including a reasonable fee for the individual's attorney of record.

(4) No employee of the state Medicaid Fraud Control Unit, the Office of the Attorney General, the Office of the Inspector General, or the Cabinet for Human Resources shall notify the alleged offender of the identity of the person who in good faith makes a report required or permitted by Sections 1 to 17 of this Act nor shall the employee notify the alleged offender that a report has been made alleging a violation of Sections 1 to 17 of this Act until such time as civil or criminal proceedings have been initiated or a formal investigation has been initiated. Any information or report concerning an alleged offender shall be considered confidential in accordance with the Kentucky Open Records Law, KRS 61.870 to 61.884.

SECTION 9. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) Any provider who has been found by a preponderance of the evidence in an administrative process, in conformity with any applicable federal regulations and with due process protections, to have knowingly submitted or caused claims to be submitted for payment for furnishing treatment, services, or goods under a medical assistance program provided under this chapter, which payment the provider was not entitled to receive by reason of a violation of this chapter, shall:

(a) Be liable for restitution of any payments received in violation of this chapter, and interest at the maximum legal rate pursuant to KRS 360.010 in effect on the date any payment was made, for the period from the date payment was made to the date of repayment to the Commonwealth;

(b) Be liable for a civil payment in an amount up to three (3) times the amount of excess payments;

(c) Be liable for payment of a civil payment of five hundred dollars ($500) for each false or fraudulent claim submitted for providing treatment, services, or goods;

(d) Be liable for payment of legal fees and costs of investigation and enforcement of civil payments; and

(e) Be removed as a participating provider in the medical assistance program for two (2) months to six (6) months for a first offense, for six (6) months to one (1) year for a second offense, and for one (1) year to five (5) years for a third offense.

(2) Civil payments, interest, costs of investigation, and enforcement of the civil remedies recovered on behalf of the Commonwealth under this section shall be remitted to the State Treasurer for deposit in a Medicaid trust fund which is hereby created and shall not lapse. Funds deposited in the Medicaid trust fund shall not be spent until appropriated by the General Assembly for medical assistance services.

(3) The remedies under this section are separate from and cumulative to any other administrative, civil, or criminal remedies available under federal or state law or regulation.

(4) The Cabinet for Human Resources, in consultation with the Office of the Attorney General, may promulgate administrative regulations, pursuant to KRS Chapter 13A, for the administration of the civil payments contained in this section.

SECTION 10. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) The Attorney General, on behalf of the Commonwealth, may commence proceedings to enforce Sections 1 to 17 of this Act, and to prosecute for all other criminal offenses that involve or are directly related to the use of any medical assistance program funds or services provided under this chapter.

(2) In enforcing Sections 1 to 17 of this Act, the Attorney General may subpoena witnesses or documents to the grand jury, District Court, or Circuit Court of the county or counties where venue lies, and subpoena witnesses or documents to the Office of the Attorney General to secure testimony for use in civil or criminal trials, investigations, or hearings affecting the Cabinet for Human Resources.

SECTION 11. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) The Commonwealth shall have a lien against all property of any provider or recipient who is found to have defrauded the Medicaid program for an amount equal to the sum defrauded plus any interest and penalties levied under Sections 1 to 17 of this Act. The lien shall attach to all property and rights to property owned by the provider or recipient and all property subsequently acquired after a finding of fraud by the Cabinet for Human Resources.

(2) The lien imposed by subsection (1) of this section shall not be defeated by gift, devise, sale, alienation, or any other means, and shall include the sum defrauded and all interest, penalties, fees, or other expenses associated with collection of the debt. The lien shall have priority over any other lien or obligation against the property, except as provided in subsection (3) of this section.

(3) The lien imposed by subsection (1) of this section shall not be valid as against any purchaser, judgment lien creditor, or holder of a security interest or mechanics lien which was filed prior to the date on which notice of the lien created by this section is filed by the secretary for human resources or his designee with the county clerk of the county or counties in which the provider's business or residence is located, or in any county in which the taxpayer has an interest in property. The notice of lien shall be recorded in the same manner as the notice of lis pendens.

(4) The secretary for human resources shall issue a partial release of any part of the property subject to lien upon payment by the debtor of that portion of the debt and any interest, penalty, or fees covered by the lien on that property.

(5) The secretary for human resources may enforce the lien created pursuant to this section in the manner provided for the enforcement of statutory liens under KRS 376.110 to 376.130.

SECTION 12. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

In a prosecution for any violation of the provisions of Sections 1 to 17 of this Act, it shall be a defense if the person relied on the written advice of an employee or agent of the Cabinet for Human Resources, and the advice constitutes a defense under any of the provisions of KRS 501.070.

SECTION 13. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) Any professional, licensed or regulated by any agency of the Commonwealth of Kentucky, who upon final and unappealable decision by a court of competent jurisdiction, is convicted or pleads guilty to a violation of any of the criminal provisions of Sections 1 to 17 of this Act shall, in addition to any other penalty provided by law, forfeit the license to practice his or her profession for a mandatory minimum period of five (5) years. The license to practice a profession shall be reinstated only after compliance with all conditions for reinstatement contained in administrative regulations of the applicable licensure or regulatory board or agency promulgated pursuant to the provisions of KRS Chapter 13A. For purposes of this subsection, an individual or entity is considered to have been "convicted" of an offense when:

(a) A judgment of conviction has been entered against the individual or entity by a federal or state court;

(b) There has been a finding of guilt against the individual or entity by any court of competent jurisdiction;

(c) A plea of guilty by the individual or entity has been accepted by any court of competent jurisdiction; or

(d) The individual or entity has entered into participation in a court imposed first offender, deferred adjudication, diversion, or other arrangement or program where judgment of conviction has been withheld.

(2) Pending the final and unappealable decision of a court of competent jurisdiction, as provided under subsection (1) of this section, the provider shall not be eligible to participate in the Kentucky medical assistance program.

(3) No provider, owner, officer, or stockholder possessing more than forty percent (40%) of the shares of a provider shall receive payments for medical services or receive profits or remuneration from any other medical assistance provider with which the provider, owner, officer, or stockholder may thereafter become associated until all criminal penalties or civil payments assessed against the provider, owner, officer, or stockholder under Sections 1 to 17 of this Act have been satisfied.

SECTION 14. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) Each health facility and health service as defined in KRS 216B.015 and each provider, participating in the medical assistance program shall, as a condition of participation in the medical assistance program, file annually with the Cabinet for Human Resources the names and addresses of all persons having direct or indirect ownership or control interest, as defined in 42 C.F.R. 455.101, with five percent (5%) or more interest in the health facility, or health service or the business of the provider and those medical assistance program participating health facilities or health services with which the reporting provider, or health facility, or health service engages in a significant business transaction or a series of transactions that during any one (1) fiscal year, exceed the lesser of twenty-five thousand dollars ($25,000) or five percent (5%) of the total operating expenses of the provider, or health facility, or health service. The list of names and addresses shall be made available by the cabinet for public inspection during regular business hours and shall be updated annually.

(2) Each owner of or direct financial investor in any health facility or health service which dispenses or supplies drugs, medicines, medical devices, or durable medical equipment to a patient shall annually file with the Cabinet for Human Resources the names and addresses of any immediate family member who is authorized under state law to prescribe drugs or medicines or medical devices or equipment.

SECTION 15. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

Any provider licensed or certified under the laws of the Commonwealth whose license or certificate to practice is suspended, revoked, limited, or otherwise restricted shall have that fact reported to the medical assistance program by the respective licensure or regulatory board or agency within five (5) working days of the action.

SECTION 16. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

No staff of the Office of the Attorney General shall, in private practice of law, serve as legal counsel to or represent any provider, as defined in Section 1 of this Act. Designated staff of the Office of the Attorney General shall work in cooperation with the Cabinet for Human Resources in any initiation of disciplinary proceedings against a health care provider as defined in Section 1 of this Act and as may be authorized or required under Sections 1 to 17 of this Act for violations of Sections 1 to 17 of this Act.

SECTION 17. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) The Office of the Inspector General in the Cabinet for Human Resources shall establish, maintain, and publicize a twenty-four (24) hour toll-free hotline for the purpose of receiving reports of alleged fraud and abuse by medical assistance program recipients and participating providers.

(2) The Office of the Inspector General in the Cabinet for Human Resources shall prepare a written description of the reported information and immediately make a written referral to:

(a) The state Medicaid Fraud Control Unit and to the Office of the Attorney General of all reports of alleged fraud and abuse by providers or recipients participating in the medical assistance program; and

(b) Other agencies and licensure boards of all reports relevant to their jurisdiction.

(3) The Office of the Inspector General in the Cabinet for Human Resources, jointly with the state Medicaid Fraud Control Unit and the Office of the Attorney General, shall prepare a Medicaid fraud and abuse report, for the prior fiscal year, categorized by types of fraud and abuse and by recipient and provider group. This report shall be submitted no later than July 1 of each year to the Legislative Research Commission, the Interim Joint Committee on Appropriations and Revenue, and the Interim Joint Committee on Health and Welfare and shall identify:

(a) The number and type of reports received in the Office of the Inspector General in the Cabinet for Human Resources, from the Medicaid fraud and abuse hotline categorized by recipient and provider groups;

(b) The number and type of alleged Medicaid fraud and abuse reports which were discovered by, received by, or referred to the Office of the Attorney General, the state Medicaid Fraud Control Unit, the Office of the Inspector General and the Department for Medicaid Services; the number and type of reports which were opened for investigation by the Office of the Attorney General, the state Medicaid Fraud Control Unit, the Department for Medicaid Services, or the Office of the Inspector General and their disposition including:

1. Administrative actions taken;

2. Criminal penalties and civil payments received;

3. The amount of state and federal funds involved in the alleged fraud and abuse;

4. The cost of administering the hotline; and

5. Recommendations for legislative action to prevent, detect, and prosecute medical assistance abuse and fraud in the Commonwealth.

Section 18. KRS 205.624 is amended to read as follows:

(1) An applicant or recipient shall be deemed to have made to the cabinet an assignment of his rights to third party payments to the extent of medical assistance paid on behalf of the recipient under Title XIX of the Social Security Act. The applicant or recipient shall be informed in writing by the cabinet of such assignment.

(2) The cabinet shall have the right of recovery which a recipient may have for the cost of hospitalization, pharmaceutical services, physician services, nursing services, and other medical services not to exceed the amount of funds expended by the cabinet for such care and treatment of the recipient under the provisions of Title XIX of the Social Security Act.

(a) If a payment for medical assistance is made, the cabinet, to enforce its right, may:

1. Intervene or join in an action or proceeding brought by the injured, diseased, or disabled person, ***the person's*** ~~[his]~~ guardian, personal representative, estate, dependents, or survivors against a third party who may be liable for the injury, disease, or disability, or against contractors, public or private, who may be liable to pay or provide medical care and services rendered to an injured, diseased, or disabled recipient, in state or federal court; or

2. Institute and prosecute legal proceedings against a third party who may be liable for the injury, disease, or disability, or against contractors, public or private, who may be liable to pay or provide medical care and services rendered to an injured, diseased, or disabled recipient, in state or federal court, either alone or in conjunction with the injured, diseased, or disabled person, ***the person's*** ~~[his]~~ guardian, personal representative, estate, dependents, or survivors; or

3. Institute the proceedings in its own name or in the name of the injured, diseased, or disabled person, ***the person's*** ~~[his]~~ guardian, personal representative, estate, dependents, or survivors.

(b) The injured, diseased, or disabled person may proceed in his own name, collecting costs without the necessity of joining the cabinet or the Commonwealth as a named party, provided the injured, diseased, or disabled person shall notify the cabinet of the action or proceeding entered into upon commencement of the action or proceeding.

The injured, diseased, or disabled person must notify the cabinet of any settlement or judgment of his or her claim.

(c) In the case of an applicant for or recipient of medical assistance whose eligibility is based on deprivation of parental care or support due to absence of a parent from the home, the cabinet may:

1. Initiate a civil action or other legal proceedings to secure repayment of medical assistance expenditures for which the absent parent is liable; and
2. Provide for the payment of reasonable administrative costs incurred by such other state or county agency requested by the cabinet to assist in the enforcement of securing repayment from the absent parent.

(3) Each insurer issuing policies or contracts under Subtitle 17, 18, 32, or 38 of KRS Chapter 304 shall cooperate fully with the Cabinet for Human Resources or an authorized designee of the cabinet in order for the cabinet to comply with the provisions of subsection (1) of this section.

Section 19. KRS 205.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 205.170 or subsections (1) to (3) of KRS 205.175 shall be guilty of a Class A misdemeanor.

(2) Any person who violates subsection (4) of KRS 205.175 shall be guilty of a Class D felony.

(3) Any person who willfully violates any of the provisions of KRS 205.310, or any rule or regulation thereunder, shall be guilty of a Class B misdemeanor. Each failure or violation shall constitute a separate offense.

(4) [~~Any person who violates the provisions of subsections (1), (2) and (3) of KRS 205.850 shall be guilty of a Class D felony.~~

~~(5) Any person who violates subsection (4) of KRS 205.850 shall be guilty of a Class A misdemeanor unless the sum total of benefits or payments claimed in any such application, claim, report, or document, or in any combination or aggregation thereof, is valued at one hundred dollars ($100) or more in which case it shall be a Class D felony.~~

~~(6) Any person who violates the provisions of subsection (5) of KRS 205.850 shall be guilty of a Class C felony.~~

~~(7) Any person who violates subsections (1) to (6) of KRS 205.850 shall, in addition to any other penalties provided by law, forfeit and pay a civil penalty of payment to the cabinet in the amount of all benefits and payments to which the person was not entitled.~~

~~(8) Any provider who violates subsections (1) to (6) of KRS 205.850 shall, in addition to any other penalties provided by law, including the penalty set forth in subsection (7) of this section, forfeit and pay civil penalties of:~~

~~(a) Payment to the state treasury's general revenue fund in an amount equal to three (3) times the amount of such benefits and payments to which the person was not entitled; and~~

~~(b) Payment of all reasonable expenses which the court determines have been necessarily incurred by the state in the enforcement of this section.~~

~~(9)~~] Any bank, savings and loan association, credit union, or other financial institution which fails to comply with the provisions of subsection (1) of KRS 205.835 or which submits fraudulent information to the cabinet shall be guilty of a Class A misdemeanor.

Section 20. KRS 194.515 is amended to read as follows:

For the purpose of enforcing the provisions of KRS 194.505, ***Sections 1 to 17 of this Act,*** [~~205.850~~] and 341.990(5) and (6), and of investigating any assistance program administered by the department, the designated agents of the department shall have the same access to records maintained pursuant to KRS 17.150 as do peace officers.

Section 21. The following KRS sections are repealed:

205.845 Definitions.

205.850 Prohibited activities -- Exception -- Commencement of proceedings for enforcement.

205.855 Defense in prosecution.

The Committee on Appropriations and Revenue reported **HB 487** and **SB 22** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 487, AN ACT relating to property taxation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 136.030 is amended to read as follows:

(1) (a) The individual stockholders of a corporation shall not be required to list their shares for ad valorem taxation ***if*** [~~so long as~~] the corporation pays taxes to the State of Kentucky on at least seventy-five percent (75%) of its total property, wherever located. Bonds and obligations of the United States of America and its possessions and bonds and obligations of the State of Kentucky, its instrumentalities, and its political subdivisions and their

instrumentalities shall not be considered in the computation of the total property of the corporation, wherever located, nor in the computation of the amount of property upon which the corporation pays ad valorem taxes to the State of Kentucky. In order to obtain this exemption, the stockholder shall furnish satisfactory proof to the Revenue Cabinet that at least seventy-five percent (75%) of the total property of the corporation as [~~hereinabove~~] specified ***in this section*** is taxed in the State of Kentucky.

(b) A corporation which has its "principal office", as defined in KRS 271B.1-400, in this state during the taxable period may elect, in order to satisfy the provisions of paragraph (a) of this subsection, to include in the computation of the total property of the corporation, wherever located, and in the computation of the amount of property upon which the corporation pays ad valorem taxes to the State of Kentucky, out-of-state business property formerly owned by a subsidiary corporation, the shares of which had been treated as stock of an "affiliated company," as defined in KRS 132.020, held by the electing corporation, when the electing corporation pays an ad valorem tax for state purposes for the taxable period on the value of the out-of-state business property at the rate provided for in KRS 132.020(2).

(2) Every corporation organized under the laws of this state, or doing business in this state, whose stock is liable to assessment and taxation under subsection (1) of this section, except banks, trust companies, or combined banks and trust companies doing business in this state, and domestic life insurance companies, shall by February 15, of each year make a true and correct report to the Revenue Cabinet signed by its president, secretary, treasurer, or other chief officer, giving the names and addresses of residents of this state who hold its shares of stock and outstanding bonds as of January 1 ***of that year*** [~~previous thereto~~], and also the transfer of any of its stocks or bonds by residents of this state to nonresidents within thirty (30) days ***prior*** [~~previous~~] to January 1.

(3) Every broker-dealer or his agent doing business in this state pursuant to KRS Chapter 292, shall on or before March 1, each year, as of the preceding January 1, furnish the Revenue Cabinet the following information:

(a) Name***,*** [~~and~~] address***, Social Security number, or federal identification number*** of all Kentucky ***customers*** [~~residents~~] whose stocks, bonds, ***money market funds, options, index futures,*** or other ***forms of intangible*** securities are held in a name other than that of the actual owner and which are in the possession of or subject to the control of ***the*** [~~such~~] broker-dealer or his agent, for the benefit of ***the*** [~~such~~] actual owner. ***Broker-dealers*** [~~This~~] shall [~~be construed to~~] include all ***information for*** accounts fully paid for ***or margined*** if the stock certificates ***or other tangible evidence of ownership*** have not been sent to the Kentucky residents;

(b) Name of company by whom stocks, bonds, ***mutual funds, money market fund,*** options, index futures, or other ***forms of intangible*** securities were issued;

(c) ***CUSIP number of each stock, bond, mutual fund, money market fund, and other form of intangible securities;***

(d) For stock or other intangible securities owned in shares, the number of shares and type of each stock ***or security; for bonds or other like intangible securities, the***[~~,~~] interest rate, maturity date, par value, and number of bonds ***or other security*** held***;***[~~,~~] and ***for other types of intangible interests held by the broker-dealer,*** sufficient information to measure the quantity of other securities; and

(e)[~~(d)~~]Market value as of the previous January 1.

(4) For purposes of determining the tax status, under subsection (1) of this section, of the shareholders of a holding company with subsidiaries subject to the provisions of KRS 136.120(1), the property of the subsidiaries subject to the provisions of KRS 136.120(1) shall be considered to be property of the holding company, and ad valorem taxes paid to the State of Kentucky by the subsidiaries subject to the provisions of KRS 136.120(1) shall be considered to be paid by the holding company.

Section 2. KRS 132.050 is amended to read as follows:

(1) Annual tax at the rate of ten cents ($0.10) on each one hundred dollars ($100) of the fair cash value, based upon the assessed value as of January 1 of each year, of all items of direct or contingent indebtedness of customers to brokers making purchases or sales of securities for them in margin transactions shall be paid by ***the broker*** [~~such brokers~~].

(2) This tax shall be for state purposes only, and in lieu of all other ad valorem taxes by the state or by any county, city or other taxing district on ***the*** [~~such~~] indebtedness to brokers. The assessment, equalization and collection of the tax shall be governed by the general laws applicable to intangible personal property [~~other than that referred to in KRS 132.060~~].

Section 3. KRS 136.050 is amended to read as follows:

(1) Except where otherwise ***specifically*** [~~specially~~] provided, all corporations required to make reports to the Revenue Cabinet shall pay all taxes due the state [~~from them into the State Treasury~~] at the same time as natural persons are required to pay taxes, and when delinquent shall pay the same rate of interest and penalties as natural persons who are delinquent.

(2) All state taxes assessed against any corporation under the provisions of KRS 136.120 to 136.200 shall be due and payable ***within the times limits*** [~~as~~] provided in KRS 131.110. All county, city, school, and other taxes so assessed shall be due and payable thirty (30) days after notice of the amount of the tax is given by the collecting officer. The state,

county, city, school, and other taxes found to be due on any protested assessment or portion thereof shall begin to bear legal interest on the ***earlier of the January 1 following the April 30 of the year in which the report is due, or forty-five (45) days from the notice of assessment, whichever is later, except for assessments made pursuant to KRS 132.290 and 132.360*** [~~sixty-first day after the Kentucky Board of Tax Appeals acknowledges receipt of a protest of any assessment or enters an order to certify the unprotested portion of any assessment until paid, except that in no event shall interest begin to accrue prior to January 1 following April 30 of the year in which the report is due~~]. Every corporation [~~so~~] assessed that fails to pay its taxes when due shall be deemed delinquent, ***and penalties under KRS 131.180*** [~~a penalty of ten percent (10%)~~] on the amount of the tax shall attach, and thereafter the tax shall bear interest at the tax interest rate as defined in KRS 131.010(6).

Section 4. KRS 132.290 is amended to read as follows:

(1) Any real property which has not been listed for taxation, for any year in which it is taxable, by the time the board of assessment appeals completes its work for that year shall be deemed omitted property. Any personal property which has not been listed for taxation, for any year in which it is taxable, by April 15 of that year shall be deemed omitted property.

(2) All omitted property shall be assessed retroactively in the manner provided by law at any time within five (5) years from the date when it became omitted, but the lien ***against omitted*** [~~thereby accruing on any such~~] property, except real property, shall not prejudice the rights of bona fide purchasers acquired in the meantime.

(3) All omitted property voluntarily listed shall be subject to a penalty of ten percent (10%) of the amount of taxes, and interest at the tax interest rate as defined in KRS 131.010(6) from the date when the taxes would have become delinquent had the property been listed as required by law, until the date the tax bill is prepared in accordance with KRS 133.230.

(4) All omitted property not voluntarily listed shall be subject to a penalty of twenty percent (20%) of the amount of taxes, and interest at the tax interest rate as defined in KRS 131.010(6) from the date when the taxes would have become delinquent had the property been listed as required by law, until the date the tax bill is prepared in accordance with KRS 133.230.

(5) When the property is assessed retroactively by action prosecuted in the manner provided by KRS 132.330 and 132.340, an additional penalty of twenty percent (20%) of the amount of the original tax, interest and penalty may be collected for the purpose provided in KRS 134.400 and paid into the State Treasury. All other penalties and interest shall be distributed in the same manner as the tax.

(6) When the Revenue Cabinet assesses taxes against the same omitted personal property of a taxpayer that was assessed as omitted personal property the previous tax year, an additional penalty of twenty percent (20%) of the amount of the tax shall be assessed.

Section 5. KRS 132.220 is amended to read as follows:

(1) Deposits belonging to a resident of Kentucky in any national bank not of this state or in any bank, trust company, or combined bank and trust company not organized under the laws of this state, and unmanufactured tobacco insofar as it is subject to taxation by KRS 132.190 and 132.200, shall be listed, assessed, and valued as of September 1 of each year. Money in hand shall be listed, assessed, and valued as of September 1 of each year. Shares of stock, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and all interest in ***the*** [~~such~~] property, unless otherwise provided by law, shall be listed, assessed, and valued as of the beginning of business on January 1 of each year. All other taxable property and all interest in other taxable property, unless otherwise specifically provided by law, shall be listed, assessed, and valued as of January 1 of each year. It shall be the duty of all persons owning or having any interest in any real property taxable in this state to list or have listed ***the*** [~~such~~] property with the property valuation administrator of the county where it is located, between January 1 and March 1 in each year, except as otherwise provided by law. It shall be the duty of all persons owning or having any interest in any intangible personal property or tangible personal property taxable in this state to list or have listed ***the*** [~~such~~] property with the property valuation administrator of the county of taxable situs or with the Revenue Cabinet between January 1 and ***May*** [~~April~~] 15 in each year, except as otherwise prescribed by law. ***The filing date for an individual's intangible property tax return may be extended to the extended federal income filing date approved by the Internal Revenue Service for that individual. If an individual extends the filing date for the intangible return, no discount shall be allowed upon the payment of the intangible tax.*** All persons in whose name property is properly assessed shall remain bound for the tax, notwithstanding they may have sold or parted with it.

(2) Any taxpayer may list his property in person before the property valuation administrator or his deputy, or may file a property tax return by first class mail. Any real property correctly and completely described in the assessment record for the previous year, or purchased during the preceding year and for which a value was stated in the deed according to the provisions of KRS 382.135, may be considered by the owner to be listed for the current year if no changes that could potentially affect the assessed value have been made to the property. However, if requested in writing by the property valuation administrator or by the Revenue Cabinet, any real property owner shall submit a property tax return to verify existing information or to provide additional information for assessment purposes. Any real property which has been underassessed as a result of the owner intentionally failing to provide information, or intentionally providing erroneous

information, shall be subject to revaluation, and the difference in value shall be assessed as omitted property under the provisions of KRS 132.290.

(3) If the owner fails to list the property, the property valuation administrator shall nevertheless assess it. The property valuation administrator may swear witnesses in order to ascertain the person in whose name to make the list. The property valuation administrator, his employee, or employees of the Revenue Cabinet may physically inspect and revalue land and buildings in the absence of the property owner or resident. The exterior dimensions of buildings may be measured and building photographs may be taken; however, with the exception of buildings under construction or not yet occupied, an interior inspection of residential and farm buildings, and of the nonpublic portions of commercial buildings shall not be conducted in the absence or without the permission of the owner or resident.

(4) Real property shall be assessed in the name of the owner, if ascertainable by the property valuation administrator, otherwise in the name of the occupant, if ascertainable, and otherwise to "unknown owner." The undivided real estate of any deceased person may be assessed to the heirs or devisees of the person without designating them by name.

(5) Real property tax roll entries for which tax bills have not been collected for more than one (1) year, and for which the property valuation administrator cannot physically locate and identify the real property, shall be deleted. The property valuation administrator shall keep a record, which shall be open under the provisions of KRS 61.870 to 61.884, of these entries. If, at any time, one of these entries is determined to represent a valid parcel of property it shall be assessed as omitted property under the provisions of KRS 132.290.

(6) All real property exempt from taxation by Section 170 of the Constitution shall be listed with the property valuation administrator in the same manner and at the same time as taxable real property. The property valuation administrator shall maintain an inventory record of the tax-exempt property, but the property shall not be placed on the tax rolls. A copy of this tax-exempt inventory shall be filed annually with the Revenue Cabinet within thirty (30) days of the close of the listing period. This inventory shall be in the form prescribed by the Revenue Cabinet. The Revenue Cabinet shall make an annual report itemizing all exempt properties to the Governor and the Legislative Research Commission within sixty (60) days of the close of the listing period.

(7) Each property valuation administrator, under the direction of the Revenue Cabinet, shall review annually all real property listed with him under subsection (6) of this section and claimed to be exempt from taxation by Section 170 of the Constitution. The property valuation administrator shall place on the tax rolls all property that is not exempt. Any property valuation administrator who fails to comply with this subsection shall be subject to the penalties prescribed in KRS 132.990(2).

Section 6. The following KRS sections are repealed:

132.060 Marginal accounts tax -- Brokers' report to cabinet.

132.070 Assessment of marginal accounts tax.

132.080 Payment and collection of marginal accounts tax -- Penalty.

132.090 Credit to broker for services.

Section 7. The provisions of subsection (6) of Section 4 of this Act shall first apply to omitted personal property assessed on or after January 1, 1995, by the Revenue Cabinet.

SB 22, AN ACT relating to bonds.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 56.870 is amended to read as follows:

(1) Notwithstanding any statutory provisions to the contrary, prior to the issuance and sale of any definitive bonds or temporary bonds, or the securing of any interim financing through bond anticipation notes, loan agreements, or by any other means, each agency, authority, board, corporation, cabinet, commission, or any other agency or instrumentality of the Commonwealth shall first obtain approval of [~~any such~~] financing from the General Assembly, sitting in regular or special session. This approval shall be evidenced by the adoption by the General Assembly of a specific act or the adoption by the General Assembly of the biennial branch budget bill which ***specifies*** [~~shall specify~~] the purposes for the financing.

(2) The biennial branch budget bill shall also establish a ceiling for revenue bonds which require a general fund or road fund appropriation to retire.

(3) The provisions of subsection (1) of this section shall not be applicable to the financing of any project in any case where the project for which financing is proposed is certified by the ***secretary of the Finance and Administration Cabinet*** [~~Governor, as hereinafter provided,~~] to be of ***a*** [~~such~~] type ***that will*** [~~as to~~] independently produce revenues sufficient to fully meet debt service, issuance costs, reserve fund requirements, insurance premiums, and any other expenditures necessary for financing so that no appropriation of state funds will be required. Repayments of revolving funds established with bond issues for which debt service, issuance costs, reserve fund requirements, insurance premiums, or any other expenditures associated with the issuance of the bonds are appropriated by the General Assembly shall not be

deemed independently produced revenue. This certification shall be made in writing by the secretary of the Finance and Administration Cabinet to the statutory head of the issuing agency or authority with a copy to the Governor and the Legislative Research Commission.

(4) The following statement shall appear on all bonds or notes and all prospectuses offering statements or related materials used in conjunction with the sale of bonds or notes for which financing is certified in accordance with the provisions of subsection (3) of this section: "Kentucky's name is on these bonds (or notes) for the benefit and convenience of other entities within the state. However, the only security which is pledged for the bonds (or notes) is the independent revenues and assets from the project. The General Assembly does not intend to appropriate any state funds to fulfill the financial obligation represented by the bonds (or notes)."

Section 2. KRS 164A.020 is amended to read as follows:

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

(1) "Board" means the board of directors of the corporation.

(2) "Bonds" or "notes" means the bonds or bond anticipation notes authorized to be issued by the corporation pursuant to this chapter.

(3) "Corporation" means the Kentucky Higher Education Student Loan Corporation, an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky created to perform essential governmental services.

(4) "Eligible institution" means any educational institution described as an eligible institution in the federal act which has, if required by the guarantee agency, a contract in force with the guarantee agency pursuant to the federal act and this chapter.

(5) "Eligible lender" means the Kentucky Higher Education Assistance Authority, a de jure political subdivision of the Commonwealth of Kentucky and the corporation and all other entities described as eligible lenders in the federal act which have in force a contract with the guarantee agency providing for loan guarantees to be issued by the guarantee agency to the subject lender under the federal act and this chapter.

(6) "Federal act" means the Higher Education Act of 1965, as amended, codified as Title 20, United States Code, Sections ***1001*** [~~1071~~] et seq.

(7) "Guarantee agency" means the Kentucky Higher Education Assistance Authority duly organized and existing pursuant to the statutory laws of the Commonwealth of Kentucky or any agency authorized as a guarantor pursuant to the federal act.

(8) "Qualified student" means a student who qualifies for an insured student loan under the federal act.

(9) "Insured student loan" means ***a loan*** [~~an obligation representing advances of money~~] to a qualified student ***on which*** [~~evidenced by one (1) or more promissory notes~~] the payment of principal [~~of~~] and interest [~~on which~~] is ***at least ninety-eight percent (98%)*** insured by the guarantee agency and reinsured [~~to the extent of not less than eighty percent (80%) of the principal amount thereof~~] by the Secretary of Education of the United States ***in accordance with the requirements of*** [~~under~~] the federal act, or ***at least ninety-eight percent (98%)*** [~~fully~~] insured as to principal amount by the United States [~~Secretary of Education~~] under the federal act ***or the Health Professions Educational Assistance Act of 1976, codified as Title 42, United States Code, section 294 et seq***. As used in connection with the purchase, making or acquisition of insured student loans by the corporation, the term insured student loan shall further mean and refer to any contingent interest, security interest, pledge, commitment, chose in action or other property interest in any such loan.

Section 3. KRS 164A.080 is amended to read as follows:

(1) The corporation ***may*** [~~is hereby authorized to~~] provide for the issuance, at one (1) time or from time to time, of not exceeding five hundred fifty-three million dollars ($553,000,000) in bonds of the corporation to carry out and effectuate its corporate purposes and powers. In anticipation of the issuance of [~~such~~] bonds***,*** the corporation ***may*** [~~also is hereby authorized to~~] provide for the issuance, at one (1) time or from time to time, of bond anticipation notes. The principal of and the interest on [~~such~~] bonds or notes shall be payable solely from the funds herein provided for [~~such~~] payment. Any [~~such~~] notes may be made payable from the proceeds of bonds or renewal notes or, ***if*** [~~in the event~~] bond or renewal note proceeds are not available, [~~such~~] notes may be paid from any available revenues or assets of the corporation. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the corporation at ***the*** [~~such~~] price or prices and under ***the*** [~~such~~] terms and conditions [~~as may be~~] determined by the corporation. Any [~~such~~] bonds or notes shall bear interest at ***a*** [~~such~~] rate or rates [~~as may be~~] determined by the corporation. Notes shall mature at ***a*** [~~such~~] time or times not exceeding five (5) years from their date or dates and bonds shall mature at ***a*** [~~such~~] time or times not exceeding thirty (30) years from their date or dates, as [~~may be~~] determined by the corporation. The corporation shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached [~~thereto~~], and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the state. ***If*** [~~In case~~] any officer whose ***signature*** [~~signatures~~] or a facsimile of whose signature ***appears*** [~~shall appear~~] on any bonds or notes or coupons attached ***to them*** [~~thereto~~] shall cease to be ***an*** [~~such~~] officer before the delivery ***of the bonds or notes, the*** [~~thereof, such~~] signature or [~~such~~]

facsimile shall [~~nevertheless~~] be valid and sufficient for all purposes [~~the same~~] as if he had remained in office until ***the*** [~~such~~] delivery. The corporation may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the corporation may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the approval of a resolution of the corporation authorizing the sale of its bonds or notes, ***the*** [~~such~~] bonds or notes may be sold in ***a*** [~~such~~] manner, either at public or private sale, and for ***a*** [~~such~~] price ***the*** [~~as said~~] corporation shall determine to be for the best interest of the corporation and best effectuate the purposes of this chapter ***if the*** [~~provided that such~~] sale ***is*** [~~shall be~~] approved by the corporation.

(2) The proceeds of any bonds or notes shall be used solely for the purposes for which ***they are*** issued and shall be disbursed in ***a*** [~~such~~] manner and under [~~such~~] restrictions, if any, [~~as~~] the corporation may provide in the resolution authorizing the issuance of [~~such~~] bonds or notes or in the trust agreement [~~hereinafter mentioned~~] securing the ***bonds or notes*** [~~same~~]. The principal of and interest on any bonds issued by the corporation shall be payable [~~solely and~~] only from the proceeds derived by the corporation from insured student loans made and purchased from the proceeds of ***the*** [~~such~~] bonds. [~~No such bond proceeds may be expended for the purchase or making of any insured student loan unless such insured student loan is insured as to the principal and interest payments by the United States of America or the guarantee agency, and the guarantee agency has reinsured such insured student loan with the United States of America to the maximum extent permitted by the Higher Education Act of 1965, as amended.~~]

(3) Prior to the issuance of any bonds or notes that are not secured by the repayment of student loans at least ninety-eight percent (98%) insured by the guarantee agency and reinsured by the United States of America, the corporation shall obtain approval of the issuance from the General Assembly in accordance with the provisions of KRS 56.870(1). This requirement shall not apply to refunding bond or note issues which are for the purpose of achieving debt service savings and which do not extend the term of the refunded bond or note.

Section 4. KRS 198A.090 is amended to read as follows:

(1) ***Except as provided in subsection (6) of this section,*** the corporation may provide for the issuance, at one (1) time or from time to time, of bonds of the corporation if the cumulative outstanding indebtedness of the corporation's bonds does not exceed one billion one hundred twenty-five million dollars ($1,125,000,000), in order to carry out and effectuate its corporate purposes and powers.

(2) In anticipation of the issuance of bonds, the corporation [~~also~~] may provide for the issuance, at one (1) time or from time to time, of bond anticipation notes. The principal of and the interest on the bonds or notes shall be payable solely from the funds provided for the payment. Notes may be made payable from the proceeds of bonds or renewal notes or, if bond or renewal note proceeds are not available, notes may be paid from any available revenues or assets of the corporation.

(3) The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the corporation at a price and under terms and conditions determined by the corporation. Bonds or notes shall bear interest at a rate determined by the corporation. Notes shall mature at a time not exceeding ten (10) years from their date and bonds shall mature at a time not exceeding forty (40) years from their date, as determined by the corporation. The corporation shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination and the place of payment of principal and interest, which may be any bank or trust company within or without the Commonwealth. If an officer whose signature or a facsimile of whose signature ***appears*** [~~shall appear~~] on any bonds, notes, or coupons attached ***to them*** [~~thereto~~] shall cease to be ***an*** [~~such~~] officer before the delivery thereof, the signature or facsimile shall be valid and sufficient for all purposes [~~the same~~] as if he had remained in office until delivery. The corporation may [~~also~~] provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the corporation may determine, and provision may be made for[~~,~~] the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the approval of a resolution of the corporation, authorizing the sale of its bonds or notes, the bonds or notes may be sold in a manner, either at public or private sale, and for a price [~~as~~] the corporation shall determine to be for the best interest of the corporation and best effectuate the purposes of this chapter, if the sale is approved by the corporation.

(4) The proceeds of any bonds or notes shall be used solely for the purposes for which ***they are*** issued and shall be disbursed in the manner and under the restrictions***,*** if any, the corporation may provide in the resolution authorizing the issuance of bonds or notes or in the trust agreement securing the same.

(5) Prior to the preparation of definitive bonds, the corporation may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds [~~shall~~] have been executed and are available for delivery. The corporation may also provide for the replacement of any bonds or notes which [~~shall~~] become mutilated***,*** [~~or shall be~~] destroyed***,*** or lost.

(6) ***(a) Prior to the issuance of any bonds or notes that are not secured by:***

1. Direct obligations or obligations guaranteed by the United States of America; or

2. Obligations of federal agencies to the extent that the obligations are backed by the full faith and credit of the United States of America; or

3. Repurchase agreements with any primary dealer in securities fully secured by obligations described in subparagraphs 1 and 2 if the market value of the security is maintained at one hundred three percent (103%) of the principal amount of the repurchase agreement and the security is held by an independent third party custodian financial institution; or

4. Insured or guaranteed construction loans or mortgage loans as defined by KRS 198A.010(9) and (10); or

5. Guaranty insurance policies which guarantee payment of the principal and interest on the bonds issued by a nationally recognized entity authorized to issue guarantees and rated in the highest rating category by at least one (1) of the nationally recognized rating services;

the corporation shall obtain the approval of the issuance from the General Assembly in accordance with the provisions of KRS 56.870(1), unless the provisions of paragraph (b) of this subsection apply. This requirement shall not apply to refunding bond or note issues which are for the purpose of achieving debt service savings and which do not extend the term of the refunded bonds or notes.

(b) The corporation may provide for the issuance, at any one (1) time or from time to time, of bonds which do not satisfy the requirements of paragraph (a) of this subsection without approval of the issuance by the General Assembly if the cumulative outstanding indebtedness of the corporation that does not meet the requirements of paragraph (a) of this subsection does not exceed thirty million dollars ($30,000,000).

(c) The corporation shall annually report on its housing and bonding programs to the Interim Joint Committee on Appropriations and Revenue [~~Bonds or notes may be issued under the provisions of this chapter as provided in KRS 45.810. The corporation shall annually report on its housing and bonding programs to the Appropriations and Revenue Committee of the Kentucky General Assembly~~].

(7) The Finance and Administration Cabinet shall provide to the corporation fiscal consultant services regarding revenue bond management as necessary.

Section 5. KRS 224A.165 is amended to read as follows:

(1) The authority ***may,*** [~~shall be authorized and empowered~~] in connection with the issuance of its revenue bonds and notes for the accomplishment of its public purposes pursuant to this chapter***,*** [~~to~~] establish in respect of ***the*** [~~such~~] revenue bonds and notes [~~such~~] reserve funds or replacement funds [~~as may be~~] required in the sound discretion of the board of the authority in order to enable the authority to effectuate its proper public purposes, and to issue [~~such~~] revenue bonds and notes in the most advantageous manner. ***If*** [~~In the event~~] any [~~such~~] reserve fund or replacement fund created by the authority in connection with any [~~such~~] revenue bond issue or note issue should, in violation of any contract made by the authority with any bond holder or note holder, be monetarily deficient in any respect as of any date of accounting [~~so~~] stipulated by the authority, the authority shall immediately make formal request in writing to the secretary of the Finance and Administration Cabinet, and to the Governor of Kentucky, that sums adequate to restore ***the*** [~~such~~] reserve fund or replacement fund to its contractually required level and to pay any overdue principal and interest on any outstanding revenue bonds and notes of the authority be included in the next succeeding executive budget, and that ***the*** [~~such~~] budget request be presented to the General Assembly of Kentucky with recommendation for approval by the General Assembly for payment to the authority for the use and benefit of ***the*** [~~such~~] reserve fund or replacement fund.

(2) If the provisions of KRS 56.870(3) are determined to apply to a revenue bond or note, and if the proceeds of the bond or note are made available to a governmental agency or private entity, and if the debt is not fully guaranteed by the United States government or secured by a nationally recognized entity authorized to issue guarantees and rated in the highest rating category by at least one (1) of the nationally recognized rating services, the authority shall obtain approval from the General Assembly in accordance with the provisions of KRS 56.870(1) prior to the issuance of the bonds or notes. Notwithstanding the foregoing, no such approval shall be required for the following issues of bonds or notes:

(a) Refunding bonds or notes which are issued for the purpose of achieving debt service savings and which do not extend the term of the refunded bonds;

(b) Bonds or notes issued to provide interim construction financing to governmental agencies which mature no later than three (3) years from their date of issuance if the aggregate principal amount of the bonds or notes outstanding under any trust indenture or bond resolution does not exceed the sum of sixty million dollars ($60,000,000);

(c) Bonds or notes having a final maturity extending beyond three (3) years, the principal and premium, if any, and interest on which are secured primarily by repayments of loans made to the governmental agency or private entity, if the aggregate principal amount of the bonds or notes outstanding under any trust indenture or bond resolution does not exceed the sum of one hundred twenty-five million dollars ($125,000,000).

The incremental amount of principal debt incurred by issuing refunding bonds or notes which are issued for the purpose of achieving debt service savings and which do not extend the term of the refunded bond or note, shall not be subject to the limits defined in paragraphs (b) and (c).

The Committee on Banking and Insurance reported **HB 177,** with Committee Amendment attached thereto, **HB 427,** with Committee Amendments attached thereto, and **SB 78** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 177, AN ACT relating to insurance coverage for loss or damage to a structure.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.20-260 is amended to read as follows:

(1) After July 15, 1986, no insurer shall deliver, issue for delivery or renew any policy or policies providing coverage for loss or damage to a structure located in this Commonwealth for an amount greater than one hundred percent (100%) of the replacement cost of the structure. For the purpose of this section, "structure" means any dwelling, building or fixture permanently affixed to realty, but does not include land, trees, plants or crops.

(2) In the event of total loss of an insured structure located in the Commonwealth that is insured for more than the replacement value as determined at the time of loss, the insurer shall be liable to the insured for the face amount of the policy, if the loss is covered under the policy.

The Committee Amendment No. 1 to **HB 177** is as follows:

On page 1, by deleting lines 8 to 11 in their entirety and inserting in lieu thereof:

"***(2) In the event a policy insuring against a property or casualty loss is issued on any basis other than for a fixed amount payable for a total loss covered under the policy, the declaration page on the policy shall indicate that the insurer's limit of liability shall be:***

(a) The actual replacement cost of the structure at the time of loss: or

(b) The market value at the time of loss.".

HB 427, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.2-150 is amended to read as follows:

(1) The commissioner shall carefully preserve in the department and in permanent form, a correct account of all his transactions and of all fees and moneys received by him by virtue of his office, together with all financial statements, examination reports, correspondence, filings, and documents duly received by the department. The commissioner shall hand the same over to his successor in office.

(2) The commissioner shall keep a suitable record of all insurer certificates of authority and of all licenses issued under this code, together with all applicable suspensions and revocations and of the causes thereof.

(3) Unless otherwise provided by law, records of the department shall be open to the extent provided by the Kentucky Open Records Act, KRS 61.872 to 61.884:

   (a) The following records shall be open:

      1. Rate and form filings and information filed in support thereof; and

      2. Other records as provided by law;

   (b) The following records shall be closed:

      1. All information received in confidence from the National Association of Insurance Commissioners, including, but not limited to, information from the insurance regulatory information system. However, records described in this paragraph may be used by the commissioner in enforcement prosecutions and proceedings for disciplinary action, and may be disclosed to other law enforcement authorities; and

      2. Other records as provided by law; and

   (c) When inspection of department records is denied, any person challenging the denial shall follow the procedures set forth in the Kentucky Open Records Act, KRS 61.872 to 61.884.

(4) After five (5) years, the commissioner may destroy unneeded or obsolete records and filings in the department***, with the exception of fiscal records concerning the finances of the department which may be destroyed after three (3) years***.

Section 2. KRS 304.2-140 is amended to read as follows:

Any person who willfully violates any rule, regulation, ***subpoena,*** or order of the commissioner or any provision of this code shall be subject to suspension or revocation of certificate of authority or license, or administrative fine or both.

Section 3. KRS 304.2-340 is amended to read as follows:

(1) The commissioner or his authorized designee conducting a hearing, examination***,*** or investigation by his authority shall have power to subpoena witnesses, compel their attendance, administer oaths, examine any person under oath relative to the subject of the hearing, examination or investigation, and to compel any person to subscribe to his testimony after it has been correctly reduced to writing, and, in connection therewith, to require the production of any books, papers, records, correspondence or other documents which he deems relevant to the inquiry.

(2) A subpoena issued pursuant to this section shall have the same force and effect [~~and shall be served in the same manner~~] as if issued from a court of record.

(3) ***A subpoena issued pursuant to this section shall be served in the same manner as if issued from a court of record, except a subpoena may be served upon any person holding a license or a certificate of authority from the commissioner or upon the employee of the person or entity in the same manner as other orders and notices are served, as provided in KRS 304.2-120.***

(4) If any individual ***or licensee*** refuses to comply with ***a*** [~~any such~~] subpoena or to testify as to any matter concerning which he may be lawfully interrogated***:***[~~,~~]

(a) The Circuit Court of the county wherein ***the*** [~~such~~] examination, investigation, or hearing is being conducted or of the county wherein ***the*** [~~such~~] individual ***or licensee*** resides, on the commissioner's application may, after summary hearing, issue an order requiring ***the*** [~~such~~] individual ***or licensee*** to comply with the subpoena and to testify; and failure to obey [~~such~~] an order may be punished by the court as a contempt thereof***; and***

(b) The commissioner may suspend or revoke the certificate of authority or license of any licensee or impose an administrative fine, or both, for failure of the licensee or the employee of any licensee to comply.

(5)[~~(4)~~] Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a Circuit Court, but no officer, director, agent or employee of an insurer or person being examined or investigated shall be entitled to witness or mileage fees.

(6)[~~(5)~~] Any individual willfully testifying falsely under oath as to any material to any [~~such~~] examination, investigation, or hearing shall upon conviction thereof be guilty of perjury.

Section 4. KRS 304.7-020 is amended to read as follows:

(1) Insurers shall hereafter invest in or lend their funds on the security of, and shall hold as invested assets, only eligible investments as prescribed in this subtitle.

(2) Any particular investment held by an insurer on July 14, 1992, which was a legal investment at the time it was made, and which the insurer was legally entitled to possess immediately prior to July ***12, 1994*** [~~14, 1992~~], shall be deemed to be an eligible investment.

(3) Except as stated in subsection (2) of this section and KRS 304.7-030(4), eligibility of an investment shall be determined as of the date of the making or acquisition, but an investment permitted under KRS 304.7-270 shall be considered an eligible investment under another section or sections of this subtitle from and after the date on which it meets the requirements of eligibility of the section or sections as if it were made or acquired on that date.

(4) Any investment limitation or diversification requirement based upon the amount of the insurer's assets or a particular fund shall relate to the assets or fund as shown by the insurer's annual statement as of the December 31 next preceding date of acquisition of the investment by the insurer, or as shown by a current applicable financial statement, resulting from merger with another insurer, bulk reinsurance, or change in capitalization.

Section 5. KRS 304.7-050 is amended to read as follows:

(1) Investments of an insurer transacting life or health insurance or both shall be subject to limitations set forth in the following sections of this subtitle identified for "life insurer."

(2) Investments of an insurer transacting other than life insurance shall be subject to limitations set forth in the following sections of this subtitle identified for "other than life insurer."

(3) [~~Except as otherwise provided in this subtitle,~~] An insurer shall not have at any one (1) time any combination of investments in or loans upon the security of the obligations, property, or securities of any one (1) person aggregating an amount exceeding ***the lesser of:***

(a) Ten percent (10%) of the insurer's assets***; or***

(b) The excess capital and surplus over one million two hundred fifty thousand dollars ($1,250,000).

Investments with any one (1) person exceeding this limit shall not be held under KRS 304.7-270. This restriction shall not apply as to general obligations issued, assumed, or guaranteed by the United States or by any state, or by Canada or by any province thereof, or include policy loans made under KRS 304.7-180.

Section 6. KRS 304.7-270 is amended to read as follows:

(1) An insurer may invest and have invested in loans other than loans to officers and directors prohibited under KRS 304.7-340***,*** or in investments or excessive investments***, other than loans or investments prohibited by KRS 304.7-050(3),*** not qualifying or not permitted under this subtitle in aggregate amount not over ***the lesser of:***

(a) Ten percent (10%) of its assets***; or***

(b) The excess capital and surplus over one million two hundred fifty thousand dollars.

(2) Loans or investments held under this section shall not be subject to any percentage limitations set out in this subtitle.

Section 7. KRS 304.14-560 is amended to read as follows:

(1) The commissioner of insurance shall ***biennially*** [~~annually~~] compile a consumer's guide to long-term care insurance in Kentucky. The consumer's guide shall cover all insurers offering health insurance policies in Kentucky, including health maintenance organizations, which provide coverage for services provided in long-term care facilities as defined in KRS 216.510(1). The purpose of the consumer's guide shall be to improve the buyer's ability to select the most appropriate long-term care coverage and to improve the buyer's understanding of long-term care. The consumer's guide shall contain, at a minimum, the following information:

(a) Definitions of long-term care services provided in Kentucky, the cost of services, sources of payment for long-term care, and eligibility for assistance programs;

(b) Factors that affect premium rates, such as age, deductibles, duration of benefits, and daily benefits paid;

(c) An explanation of the types of limitations contained in long-term care policies;

(d) A check list for the use of potential buyers of long-term care insurance which covers items that should be considered when selecting a long-term care insurance policy; and

(e) A comparison of the long-term care policies offered for sale in Kentucky. The comparison shall be updated at least annually, shall not recommend one policy over another, and shall provide the following information for policies: premiums at ages fifty-five (55), sixty-five (65), and seventy-five (75); services covered; length of coverage; limitations on coverage; prior institutionalization requirements; elimination period; and any other information the commissioner deems appropriate.

(2) The commissioner shall distribute, free of charge, a copy of the consumer's guide to long-term care insurance to any person upon request.

(3) The commissioner shall assess against insurers writing long term health care insurance in Kentucky on an equitable basis the cost of compiling, printing, and distributing the consumer's guide to long-term care.

Section 8. KRS 304.14-615 is amended to read as follows:

(1) The commissioner shall promulgate administrative regulations that include standards for full and fair disclosure setting forth the manner, content, and require disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation of conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms.

(2) A long-term care insurance policy shall not:

(a) Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder;

(b) Contain a provision establishing a new waiting period in the event existing coverage is covered to or replaced by a new or other form within the same insurer, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

(c) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care.

(3) (a) A long-term care insurance policy or certificate, other than a policy or certificate thereunder issued to a group defined in KRS 304.14-600(4)(a), shall not use a definition of "preexisting condition" which is more restrictive than the following: "Preexisting condition means a condition for which medical services or treatment was recommended by, or received from, a provider of health care services within six (6) months preceding the effective date of coverage of an insured person."

(b) A long-term care insurance policy or certificate, other than a policy or certificate under a policy issued to a group as defined in KRS 304.14-600(4)***(a)***[~~(c)~~], shall not exclude coverage for a loss or confinement which is the result of a preexisting condition unless that loss or confinement begins within six (6) months following the effective date of coverage of an insured person.

(c) The commissioner may extend the limitation periods set forth in subsection (3)(a) and (b) of this section as to specific age group categories in specific policy forms upon finding that the extension is in the best interest of the public.

(d) The definition of "preexisting condition" does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in paragraph (b) of this subsection expires. A long-term care insurance policy or certificate shall not exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in paragraph (b) of this subsection.

(4) (a) A long-term care insurance policy shall not be delivered or issued for delivery in this Commonwealth if the policy:

1. Conditions eligibility for any benefits on a prior hospitalization requirement;

2. Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or

3. Conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care, or recuperative benefits on a prior institutionalization requirement.

(b) 1. A long-term care insurance policy containing post-confinement, post-acute care, or recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled "limitations or conditions on eligibility for benefits" the limitations or conditions, including any required number of days of confinement.

2. A long-term care insurance policy or rider which conditions eligibility of noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty (30) days.

(5) The commissioner may promulgate administrative regulations establishing loss ratio standards for long-term care insurance policies if a specific reference to long-term care insurance policies is contained in the administrative regulations.

(6) Long-term care insurance applicants shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance policies and certificates shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group defined in KRS 304.14-600(4)(a), the applicant is not satisfied for any reason.

(7) (a) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose.

1. The commissioner shall prescribe a standard format, including style, arrangement and overall appearance, and the content of an outline of coverage.

2. In the case of agent solicitations, an agent shall deliver the outline of coverage prior to the presentation of an application or enrollment form.

3. In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form.

(b) The outline of coverage shall include:

1. A description of the principal benefits and coverage provided in the policy;

2. A statement of the principal exclusions, reductions, and limitations contained in the policy;

3. A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage shall be specifically described;

4. A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;

5. A description of the terms under which the policy or certificate may be returned and premium refunded; and

6. A brief description of the relationship of the cost of care and benefits.

(8) A certificate issued pursuant to a group long-term care insurance policy which is delivered or issued for delivery in this Commonwealth or a certificate subject to approval by the commissioner shall include:

(a) A description of the principal benefits and coverage provided in the policy;

(b) A statement of the principal exclusions, reductions, and limitations contained in the policy; and

(c) A statement that the group master policy determine governing contract provisions.

(9) At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy which provides

long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of any request, the insurer shall deliver the policy summary no later than at the time of policy delivery. In addition to complying with all applicable requirements, the summary shall also include:

(a) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;

(b) An illustration of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits, if any, for each covered person;

(c) Any exclusions, reductions, and limitations on benefits of long-term care insurance; and

(d) If applicable to the policy type, the summary shall also include:

1. A disclosure of the effects of exercising other rights under the policy;
2. A disclosure of guarantees related to long-term care of insurance charges; and
3. Current and projected maximum lifetime benefits.

(10) When a long-term care benefit funded through a life insurance vehicle by the acceleration of the death benefit is in benefit payment status, a monthly report shall be provided to the policyholder by the insurer. The report shall include:

(a) Any long-term care benefits paid out during the month;

(b) An explanation of any changes in the policy, such as death benefits or cash values, due to long-term care benefits being paid out; and

(c) The amount of long-term care benefits existing or remaining.

(11) Any policy or rider advertised or marketed, or offered as long-term care or nursing home insurance shall comply with the provisions of KRS 304.14-600 to 304.14-625.

Section 9. KRS 304.16-085 is amended to read as follows:

(1) Insurance under any group life insurance policy issued pursuant to KRS 304.16-030 (employee groups), KRS 304.16-050 (labor union groups), KRS 304.16-060 (trustee groups), KRS 304.16-070 (public employee groups) and KRS 304.16-080 (association groups) of this subtitle may be extended to insure the dependents, or any class or classes thereof, of each insured employee or member who so elects in amounts in accordance with a plan which precludes individual selection and shall not be in excess of fifty percent (50%) of the insurance on the life of ***the*** [~~such~~] employee or members [~~nor in any event in excess of ten thousand dollars ($10,000) upon the life of a spouse or in excess of five thousand dollars ($5,000) upon the life of a child; or, as to a child whose age at death is under six (6) months, the amount shall not be in excess of fifteen hundred dollars ($1,500)~~]. A "dependent" is the husband or wife of the insured employee or member and an insured employee's or member's child under eighteen (18) years of age or his child eighteen (18) years or older who is attending an educational institution and relying upon the insured employee or member for financial support.

(2) Premiums for the insurance on ***the*** [~~such~~] dependents may be paid by the group policyholder, or by the employee or member or by the group policyholder and the employee or member jointly.

(3) A husband or wife and dependents pursuant to this section shall have the same conversion right as to the insurance on his or her life as is vested in the employee or member.

(4) Notwithstanding the provisions of KRS 304.16-180 (certificate; filing approval) only one (1) certificate need be issued for each family unit if a statement concerning any dependent's coverage is included in ***the*** [~~such~~] certificate.

Section 10. KRS 304.17-120 is amended to read as follows:

There shall be a provision as follows:

"Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid ***within thirty (30) days of*** [~~immediately upon~~] receipt of due written proof of ***the*** [~~such~~] loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid .... (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid ***within thirty (30) days of*** [~~immediately upon~~] receipt of due written proof."

Section 11. KRS 304.17-042 is amended to read as follows:

(1) All individual health insurance policies providing coverage on an expense incurred basis ***regardless of whether the policies are issued for nonfamily or family coverage,*** [~~which provide coverage for a family member of the insured~~] shall, [~~as to such family members' coverage, also~~] provide that [~~the~~] health insurance benefits [~~applicable for children~~] shall be payable with respect to a newly born child of the insured from the moment of birth.

(2) The coverage for newly born children shall consist of coverage of injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities.

(3) If payment of a specific premium or fee is required to provide coverage for a child the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer

within thirty-one (31) days after the date of birth in order to have the coverage continue beyond such thirty-one (31) day period.

(4) The requirements of this section shall apply to all health insurance policies delivered in this state on and after ***July 15, 1994*** ~~[October 1, 1976]~~.

Section 12. KRS 304.18-032 is amended to read as follows:

(1) All group or blanket health insurance policies and certificates issued thereunder providing coverage on an expense incurred basis***, regardless of whether the policies and certificates are issued for nonfamily or family coverage,*** ~~[which provide coverage for a family member of the insured or certificate holder]~~ shall, ~~[as to such family members' coverage also]~~ provide that ~~[the]~~ health insurance benefits ~~[applicable for children]~~ shall be payable with respect to a newly born child of the insured or certificate holder from the moment of birth.

(2) The coverage for newly born children shall consist of coverage of injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities.

(3) If payment of a specific premium or fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer within thirty-one (31) days after the date of birth in order to have the coverage continue beyond such thirty-one (31) day period.

(4) The requirements of this section shall apply to all insurance policies, and certificates issued thereunder, delivered or issued for delivery in this state on and after ***July 15, 1994*** ~~[October 1, 1976]~~.

Section 13. KRS 304.32-153 is amended to read as follows:

(1) All individual or group service or indemnity type contracts and all certificates thereunder issued by a nonprofit corporation ***regardless of whether the contracts and certificates are issued for nonfamily or family coverage*** ~~[which provide coverage for a family member of the member or subscriber]~~ shall, ~~[as to such family members' coverage, also]~~ provide that ~~[the]~~ health insurance benefits ~~[applicable for children]~~ shall be payable with respect to a newly born child of the member or subscriber from the moment of birth.

(2) The coverage for newly born children shall consist of coverage of injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities.

(3) If payment of a specific premium or fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the nonprofit service or indemnity corporation within thirty-one (31) days after the date of birth in order to have the coverage continue beyond such thirty-one (31) day period.

(4) The requirements of this section shall apply to all member or subscriber contracts, and all certificates thereunder, delivered or issued for delivery in this state on and after ***July 15, 1994*** ~~[October 1, 1976]~~.

Section 14. KRS 304.38-199 is amended to read as follows:

(1) All health maintenance organization contracts issued by health maintenance organizations***, regardless of whether the contracts are for nonfamily or family coverage,*** ~~[which provide coverage for a family member of a subscriber]~~ shall, ~~[as to such family members' coverage, also]~~ provide that ~~[the]~~ health insurance benefits ~~[applicable for children]~~ shall be payable with respect to a newly born child of the subscribed from the moment of birth.

(2) The coverage for newly born children shall consist of coverage of injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities.

(3) If payment of a specific premium or fee is required to provide coverage for a child, the policy or contract may require that the notification of birth of a newly born child and payment of the required premium or fees must be furnished to the health maintenance organization within thirty-one (31) days after the date of birth in order to have the coverage continued beyond such thirty-one (31) days.

(4) The requirements of this section shall apply to all contracts delivered or issued for delivery in this state on and after July 15, ***1994*** ~~[1982]~~.

Section 15. KRS 304.3-040 is amended to read as follows:

A "Lloyd's Plan" insurer is an unincorporated association of ***persons*** ~~[individuals]~~ or associations of ***persons*** ~~[individuals]~~, designated as "underwriters" who transact an insurance business as insurers in this state through an attorney-in-fact under the name "Lloyd's" or under a "Lloyd's Plan" of operation.

Section 16. KRS 304.28-010 is amended to read as follows:

Persons ~~[Individuals, partnerships]~~ or associations of ***persons*** ~~[individuals,]~~ hereby designated "underwriters" not heretofore authorized, are authorized to transact any insurance, except life, title or mortgage guaranty insurance in this state, on the Lloyd's plan, by executing articles of agreement expressing their purpose so to do and complying with the requirements set forth in this code.

Section 17. KRS 304.37-020 is amended to read as follows:

(1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign or alien insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. For an alien insurer, the domiciliary state shall be deemed to be its state of entry. Any insurer which is subject to registration under this section shall register within sixty (60) days after June 16, 1972, or fifteen (15) days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(2) Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

(a) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(b) The identity of every member of the insurance holding company system;

(c) The following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:

1. Loans to, other investments in, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
2. Purchases, sales, or exchanges of assets;
3. Transactions not in the ordinary course of business;
4. Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered in the ordinary course of the insurer's business;
5. All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles;
6. Reinsurance agreements covering all or substantially all of one (1) or more lines of insurance of the ceding company;
7. Dividend and other distributions to shareholders; and
8. Consolidated tax allocation agreements;

(d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate for a loan made to any member of the insurance holding company system; and

(e) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

(3) It shall not be necessary to disclose information on the registration statement filed pursuant to subsection (2) of this section if the information is not material for the purposes of this section. Unless the commissioner by administrative regulation or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, or investments, involving one-half of one percent ***(0.5%)*** ~~[(.05%)]~~ or less of an insurer's admitted assets as of the ***thirty-first*** ~~[31st]~~ day of December next preceding shall not be deemed material for purposes of this section.

(4) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within thirty days (30) after the end of the month in which it learns of each change or addition.

(5) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(6) Subject to KRS 304.37-030(5), each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the dividend or distribution declaration.

(7) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, if the information is reasonably necessary to enable the insurer to comply with the provisions of this subtitle.

(8) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(9) The commissioner may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(10) The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1)

and to file all information and material required to be filed under this section.

(11) The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by administrative regulation or order shall exempt it from the provisions of this section.

(12) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the persons and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

(13) The failure to file a registration statement or any amendment thereto required by this section within the time specified for the filing shall be a violation of this subtitle.

Section 18. KRS 304.38-050 is amended to read as follows:

(1) No health maintenance organization shall deliver or issue for delivery in this state any contract describing health benefits available, or any endorsement, rider, or application which becomes a part thereof, or any amendments thereto or modifications thereof, or the schedule of fees or other periodic charges to be paid by enrollees, until a copy of ***the*** [~~such~~] form has been filed with and approved by the commissioner. Each form shall contain a complete and clear statement of (a) the health care services to which the enrollee is entitled; (b) any limitations on the services, kind of services, benefits to be provided, including any deductible or copayment feature; (c) where and in what manner information is available as to how services may be obtained; and (d) any other provisions pertaining to the delivery of health care services. Any schedule of fees or other periodic charges to be paid by enrollees submitted to and filed with the commissioner along with adequate supporting information to show that ***the*** [~~such~~] charges or fees are not excessive, inadequate, or unfairly discriminatory.

(2) At the expiration of ***sixty (60)*** [~~thirty (30)~~] days, the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner, or a hearing has been scheduled by order of the commissioner. In the event that a hearing is held, the ***sixty (60)*** [~~thirty (30)~~] day waiting period shall begin anew after the close of ***the*** [~~such~~] hearing. Approval of ***the*** [~~any such~~] form by the commissioner shall constitute a waiver of any unexpired portion of ***the*** [~~such~~] waiting period. The commissioner may extend by not more than an additional thirty (30) day period within which he may affirmatively approve or disapprove ***the*** [~~any such~~] form by giving notice to the insurer of ***the*** [~~such~~] extension before expiration of the initial ***sixty (60)*** [~~thirty (30)~~] day period. At the expiration of ***the*** [~~any such~~] period as so extended, and in the absence of ***the*** [~~such~~] prior affirmative approval or disapproval, ***the*** [~~any such~~] form shall be deemed approved. The commissioner may at any time withdraw ***the*** [~~any such~~] approval.

Section 19. KRS 304.44-010 is amended to read as follows:

As used in this subtitle unless the context requires otherwise:

(1) "Department" means the Department of Insurance;

(2) "Mine subsidence" means the collapse of underground coal mines resulting in ***direct*** damage to a structure. It does not include loss caused by earthquake, landslide, volcanic eruption***,*** or collapse of storm***, water seepage,*** and sewer drains;

(3) "Mine subsidence insurance fund" or "fund" means the fund established by this subtitle and administered as determined by the department;

(4) "Policy" means a contract of insurance providing mine subsidence insurance;

(5) "Premium" means the gross rate charged policyholders for insurance provided by this subtitle;

(6) "Structure" means any dwelling, building or fixture permanently affixed to realty, but does not include land, trees, plants or crops; and

(7) "Administrator" means the organization designated by the commissioner of the department to administer the fund.

Section 20. KRS 304.13-051 is amended to read as follows:

(1) In a competitive market, every insurer shall file with the commissioner rates and supplementary information to be used in this state for commercial risks as designated by the commissioner and for all personal risks. ***The*** [~~Such~~] rates and supplementary rate information shall be filed not later than fifteen (15) days after the date of first use of the rates, unless the commissioner finds after a hearing that an insurer's rates require closer supervision because of the insurer's financial condition. On [~~such~~] a finding, rates for both personal and commercial risks, supplementary rate information, and supporting information shall be filed with the commissioner at least thirty (30) days before the effective date of the rates. [~~Such~~] An order shall expire no later than one (1) year after it is issued.

(2) In a noncompetitive market, every insurer shall file with the commissioner all rates for that market, supplementary rate information, and supporting information at least thirty (30) days before the proposed effective date of the rates. On application of the filer, the commissioner may authorize an earlier effective date.

(3) Any rate filing in effect at the time the commissioner determines that competition does not exist pursuant to KRS

304.13-041 shall be deemed to be effective until disapproved pursuant to the procedures and rating standards of this chapter.

(4) Every insurer shall file with the commissioner all rating manuals and underwriting rules that it uses in this state not later than fifteen (15) days after they become effective. [~~Such~~] Manuals, rules and guidelines must be adhered to until amended. The commissioner may exempt an insurer from filing supporting information if it files by reference, with or without deviation, to a filing which is in effect for another insurer or an advisory organization.

(5) (a) No insurer shall place into effect any rates, manuals, or underwriting rules which it proposes to use pursuant to subsection (1) or (4) of this section if ***the*** [~~such~~] rates, manuals or underwriting rules will result in an increase or decrease of more than twenty-five percent (25%) from ***the*** [~~such~~] insurer's then existing rates for any classification of risks in any of its rating territories within a twelve (12) month period of time.

(b) Any insurer which proposes to change its then existing rates, manuals or underwriting rules so as to effectively increase or decrease the rates of any classification of risks within any rating territory more than twenty-five percent (25%) within a twelve (12) month period shall file all ***the*** [~~such~~] rates and supplemental rating information which shall not become effective until approved by the commissioner.

(6) Rates and supplemental rating information for a residual market mechanism shall not become effective until approved by the commissioner.

(7) The commissioner shall review filings made in accordance with subsections (2), (5)(b) and (6) of this section as soon as reasonably possible after they have been made in order to determine whether they meet the applicable requirements of this chapter. Each filing shall be on file for a waiting period of thirty (30) days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed thirty (30) days if he gives written notice within ***the*** [~~such~~] waiting period to the insurer which made the filing that additional time is needed for consideration of the filing. The commissioner may, when he deems it to be in the public interest, hold a public hearing on any filing before ***the*** [~~said~~] filing becomes effective to determine whether the filing meets the requirements of this subtitle. In the event that a hearing is held under the provisions of this subsection, the waiting periods specified in this subsection shall not begin to run until thirty (30) days after the close of ***the*** [~~such~~] hearing. The burden of establishing that the filing under consideration meets the requirements of this subtitle is on the insurer which makes ***the*** [~~such~~] filing. A filing shall be deemed to meet the requirements of this subtitle unless disapproved by the commissioner within the waiting period or any extension thereof.

(8) At any hearing conducted pursuant to subsection (7), the commissioner may approve a rate other than one that has been proposed by the filer if it is justified by the evidence presented at the hearing.

Section 21. KRS 304.13-071 is amended to read as follows:

(1) Existing rates in a noncompetitive market may be disapproved pursuant to the rating standards of this chapter after a hearing. Rates that have been filed in a noncompetitive market but that have not become effective may be disapproved pursuant to the rating standards of this chapter without a hearing. However, any insurer whose rates have been disapproved without a hearing shall be given a hearing on a written request made within thirty (30) days after the disapproval order. If a rate is disapproved, the commissioner shall issue an order specifying the reasons for disapproval. Any party aggrieved by the order of the commissioner may appeal therefrom as provided in KRS 304.2-370. The effect of an order shall be stayed during the pendancy of ***the*** [~~any such~~] appeal and the existing rate shall remain in effect until the final conclusion thereof.

(2) At any hearing conducted pursuant to subsection (1), the commissioner may approve a rate other than one that has been proposed by the filer if it is justified by the evidence presented at the hearing.

Section 22. The following KRS sections are repealed:

304.2-155 Insurance Consumer's Advisory Council.

304.15-140 Payment of claims.

304.18-115 Student health insurance program.

The Committee Amendment No. 1 to **HB 427**, is as follows:

On Page 2, lines 2 and 3, by deleting all underlined material.

The Committee Amendment No. 2 to **HB 427** is as follows:

On page 22, line 16, after ***"hearing"*** and before ***"conducted"*** by inserting ***"concerning an increase in Worker's Compensation rates"***;

On page 23, line 4, after ***"hearing"*** and before ***"conducted"*** by inserting ***"concerning an increase in Worker's Compensation rates"***.

SB 78, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 287.011 is amended to read as follows:

(1) There is created a Department of Financial Institutions, which constitutes a department of the state government within the meaning of KRS Chapter 12. The department shall be headed by a commissioner of financial institutions, who shall be the executive head of the department and shall be charged with the administration of the department.

(2) The Department of Financial Institutions shall exercise all administrative functions of the state in relation to the regulation, supervision, chartering and licensing of banks, trust companies, savings and loan associations, consumer loan companies, investment and industrial loan companies, and credit unions, and in relation to the regulation of securities.

(3) There is established within the Department of Financial Institutions the following divisions, each of which shall be headed by a director appointed by the commissioner, subject to the prior approval of the Governor, pursuant to KRS 12.050.

- ***(a) The Division of Law and Regulatory Compliance which shall be composed of the Applications and Registration Branch, the Investigations Branch, the Law Branch, and the Public Affairs Branch;***
- ***(b) The Division of Planning and Management which shall be composed of the Human/Fiscal Resources Branch, and the Technology Branch; and***
- ***(c) The Division of Supervision which shall be composed of the Western Kentucky Examination Branch, Districts 1 through 3 Supervision Sections; the Eastern Kentucky Examination Branch, Districts 4 through 6 Supervision Sections; and the Analysis and Remedial Supervision Branch*** [~~For administrative purposes the department may be divided into sections for each class of financial institution under jurisdiction of the department, and there shall be within the department, for regulation, a division of banking, a division of securities, and a division of thrift institutions. Each division shall be headed by a director, appointed by the commissioner with the prior approval of the Governor~~].

Section 2. KRS 292.310 is amended to read as follows:

When used in this chapter, unless the context otherwise requires:

(1) [~~"Director" means the director of the Division of Securities of the Department of Financial Institutions;~~

~~(2)~~] "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities, but "agent" does not include an individual who represents an issuer in:

- (a) Effecting a transaction in a security exempted by subsections (1), (2), (3), (10), or (11) of KRS 292.400, or subsections (5), (9) or (12) thereof if no commission or other remuneration is received for the sale of such securities,
- (b) Effecting transactions exempted by KRS 292.410 unless otherwise required, or
- (c) Effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition;

(2)[~~(3)~~] "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

- (a) An agent, issuer, bank, savings institution, or trust company,
- (b) A person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or
- (c) A person who has no place of business in this state if during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in paragraph (b);

(3)[~~(4)~~] "Certified" means, when used in regard to financial statements, examined and reported upon in accordance with generally accepted auditing standards with an opinion expressed by a certified public accountant;

(4) "Commissioner" means the commissioner of the Department of Financial Institutions;

(5) "Fraud," "deceit," and "defraud" are not limited to common-law deceit;

(6) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;

(7) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(a) A bank, savings institution, or trust company;

(b) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(c) A broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;

(d) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(e) A person whose advice, analyses, or reports relate only to securities exempted by KRS 292.400(1);

(f) A person who has no place of business in this state if:

1. His only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or

2. During any period of twelve (12) consecutive months he does not direct business communications into this state in any manner to more than five (5) clients other than those specified in subparagraph 1., or

(g) Such other persons not within the intent of this subsection as the director may by rule or order designate;

(8) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued, and except that with respect to fractional undivided interests in oil, gas or other mineral rights, the term "issuer" means the owner of any such right or of an interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of distribution;

(9) "Nonissuer" means not directly or indirectly for the benefit of the issuer;

(10) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(11) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer, of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;

(12) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after January 1, 1961;

(13) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas or other mineral rights; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest in or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract or variable annuity contract issued by any insurance company;

(14) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico;

(15) Nothing in this section shall be construed to affect the classification of property for ad valorem tax purposes.

Section 3. KRS 292.320 is amended to read as follows:

(1) It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

(a) To employ any device, scheme, or artifice to defraud the other person; or

(b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(a) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(4) Paragraph (a) of subsection (3) of this section does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. Paragraph (a) of subsection (3) of this section shall not prohibit investment advisers to investment companies as defined in the Investment Company Act of 1940 from charging any incentive compensation fee not in violation of the Investment Company Act of 1940 or the rules and regulations promulgated by the Securities and Exchange Commission thereunder, provided that the ***commissioner*** [~~director~~] shall approve in writing the incentive compensation fee arrangement as being fair and reasonable. "Assignment", as used in paragraph (b) of subsection (3) of this section includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

Section 4. KRS 292.325 is amended to read as follows:

The ***commissioner*** [~~director~~] may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales' literature, radio, television, or other advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, as part of a registered offering or as a part of an exemption offering required to be filed under KRS 292.415.

Section 5. KRS 292.330 is amended to read as follows:

(1) It is unlawful for any person to transact business in this state as a broker-dealer or agent, unless he is registered under this chapter. It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. It is unlawful for any person to transact business in this state as an investment adviser unless:

(a) He is so registered under this chapter, or

(b) He is registered as a broker-dealer under this chapter, or

(c) His only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.

(2) A broker-dealer, agent, or investment adviser may apply for registration by filing with the ***commissioner*** [~~director~~] or the ***commissioner's*** [~~director's~~] designee an application together with a consent to service of process pursuant to KRS 292.430 and payment of the fee prescribed in subsection (10). Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer or director or a person occupying a similar status or performing similar functions (except any partner, officer or director or other such person whose registration as an agent is denied, suspended or revoked under subsection (12)) without the filing of applications for registration as agents or the payment of fees for registration as agents. The application shall contain whatever information the ***commissioner*** [~~director~~] requires concerning such matters as:

(a) The applicant's form and place of organization;

(b) The applicant's proposed method of doing business;

(c) The qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and in the case of an investment adviser, the qualifications and business history of an employee;

(d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and

(e) The applicant's financial condition and history.

(3) If no denial order is in effect and no proceeding is pending under subsection (12), registration becomes effective at noon of the thirtieth day after an application is filed. The ***commissioner*** ~~[director]~~ may specify an earlier effective date and he may by order defer the effective date until noon of the thirtieth day after the filing of any amendment. The ***commissioner*** ~~[director]~~ may by rule establish a procedure for transfer of an agent whereby registration may become effective prior to the filing of an application; but any registration so transferred shall not be effective for more than thirty (30) days, unless within that thirty (30) days a properly completed application is filed.

(4) The ***commissioner*** ~~[director]~~ may require as a condition of registration that the applicant (and, in the case of a corporation or partnership, the officers, directors or partners) pass a written examination as evidence of knowledge of the securities business.

(5) The ***commissioner*** ~~[director]~~ may by rule require the existence and maintenance of a minimum liquid net capital for registered broker-dealers and investment advisers and a minimum ratio between net capital and aggregate indebtedness, or both.

(6) The ***commissioner*** ~~[director]~~ may by rule require registered broker-dealers, agents and investment advisers to post surety bonds in an amount up to $25,000, and may determine their conditions, except under this subsection that no such bond may be required of any registrant whose net capital exceeds $100,000. An appropriate deposit of cash or securities shall be accepted in lieu of any required surety bond. Every surety bond shall provide for suit thereon by any person who has a cause of action under KRS 292.480, and every such bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two (2) years after the sale or other act upon which it is based.

(7) The ***commissioner*** ~~[director]~~ may by rule require registered broker-dealers to carry fidelity bonds, covering its agents, general partners, and officers, in such form, covering such risks, and in such amounts (not exceeding $250,000) as he deems necessary for the protection of the public; and he may by rule require registered broker-dealers to furnish satisfactory evidence that they have such bonds.

(8) Every registration of a broker-dealer, agent or investment adviser shall be effective until December 31 of the year of registration unless the ***commissioner*** ~~[director]~~ by rule extends or lessens such registration and may be renewed as hereinafter provided. The ***commissioner*** ~~[director]~~ may by rule increase or reduce the registration fee set forth in subsection (10) of this section should such registration period be extended or lessened. The registration of an agent is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application or a notice filed with the ***commissioner*** ~~[director]~~ or the ***commissioner's*** ~~[director's]~~ designee. When an agent begins or terminates a connection with an issuer or registered broker-dealer, the agent and the issuer or broker-dealer shall promptly notify the ***commissioner*** ~~[director]~~ or the ***commissioner's*** ~~[director's]~~ designee.

(9) Registration of a broker-dealer, agent or investment adviser may be renewed by filing with the ***commissioner*** ~~[director]~~ or the ***commissioner's*** ~~[director's]~~ designee prior to the expiration thereof an application containing such information as the ***commissioner*** ~~[director]~~ may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, agent or investment adviser filed with the ***commissioner*** ~~[director]~~ or the ***commissioner's*** ~~[director's]~~ designee by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety (90) days. A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year without payment of any fee.

(10) The fee for initial or renewal registration shall be one hundred twenty dollars ($120) for a broker-dealer, one hundred dollars ($100) for an investment adviser, fifty dollars ($50) for an agent, and fifty dollars ($50) for transfer of an agent, none of which fees shall be refundable.

(11) (a) Every registered broker-dealer and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books, and other records which the ***commissioner*** ~~[director]~~ by rule prescribes. All records required shall be preserved for three (3) years unless the ***commissioner*** ~~[director]~~ by rule prescribes otherwise for particular types of records. All required records shall be kept within this state or shall, at the request of the ***commissioner*** ~~[director]~~, be made available at any time for examination by him either in the principal office of the registrant or by production of exact copies thereof in this state.

(b) Every registered broker-dealer and investment adviser shall file such reports as the ***commissioner*** ~~[director]~~ by rule prescribes.

(c) If the information contained in any document filed with the ***commissioner*** ~~[director]~~ or the ***commissioner's*** ~~[director's]~~ designee is or becomes inaccurate or incomplete in any material respect, the broker-dealer shall promptly file a correcting amendment.

(d) The ***commissioner*** ~~[director]~~ may make periodic examinations, within or without this state, of each broker-dealer and investment adviser at such times and in such scope as he determines. These examinations may be made without prior notice to the broker-dealer or investment adviser. The expense reasonably attributable to any such examination shall be paid by the broker-dealer or investment adviser whose business is examined but the expense so payable shall not exceed an amount which the ***commissioner*** ~~[director]~~ by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the ***commissioner*** ~~[director]~~, insofar as he deems it practicable in administering this subsection, may cooperate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

(e) The ***commissioner*** ~~[director]~~ may by rule prohibit unreasonable charges, profits, commissions or other compensation of broker-dealers and investment advisers.

(f) The ***commissioner*** ~~[director]~~ may prescribe rules for the conduct of business by broker-dealers and investment advisers which he finds appropriate in the public interest and for the protection of investors.

(g) The ***commissioner*** ~~[director]~~ may enter into an arrangement, agreement, or other working relationship with federal, other state and self-regulatory authorities whereby documents may be filed and maintained in a central depository system with the National Association of Securities Dealers or other agencies or authorities. It is the intent of this paragraph that the ***commissioner*** ~~[director]~~ be provided power to reduce duplication of filings, reduce administrative costs and establish uniform procedures, forms, and administration with the states and federal authorities. The ***commissioner*** ~~[director]~~ may permit initial and renewal registration filings required under this chapter to be filed with the securities and exchange commission, the National Association of Securities Dealers or other similar authorities. The ***commissioner*** ~~[director]~~ may accept uniform securities examinations or other procedures designed to implement a uniform national securities regulatory system or facilitate common practices and procedures among the states.

(12) (a) The ***commissioner*** ~~[director]~~ may by order deny, suspend or revoke registration of any broker-dealer, agent or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

1. Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;
2. Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor law or any rule or order under this chapter or a predecessor law;
3. Has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or any felony, or has pending against him any such criminal charge;
4. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;
5. Is the subject of an order of the ***commissioner*** ~~[director]~~ denying, suspending, or revoking registration as a broker-dealer, agent, or investment adviser;
6. Is the subject of an order entered within the past five (5) years by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a broker-dealer or agent, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post-office fraud order; but a. the ***commissioner*** ~~[director]~~ may not institute a revocation or suspension proceeding under this paragraph more than one (1) year from the date of the order relied on, and b. he may not enter any order under this paragraph on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;
7. Has engaged in dishonest or unethical practices in the securities business;
8. Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the ***commissioner*** ~~[director]~~ may not enter an order against a broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser; or
9. Is not qualified on the basis of such factors as training, experience, or knowledge of the securities business, except as provided in paragraph (b) below; or the ***commissioner*** ~~[director]~~ may by order, deny, suspend or revoke any registration if he finds that the order is in the public interest and that the applicant or registrant:
    a. Has failed reasonably to supervise his agents if he is a broker-dealer or his employees if he is an

investment adviser; or

b. Has failed to pay the proper filing fee; but the ***commissioner*** ~~[director]~~ may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected.

The ***commissioner*** ~~[director]~~ may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next thirty (30) days.

(b) The following provisions govern the application of subparagraph 9 of paragraph (a) of this subsection:

1. The ***commissioner*** ~~[director]~~ may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer himself if he is an individual or an agent of the broker-dealer;

2. The ***commissioner*** ~~[director]~~ may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself if he is an individual or any other person who represents the investment adviser in doing any of the acts which make him an investment adviser;

3. The ***commissioner*** ~~[director]~~ may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;

4. The ***commissioner*** ~~[director]~~ shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer;

5. The ***commissioner*** ~~[director]~~ shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this state as an investment adviser;

6. The ***commissioner*** ~~[director]~~ may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser.

(c) The ***commissioner*** ~~[director]~~ may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the ***commissioner*** ~~[director]~~ shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the ***commissioner*** ~~[director]~~, the order will remain in effect until it is modified or vacated by the ***commissioner*** ~~[director]~~. If a hearing is requested or ordered, the ***commissioner*** ~~[director]~~, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the ***commissioner*** ~~[director]~~ finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, or investment adviser, or is subject to an adjudication of mental disability or to the control of a conservator or guardian, or cannot be located after reasonable search, the ***commissioner*** ~~[director]~~ may by order cancel the registration or application.

(e) Withdrawal from registration as a broker-dealer, agent, or investment adviser becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the ***commissioner*** ~~[director]~~ may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the ***commissioner*** ~~[director]~~ by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the ***commissioner*** ~~[director]~~ may nevertheless institute a revocation or suspension proceeding under subparagraph 2. of paragraph (a) of this subsection within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(f) No order may be entered under any part of this section except the first sentence of paragraph (c) of this subsection without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent), opportunity for hearing, and written findings of fact and conclusions of law.

Section 6. KRS 292.350 is amended to read as follows:

(1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under KRS 292.360:

(a) Any security whose issuer and any predecessors have been in continuous operation for at least five (5) years if:

1. There has been no default during the current fiscal year or within the three (3) preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and

2. The issuer and any predecessors during the past three (3) fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which equal at least five percent (5%) of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed (as measured by the maximum offering price or the market price on a day selected by the registrant within thirty (30) days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within ninety (90) days of the date of filing the registration statement), or if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for three (3) full fiscal years, equal at least five percent (5%) of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(b) Any security registered for nonissuer distribution if any security of the same class has ever been registered under this chapter or a predecessor law, or the security being registered was originally issued pursuant to an exemption under this chapter or a predecessor law or, if previously publicly offered and sold, was not offered and sold within this state.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in KRS 292.380 and, if required under KRS 292.430, a consent to service of process meeting the requirements of that section:

(a) A statement demonstrating eligibility for registration by notification;

(b) With respect to the issuer: its name, address, and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business;

(c) With respect to any person on whose behalf any part of the offering is to be made, if such person is an officer, director, partner or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the issuer, his name and address; the amount of securities held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;

(d) A description of the securities being registered;

(e) Total amount of securities to be offered and amount of securities to be offered in this state;

(f) The price at which the securities are to be offered for sale to the public, if other than at the market price thereof; any known variation therefrom at which any portion of the offering is to be made to any persons, other than as underwriting and selling discounts or commissions; and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees (including cash, securities, or anything else of value, if any);

(g) Names and addresses of the managing underwriters, if any, and a description of the plan of distribution, if any, of any securities which are to be offered otherwise than through an underwriter;

(h) Description of any security options outstanding or to be created in connection with the offering;

(i) Any adverse order, judgment or decree previously entered in connection with the securities being registered by any court or securities and exchange commission;

(j) A copy of any offering circular or prospectus, if any, intended, or ordered by the ***commissioner*** ~~[director]~~, to be used in connection with the offering;

(k) In the case of any registration under paragraph (b) of subsection (1) which does not also satisfy the conditions of paragraph (a) of subsection (1), a certified balance sheet of the issuer as of its last fiscal year ended and a balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement and a statement of income for each of the two (2) fiscal years preceding the date of the certified balance sheet, the last of which is to be certified, and for any period between the close of the last fiscal year and the date of the last balance sheet or for the period of the issuer's and any predecessor's existence if less than two (2) years; and

(l) Such additional information as the ***commissioner*** ~~[director]~~ may by rule or order require.

(3) If no stop order is in effect and no proceeding is pending under KRS 292.390, a registration statement under this section automatically becomes effective at three o'clock eastern standard time in the afternoon (3:00 p.m.) of the fifth full business day after the filing of the registration statement or the last amendment, or at such earlier time as the ***commissioner*** ~~[director]~~ determines.

Section 7. KRS 292.360 is amended to read as follows:

(1) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in KRS 292.380, and, if required under KRS 292.430, a consent to service of process meeting the requirements of that section:

(a) Three copies of the latest form of prospectus filed under the Securities Act of 1933 together with all amendments thereto;

(b) The amount of securities to be offered in this state;

(c) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

(e) If the ***commissioner*** [~~director~~] by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) If the ***commissioner*** [~~director~~] requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(g) An undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date.

(3) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(a) No stop order is in effect and no proceeding is pending under KRS 292.390;

(b) The registration statement has been on file with the ***commissioner*** [~~director~~] for at least ten days; and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or such shorter period as the ***commissioner*** [~~director~~] permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the ***commissioner*** [~~director~~] by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment, containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the ***commissioner*** [~~director~~] may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsection (3) of this section, if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) or the issuance of the order. If the registrant proves compliance with the requirements of subsection (3) of this section as to notice and post-effective amendment, the stop order is void as of the time of its entry. The ***commissioner*** [~~director~~] may by rule or otherwise waive either or both of the conditions specified in paragraphs (b) and (c) of subsection (3) of this section. If the federal registration statement becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the ***commissioner*** [~~director~~] of the date when the federal registration statement is expected to become effective the ***commissioner*** [~~director~~] shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under KRS 292.390; but this advice by the ***commissioner*** [~~director~~] does not preclude the institution of such a proceeding at any time.

Section 8. KRS 292.370 is amended to read as follows:

(1) Any security may be registered by qualification.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in KRS 292.380 and, if required under KRS 292.430, a consent to service of process meeting the requirements of that section:

(a) With respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five (5) years; the amount of securities of the issuer held by him as of a specified date within ninety (90) days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any subsidiary effected within the past three (3) years or proposed to be effected by him or any of his associates as defined in the rules promulgated under the Securities Exchange Act of 1934;

(c) With respect to persons covered in paragraph (b): the remuneration paid to all such persons in the aggregate during the past twelve (12) months, and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer (together with all predecessors, parents and subsidiaries), and the amount paid and to be paid to each of those who received or are to receive more than fifteen thousand dollars ($15,000);

(d) With respect to any person not named in paragraph (b), owning of record, or beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer: the information specified in paragraphs (b) and (c) other than his occupation;

(e) With respect to every promoter, not named in paragraphs (b) and (d), if the issuer was organized within the past three (3) years: the information specified in paragraphs (b) and (c), any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment;

(f) The capitalization and long-term debt (on both a current and pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, good will, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two (2) years or is obligated to issue any of its securities;

(g) The kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price or the method by which it is to be computed; and any variation therefrom at which any portion of the offering is to be made to any persons or class of persons, other than the underwriters, with a specification of such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately, cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering); the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(h) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including good will) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the cost basis or book value of the assets in the hands of the vendors (if they are officers, directors, partners or controlling shareholders of the issuer), the names of any persons who have received commissions in connection with the acquisition and the amounts of any such commissions and any other expenses in connection with the acquisition (including the cost of borrowing money to finance the acquisition);

(i) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in paragraph (b), (c), (d), (e), (g) or (h) and by any person who holds or will hold ten percent (10%) or more in the aggregate of any such options;

(j) The dates of, parties to, and general effect, concisely stated of, every management, employment or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two (2) years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer or any of its significant subsidiaries is a party and which may materially affect its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(k) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(l) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

(m) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;

(n) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(o) A signed or conformed copy of an opinion of counsel, as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state, in addition to such matters as the

commissioner [~~director~~] may request whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer, and whether or not the offering, as contemplated in the registration statement will comply with the requirements of any claimed exemption from the registration provisions of the Securities Act of 1933;

(p) A balance sheet of the issuer as of a date not more than four (4) months prior to the date of filing of the registration statement, a balance sheet certified by an independent public or certified public accountant as of the close of the last fiscal year; statements of income, changes in stockholders equity and changes in financial position for each of the issuers three (3) fiscal years preceding the date of the most recent balance sheet filed and for the period, if any, between the close of the most recent of such fiscal years and date of the most recent balance sheet filed, or, if the issuer has been in existence for less than three (3) years, such statements for the period preceding the date of the most recent balance sheet filed, and if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant. The statements of income, changes in stockholders equity and changes in financial position shall be certified for the latest fiscal year presented;

(q) The written consent of an accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if the person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement; and

(r) Such additional information as the ***commissioner*** [~~director~~] requires by rule or order.

Section 9. KRS 292.380 is amended to read as follows:

(1) Except as otherwise expressly provided in this chapter a registration statement under this chapter becomes effective when the ***commissioner*** [~~director~~] so orders. The ***commissioner*** [~~director~~] may require as a condition of registration under this chapter that a prospectus containing any designated part of the appropriate information specified in this chapter be sent or given to each person to whom an offer is made before or concurrently with: (a) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, (b) the confirmation of any sale made by or for the account of any such person, (c) payment pursuant to any such sale, or (d) delivery of the security pursuant to any such sale, whichever first occurs; but the ***commissioner*** [~~director~~] shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder.

(2) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under this chapter or a predecessor law within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The ***commissioner*** [~~director~~] may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(3) The ***commissioner*** [~~director~~] may require as a condition of registration by qualification or coordination that (a) the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount or (b) any security issued within the past three (3) years, or to be issued, to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be delivered in escrow. The ***commissioner*** [~~director~~] may by rule or order determine the conditions of any escrow or impounding required hereunder. The ***commissioner*** [~~director~~] shall not reject a depository solely because of location in another state. All securities delivered in escrow to the ***commissioner*** [~~director~~] or some other depository satisfactory to him prior to January 1, 1968 which have not previously been released shall be released from escrow and all securities delivered in escrow to the ***commissioner*** [~~director~~] or some other depository satisfactory to him subsequent to January 1, 1968 which have not previously been released shall be released from escrow no later than ten (10) years after the date of delivery into escrow.

(4) The ***commissioner*** [~~director~~] may also require as a condition of registration by qualification that the issuer undertake to keep the securities registered under this chapter for a period of up to five years or until the securities become exempt securities under KRS 292.410, and that the issuer forward to its security holders audited annual financials during the period for which the shares are registered. The ***commissioner*** [~~director~~] may by rule or order impose other undertakings.

(5) For the registration of securities by notification or coordination, or qualification, there shall be paid to the ***commissioner*** [~~director~~] an examination fee of one hundred twenty-five dollars ($125) and a registration fee of three-fiftieths of one percent (0.06%) of the aggregate offering price of the securities which are to be offered in this state, but the registration fee shall in no case be less than sixty dollars ($60) nor more than one thousand two hundred dollars ($1,200). The examination fee and the registration fee shall be payable in separate checks. When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under KRS 292.390, the ***commissioner*** [~~director~~] shall retain the examination fee. For the registration of securities issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, a new registration fee and examination fee shall be paid each year that the registration remains in effect, based upon the aggregate offering price of such securities which are to be offered in this state during

that year, even though the maximum fee was paid the preceding year; and the registration statement for such securities may be amended to increase the amount of securities to be offered. For a registration by notification for market-making purposes only the examination fee need be paid.

(6) When securities are registered by notification or by coordination or by qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer. Every registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under KRS 292.390. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction (1) so long as the registration statement is effective and (2) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under KRS 292.390 (if the registration statement did not relate in whole or in part to a nonissuer distribution) and one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the director.

(7) The ***commissioner*** ~~[director]~~ may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering. The ***commissioner*** ~~[director]~~ shall impose a fee of ten dollars ($10) for each such report filed with him.

Section 10. KRS 292.390 is amended to read as follows:

(1) The ***commissioner*** ~~[director]~~ may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds that the order is in the public interest and that:

(a) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under KRS 292.380(5) as of its effective date, or any report under KRS 292.380(7), is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) Any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been willfully violated, in connection with the offering by:

1. The person filing the registration statement;

2. The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

3. Any underwriter;

(c) The security registered or sought to be registered is the subject of an administrative stop order or a similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but:

1. The ***commissioner*** ~~[director]~~ may not institute a proceeding against an effective registration statement under this paragraph more than one (1) year from the date of the order or injunction relied on; and

2. He may not enter an order under this paragraph on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(d) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(e) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) The offering has been, or would be, made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensations, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(g) When a security is sought to be registered by notification it is not eligible for such registration;

(h) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by KRS 292.360(2)(g);

(i) The applicant or registrant has failed to pay the proper registration fee; but the ***commissioner*** ~~[director]~~ may enter only a denial order under this paragraph and he shall vacate any such order when the deficiency has been corrected;

(j) A commission or fee greater than fifteen percent (15%) would be paid directly or indirectly, in consideration for the sale of securities sought to be registered and this fee shall exclude reasonable legal and accounting expenses.

(2) The ***commissioner*** [~~director~~] may not enter a stop order against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within the next thirty (30) days.

(3) The ***commissioner*** [~~director~~] may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of a stop order under any part of this section, the ***commissioner*** [~~director~~] shall promptly notify the issuer of the securities, the applicant or registrant and the person on whose behalf the securities are to be or have been offered, that the order has been entered and of the reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen (15) days and none is ordered by the ***commissioner*** [~~director~~], the ***commissioner*** [~~director~~] shall enter his written findings of fact and conclusions of law and the order will remain in effect until it is modified or vacated by the ***commissioner*** [~~director~~]. If a hearing is requested or ordered, the ***commissioner*** [~~director~~], after notice of and opportunity for hearing to the issuer and to the applicant or registrant, shall enter his written finding of fact and conclusions of law and may modify or vacate the order. The ***commissioner*** [~~director~~] may modify or vacate a stop order if he finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

Section 11. KRS 292.400 is amended to read as follows:

KRS 292.340 to 292.390 shall not apply to any of the following:

(1) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one (1) or more of the foregoing; or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one (1) or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institutions, or trust company organized and supervised under the laws of any state;

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) Securities issued by corporations formed under KRS Chapter 279;

(6) Any security issued or guaranteed by any federal credit union or any credit union;

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:

  (a) Subject to the jurisdiction of the Interstate Commerce Commission;

  (b) A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

  (c) Regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

  (d) Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Stock Exchange, or any other stock exchange approved by the ***commissioner*** [~~director~~]; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;

(10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidence an obligation to pay cash within nine (9) months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or any guarantee of the paper or of any renewal;

(11) Any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if the ***commissioner*** [~~director~~] is notified in writing thirty (30) days before the inception of the plan or, with respect to plans which are in effect on January 1, 1961, within sixty (60) days thereafter (or within thirty (30) days before they are reopened if they are closed on January 1, 1961);

(12) Securities issued by corporations formed under or which have adopted the provisions of KRS 272.101 to 272.345 and patronage dividends or refunds be they in the form of stock, book equities, letters of credit, or letters of advice issued by any agricultural cooperative association which are the result of distributable earnings or savings;

(13) Any class of securities added by the ***commissioner*** [~~director~~], by rule and subject to the terms and conditions the ***commissioner*** [~~director~~] prescribes, to the securities exempted by this section, if the ***commissioner*** [~~director~~] finds that enforcement of this chapter with respect to the securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or limited character of the public offering. No issue of securities shall be exempted under this subsection if the aggregate amount at which the issue is offered to the public exceeds two hundred thousand dollars ($200,000);

(14) Any security which meets all of the following conditions:

(a) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of the agent in its prospectus;

(b) A class of the issuer's securities is required to be and is registered under Section 12 of the Securities Exchange Act of 1934, and has been so registered for the three (3) years immediately preceding the offering date;

(c) Neither the issuer nor a significant subsidiary has had a material default during the last seven (7) years (or the issuer's existence if less than seven (7) years) in the payment of:

1. Principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

2. Rentals under leases with terms of three (3) years or more;

(d) The issuer has had consolidated net income (before extraordinary items and the cumulative effect of accounting changes) of at least one million dollars ($1,000,000) in four (4) of its last five (5) fiscal years including its last fiscal year; and if the offering is of interest-bearing securities, has had for its last fiscal year, such net income, but before deduction for income taxes and depreciation, of at least one and one-half (1-1/2) times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" means the most recent year for which audited financial statements are available, if the statements cover a fiscal period ended not more than fifteen (15) months from the commencement of the offering;

(e) If the offering is of stock or shares, other than preferred stock or shares, the securities have voting rights and the rights include:

1. The right to have at least as many votes per share; and

2. The right to vote on at least as many general corporate decisions, as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

(f) If the offering is of stock or shares, other than preferred stock or shares, the securities are owned beneficially or of record, on any date within six (6) months prior to the commencement of the offering, by at least twelve hundred (1,200) persons, and on that date there are at least seven hundred fifty thousand (750,000) such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least three million seven hundred fifty thousand dollars ($3,750,000). In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(15) Memberships and voting stock issued by cooperative corporations formed under or which have adopted the provisions of KRS 272.020 to 272.050, and patronage refunds issued by cooperative corporations which are the result of distributable earnings or savings.

Section 12. KRS 292.410 is amended to read as follows:

(1) Except as expressly provided, KRS 292.330 to 292.390 shall not apply to any of the following transactions:

(a) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;

(b) Any nonissuer distribution of an outstanding security by a registered broker-dealer, if the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years, or during the existence of the issuer and any predecessors if less than three (3) years, in the payment of principal, interest, or dividends on the security;

(c) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the ***commissioner*** [~~director~~] may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(d) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(e) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel first mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(f) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(g) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(h) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(i) Any transaction pursuant to an offer directed by the offeror to not more than twenty-five (25) persons (other than those designated in paragraph (h)) in this state during any period of twelve (12) consecutive months, whether or not the offeror or any of the offerees is then present in this state, if

1. The seller reasonably believes that all the buyers are purchasing for investment, and
2. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in paragraph (h)); but the ***commissioner*** [~~director~~] may by rule or order, as to any security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in subparagraphs 1. and 2. of this paragraph with or without the substitution of a limitation on remuneration;

(j) Any offer or sale of a preorganization certificate or subscription, if

1. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber,
2. The number of subscribers does not exceed twenty-five (25), and
3. No payment is made by any subscriber;

(k) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state;

(l) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act;

(m) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(n) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation or sale of assets;

(o) Any transaction by a person who does not control, and is not controlled by or under common control with, the issuer if

1. The transaction is at a price reasonably related to the current market price,
2. The security is registered under Section 12 of the Securities Exchange Act of 1934 and the issuer files reports pursuant to Section 13 of that act, and
3. Copies of such federal registration statements, reports, forms or exhibits as the ***commissioner*** [~~director~~] may by rule or order require are filed with the ***commissioner*** [~~director~~];

(p) Any transaction by a person who may control, or may be controlled by or under common control with, the issuer if

1. The transaction is at a price reasonably related to the current market price,
2. The security is registered under Section 12 of the Securities Exchange Act of 1934 and the issuer files reports pursuant to Section 13 of that act, and
3. Copies of such federal registration statements, forms, reports or exhibits as the ***commissioner*** [~~director~~] may by rule or order require are filed with the ***commissioner*** [~~director~~], and
4. Such sales by any such person comply with such rules as the ***commissioner*** [~~director~~] may prescribe;

(q) Any transaction for which the ***commissioner*** [~~director~~] by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors.

(2) The ***commissioner*** [~~director~~] may by order deny or revoke the exemption specified in KRS 292.400(6), (9), (11), (12) or (13) or in this section with respect to a specific security or transaction. No such order may be entered without appropriate

prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the ***commissioner*** ~~[director]~~ may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection. Upon entry of a summary order, the ***commissioner*** ~~[director]~~ shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the ***commissioner*** ~~[director]~~, the order will remain in effect until it is modified or vacated by the ***commissioner*** ~~[director]~~. If a hearing is requested or ordered, the ***commissioner*** ~~[director]~~, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order to extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order. In any proceeding under this chapter, the burden of proving an exemption from a definition is upon the person claiming it.

Section 13. KRS 292.415 is amended to read as follows:

(1) Before any security may be issued as an exempt security under subsections (9), (12), (13) or (14) of KRS 292.400, or offered for sale or sold as an exempt transaction under KRS 292.410(1)(i) or (k), a claim of exemption must first be filed with the ***commissioner*** ~~[director]~~ and the ***commissioner*** ~~[director]~~ by order shall not have determined that the exemption is unavailable within the next ten (10) full business days. A claim of exemption filed under this section shall be in such form and contain such information as the ***commissioner*** ~~[director]~~ by rule or order requires and each offering shall be effective for a maximum of twelve (12) consecutive months unless the ***commissioner*** ~~[director]~~ by rule or order extends such period of time, not to exceed five (5) years.

(2) For every claim of exemption filed with the ***commissioner*** ~~[director]~~ there shall be paid to the ***commissioner*** ~~[director]~~ a filing fee of one hundred dollars ($100), except that for a claim of exemption filed under subsection (9) of KRS 292.400 the filing fee is one-tenth of one percent (0.1%) of the maximum aggregate offering price at which the securities are to be offered in this state, but the fee shall in no case be less than one hundred dollars ($100) or more than five hundred dollars ($500). The ***commissioner*** ~~[director]~~ shall have authority to amend or rescind under this subsection such filing fees by rule or order if the ***commissioner*** ~~[director]~~ determines that such fee is excessive under the circumstances.

(3) Any person who fails to comply with this section shall be liable for a fee in the amount of five (5) times the initial filing fee and the ***commissioner*** ~~[director]~~ may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of an exemption, if he finds that the order is in the public interest and that any security has been or is about to be offered or sold in violation of this section. If the ***commissioner*** ~~[director]~~ finds it appropriate in the public interest or necessary for the protection of investors, the ***commissioner*** ~~[director]~~ may order any issuer in violation of this section to make an offer of rescission.

(4) Failure by any person to file a claim of exemption under this section shall not give rise to a private right of action under KRS 292.330(1), 292.340 or 292.480 which would not otherwise be available under the provisions of this chapter.

(5) Any person who fails to file a claim of exemption under this section, unless he does so intentionally, shall not be subject to KRS 292.991.

Section 14. KRS 292.420 is amended to read as follows:

(1) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(2) The ***commissioner*** ~~[director]~~ may require any person, who is selling or offering for sale or who is about to sell or offer for sale or who has sold or offered for sale any security within this state, to file a statement of the claim of exemption, if any, upon which such person is relying, and if any time, in the opinion of the ***commissioner*** ~~[director]~~, the information contained in such statement filed is misleading, incorrect, inadequate, or fails to establish the right of exemption, he may require such person, agent, or investment adviser to file such information as may in his opinion be necessary to establish the claimed exemption. The refusal to furnish information as required by order of the ***commissioner*** ~~[director]~~ pursuant to the provisions of this subsection, within a reasonable time to be fixed by the ***commissioner*** ~~[director]~~, shall be proper ground for the entry of an order by the ***commissioner*** ~~[director]~~ suspending and/or canceling the registration of the broker-dealer, agent or investment adviser.

(3) The ***commissioner*** ~~[director]~~ shall have authority at all times to consider and determine whether any proposed sale, transaction, issue or security is entitled to an exemption or an exception from the definition accorded by this chapter, provided, however, that the ***commissioner*** ~~[director]~~ in his discretion may decline to exercise such authority as to any proposed sale, transaction, issue, or security. Any interested party desiring the ***commissioner*** ~~[director]~~ to exercise such authority shall submit to the ***commissioner*** ~~[director]~~ a verified statement of all material facts relating to the proposed sale, transaction, issue or security, which verified statement shall be accompanied by a request for a ruling as to the particular exemption or exception from definition, together with a filing fee of one hundred dollars ($100). After such notice to interested parties as the ***commissioner*** ~~[director]~~ shall deem proper and after a hearing, if any, the ***commissioner*** ~~[director]~~ may enter an order finding the proposed sale, transaction, issue or security entitled or not entitled to the exemption or the exception from definition as claimed. An order so entered, unless an appeal be taken

therefrom in the manner prescribed in this chapter, shall be binding upon the ***commissioner*** [~~director~~], provided that the proposed sale, transaction, issue or security when consummated or issued conforms in every relevant and material particular with the facts as set forth in the verified statement as submitted.

Section 15. KRS 292.430 is amended to read as follows:

(1) Every applicant for registration as a broker-dealer or agent under this chapter and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common law sense shall file with the ***commissioner*** [~~director~~], in such form as he by rule prescribes, an irrevocable consent appointing the ***commissioner*** [~~director~~] or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the ***commissioner*** [~~director~~], but it is not effective unless:

(a) The plaintiff, who may be the ***commissioner*** [~~director~~] in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by certified mail, return receipt requested or by registered mail to the defendant or respondent at his last address on file with the ***commissioner*** [~~director~~]; and

(b) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(2) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and he has not filed a consent to service of process under subsection (1) and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the ***commissioner*** [~~director~~] or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the ***commissioner*** [~~director~~], and it is not effective unless:

(a) The plaintiff, who may be the ***commissioner*** [~~director~~], in a suit, action, or proceeding instituted by him forthwith sends notice of the service and a copy of the process by certified mail, return receipt requested or by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice; and

(b) The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

Section 16. KRS 292.440 is amended to read as follows:

It is unlawful for any person to make or cause to be made, in any document filed with the ***commissioner*** [~~director~~] or the ***commissioner's*** [~~director's~~] designee or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Section 17. KRS 292.450 is amended to read as follows:

Neither the fact that an application for registration under KRS 292.330 or a registration statement under KRS 292.350, 292.360 or 292.370 has been filed, nor the fact that a person or security is effectively registered, constitutes a finding by the ***commissioner*** [~~director~~] that any document filed under this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the ***commissioner*** [~~director~~] has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.

Section 18. KRS 292.460 is amended to read as follows:

(1) The ***commissioner*** [~~director~~] in his discretion (a) may make such public or private investigations within or outside of this state as he deems necessary to determine whether any registration should be granted, denied or revoked or whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder, (b) may require or permit any person to file a statement in writing, under oath or otherwise as the ***commissioner*** [~~director~~] may determine, as to all the facts and circumstances concerning the matter to be investigated, and (c) may publish information concerning any violation of this chapter or any rule or order hereunder.

(2) For the purpose of any investigation or proceeding under this chapter, the ***commissioner*** [~~director~~] or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the ***commissioner*** [~~director~~] deems relevant or material to the inquiry.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction, upon

application by the ***commissioner*** ~~[director]~~, may issue to that person an order requiring him to appear before the ***commissioner*** ~~[director]~~, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the ***commissioner*** ~~[director]~~, or in obedience to the subpoena of the ***commissioner*** ~~[director]~~ or any officer designated by him, or in any proceeding instituted by the ***commissioner*** ~~[director]~~, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Section 19. KRS 292.470 is amended to read as follows:

Whenever it appears to the ***commissioner*** ~~[director]~~ that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, he may in his discretion bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The ***commissioner*** ~~[director]~~ may not be required to post a bond.

Section 20. KRS 292.490 is amended to read as follows:

Any person aggrieved by a final order of the ***commissioner*** ~~[director]~~ may obtain a review of the order by filing in the Franklin Circuit Court, within sixty (60) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the ***commissioner*** ~~[director]~~, and thereupon the ***commissioner*** ~~[director]~~ shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. No objection to the order may be considered by the court unless it was urged before the ***commissioner*** ~~[director]~~ or there were reasonable grounds for failure to do so. The findings of the ***commissioner*** ~~[director]~~ as to the facts, if supported by substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the ***commissioner*** ~~[director]~~ the court may order the additional evidence to be taken before the ***commissioner*** ~~[director]~~ and to be adduced upon the hearing in such manner and upon such conditions as the court may consider proper. The ***commissioner*** ~~[director]~~ may modify his findings as to the facts, by reason of the additional evidence so taken; and he shall file any modified or new findings, which if supported by substantial evidence shall be conclusive, and any recommendation for the modification or setting aside of the original order. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the ***commissioner's*** ~~[director's]~~ order. An appeal may be taken from the judgment of the Franklin Circuit Court on any such appeal to the Court of Appeals on the same terms and conditions as an appeal is taken in civil actions.

Section 21. KRS 292.500 is amended to read as follows:

(1) The administration of the provisions of this chapter shall be under the ~~[Division of Securities in the]~~ Department of Financial Institutions.

(2) It is unlawful for the ***commissioner*** ~~[director]~~ or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the ***commissioner*** ~~[director]~~ and which is not made public. No provision of this chapter authorizes the ***commissioner*** ~~[director]~~ or any of his officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the ***commissioner*** ~~[director]~~ or any of his officers or employees.

(3) The ***commissioner*** ~~[director]~~ may from time to time make, amend, and rescind such rules, forms and orders as are necessary to carry out the provisions of this chapter, including rules and forms governing registration statements, applications, and reports and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of rules and forms, the ***commissioner*** ~~[director]~~ may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.

(4) No rule, form, or order may be made, amended, or rescinded unless the ***commissioner*** ~~[director]~~ finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provision of this chapter. In prescribing rules and forms the ***commissioner*** ~~[director]~~ may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statement, applications, and reports whenever practicable.

(5) The ***commissioner*** [~~director~~] may by rule or order prescribe the form and content of financial statements required under this chapter and the circumstances under which consolidated financial statements shall be certified by certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting standards.

(6) All rules and forms of the ***commissioner*** [~~director~~] shall be published.

(7) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the ***commissioner*** [~~director~~], notwithstanding that the rule, form or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(8) A document is filed when it is received by the ***commissioner*** [~~director~~] or when the ***commissioner*** [~~director~~] receives confirmation that a document has been filed pursuant to KRS 292.330.

(9) Every hearing in an administrative proceeding shall be public unless the ***commissioner*** [~~director~~] in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(10) The ***commissioner*** [~~director~~] shall keep a register of all applications for registration and registration statements which are or have ever been effective under this chapter and all denial, suspension, or revocation orders which have ever been entered under this chapter. The register shall be open for public inspection.

(11) The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the ***commissioner*** [~~director~~] prescribes.

(12) Upon request and at such reasonable charges as he prescribes, the ***commissioner*** [~~director~~] shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(13) The ***commissioner*** [~~director~~] in his discretion may honor requests from interested persons for interpretative opinions.

Section 22. KRS 292.991 is amended to read as follows:

(1) Any person who willfully violates any provision of this chapter except KRS 292.440, or who willfully violates KRS 292.440 knowing the statement made to be false or misleading in any material respect, shall be guilty of a Class D felony.

(2) Any person who willfully violates any rule or order of the ***commissioner*** [~~director~~], authorized under this chapter, shall be guilty of a Class A misdemeanor; but no person may be imprisoned for violation of any rule or order of which that person did not have actual knowledge.

(3) The ***commissioner*** [~~director~~] may refer such evidence as may be available concerning violations of this chapter or of any rule or order hereunder to the Attorney General or the proper prosecuting authority, who may in his discretion, with or without such a reference, institute the appropriate criminal proceedings under this chapter.

(4) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

Section 23. KRS 294.020 is amended to read as follows:

(1) The following shall be exempt from this chapter:

(a) Any person doing business under the laws of this state or any other state or the United States relating to banks, bank holding companies, trust companies, credit unions, savings and loan associations, service corporation subsidiaries of savings and loan associations, consumer finance companies, industrial loan companies, insurance companies or real estate investment trusts as defined in 26 U.S.C. Section 856 and the affiliates of such companies, or mortgage loan companies regulated by the Department of Housing and Urban Development;

(b) An attorney-at-law licensed to practice law in Kentucky who is not principally engaged in the business of negotiating mortgage loans, when such person renders services in the course of his practice as an attorney-at-law;

(c) Any person doing any act under order of any court;

(d) Any natural person making a mortgage loan with his own funds for his own investment without intent to resell such mortgage loan;

(e) Any person doing business under the laws of this state or the United States relating to any broker-dealer, agent or investment adviser duly registered with the ***Department of Financial Institutions*** [~~Kentucky Division of Securities~~];

(f) The United States of America, the Commonwealth of Kentucky or any other state, and any Kentucky city, county or other political subdivision, and any agency, division or corporate instrumentality of any of the foregoing;

(g) The Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA);

(h) Any person licensed in this state as a real estate broker or real estate sales associate, not actively engaged in the business of negotiating loans secured by real property, when such person renders services in the course of his practice as a real estate broker or real estate associate.

(2) Any person relying upon an exemption under subsection (1) of this section shall file with the commissioner a claim of exemption. The commissioner shall thereafter determine the availability of the claimed exemption and he may not disallow an exemption that is validly claimed.

Section 24. KRS 304.24-050 is amended to read as follows:

(1) Upon receipt of the articles of incorporation of the proposed insurer, the commissioner shall submit such articles to the Attorney General for examination. Within ten (10) days after receipt thereof the Attorney General shall return the articles to the commissioner with a written statement as to whether the articles comply with law.

(2) If the Attorney General has found the articles to be in compliance with law and has so stated to the commissioner, the commissioner shall stamp or otherwise certify his approval thereon, retain one (1) copy of the articles for his files and deliver the remaining three (3) copies of the articles to the incorporators for filing as provided by laws governing business corporations generally.

(3) The incorporators shall concurrently file with the commissioner duplicates of filings made on behalf of the corporation with the ***commissioner*** ~~[director]~~ of the ***Department of Financial Institutions*** ~~[Division of Securities]~~ pursuant to KRS Chapter 292, and upon compliance with the provisions of such chapter governing sale of securities, the incorporators may open books to receive subsections for capital stock of the corporation.

(4) After all stock stated by the articles as to the amount of capital with which the corporation will begin business (which shall not be less than the applicable minimum amounts required by the provisions of this code to qualify for authority to transact the kind of insurance specified by the articles) has been subscribed and paid for either in cash or in assets of the kind eligible for investment of a domestic insurer under this code, the incorporators shall make application for a certificate of authority as provided in Subtitle 3.

(5) In addition to the requirements of this subtitle, the incorporators shall also comply with such other applicable laws governing the organization of domestic business corporations as are not in conflict with the provisions of this subtitle.

Section 25. KRS 367.801 is amended to read as follows:

As used in KRS 367.803 to 367.819 and 367.990, unless the context requires otherwise:

(1) "***Department*** ~~[Division]~~" means ***the Department of Financial Institutions*** ~~[Division of Securities]~~.

(2) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, or any other legal entity.

(3) "Offeror" means a person who is engaged in the business of selling business opportunities.

(4) "Consumer/investor" means a person who has purchased or is solicited for the purchase of a business opportunity.

(5) "Business opportunity" means an opportunity to offer, sell or distribute through a distribution device goods or services supplied in whole or in part by the offeror when:

(a) The offeror obtains an initial required consideration of not less than five hundred dollars ($500) from the purchase or lease of the business opportunity or inventory associated therewith; and

(b) The offeror has represented that the consumer/investor will earn, can earn or is likely to earn a gross or net profit in excess of the initial required investment paid by the consumer/investor for the business opportunity; and

(c) The offeror has represented that he has knowledge of the relevant market and that the market demand will enable the consumer/investor to earn a profit from the business opportunity; or the offeror has represented that locations will be provided or assistance will be given to the consumer/investor in finding locations for the use or operation of the business opportunity; or the offeror has represented that there is a guaranteed market or that the offeror will buy back or is likely to buy back any product made, manufactured, produced, fabricated, grown or bred by the consumer/investor using, in whole or in part, the products, supplies, equipment or services which were initially sold or offered for sale to the consumer/investor by the offeror.

(6) "Distribution device" is the method by which the consumer/investor offers, sells or distributes the goods or services supplied to him by the offeror and includes the following:

(a) Vending machines, electric game machines, racks, display cases and other similar devices for selling goods supplied to the consumer/investor by the offeror;

(b) Feed, training manuals and materials for breeding and selling chinchillas, earthworms, rabbits, minks, or vicunas;

(c) Ovens or other cooking devices for the sale of "fast food" or "snack food" such as pizza, sandwiches or hot drinks;

(d) Water filtration devices;

(e) Materials for operating a travel agency;

(f) Equipment and materials to set up a miniature golf course;

(g) Literature and printed materials for the sale and distribution of "warranty packages" for automobiles or other vehicles;

(h) Market projection formats for the purpose of selling to retailers plans or arrangements which are represented to increase the retailer's market share;

(i) Electronic equipment and instructional materials for the purpose of establishing message-recording services;

(j) Equipment and supplies for establishing or renting to third parties cleaning, washing, home and business or insulation services;

(k) Products for repairing, lubricating, oiling, or maintaining automobiles, digital watches or other machinery;

(l) Supplies, instructions, and equipment for home-manufacture or assembly of products to be sold or distributed by the consumer/investor.

(7) "Package franchise" means an agreement wherein:

(a) The franchisee sells goods or services which must meet the quality standards of the franchisor; and

(b) The franchisee is required by the franchisor to establish a retail business location, not to include the home or residence of the franchisee, to be used primarily for the sale of the goods or services under the trade name of the franchisor; and

(c) The franchisor exerts or has authority to exert a significant degree of control over the franchisee's business organization, promotional activities, management marketing plan, or business affairs.

Section 26. KRS 367.805 is amended to read as follows:

(1) It is unlawful for any person to engage in the sale of business opportunities unless prior to the offering the offeror has registered with the ***department*** [~~division~~] and has furnished a bond pursuant to KRS 367.815(2) and provided the following:

(a) All trade names, assumed names, and all trademarks by which the offeror or the prospective consumer/investor of the business opportunity will be doing business.

(b) The names, home addresses, and home telephone numbers of the persons and company offering the business opportunity, and the company's directors and chief executive officers, and the names, home addresses, and home telephone numbers of all representatives selling business opportunities in Kentucky.

(c) A statement as to the length of time the person and company offering the business opportunity has conducted a business of the type being offered both within and without Kentucky.

(d) A statement as to whether the person or company offering the business opportunity or any of its directors or chief executive officers or sales representatives operating in Kentucky has been held liable in a civil action by final judgment for having engaged in unfair, false, misleading, or deceptive practices or has been convicted of or pleaded nolo contendere to a felony involving fraud, embezzlement, fraudulent conversion, or misappropriation of property during the most recent seven (7) year period, or has been declared bankrupt in any judicial proceeding during the most recent seven (7) year period.

(e) A statement as to whether the person or the company offering the business opportunity or its officers, directors, or agents making the offering of the business opportunity has been a party to any legal cause of action brought by a purchaser of the business opportunity within the last seven (7) year period and, if so, the name and address of such individual who has brought the legal action.

(f) A statement disclosing the names, addresses, and telephone numbers of all persons who have been sold a business opportunity by the offeror within the last two (2) year period.

(g) A statement listing the names and addresses of any consumer/investor who has requested within the preceding three (3) years that the offeror return his money.

(2) The offeror shall immediately notify the ***department*** [~~division~~] of any material change in information contained in the application for registration and shall make appropriate amendment of the disclosure statement.

(3) The ***department*** [~~division~~] shall furnish the Attorney General with a copy of each registration disclosure form within one (1) week after registration is complete.

Section 27. KRS 367.809 is amended to read as follows:

(1) The ***department*** [~~division~~], after ascertaining that the applicant has complied with KRS 367.805, shall issue a registration number.

(2) It shall be unlawful for the registrant to fail to include the registration number in any advertising.

Section 28. KRS 367.813 is amended to read as follows:

(1) Prior to the solicitation of potential consumer/investors the offeror shall furnish and display to the potential consumer/investor a copy of the material required to be furnished the ***department*** [~~division~~] when registering pursuant to KRS 367.805.

(2) When furnishing the information required by subsection (1) of this section, the offeror shall furnish the prospective consumer/investor with a notice in at least ten (10) point bold-face type, stating that registration with the ***department*** [~~division~~] does not directly or indirectly imply approval by the ***department*** [~~division~~] or the Commonwealth of Kentucky of the business opportunity or any of the activities of representatives selling such business opportunities.

Section 29. KRS 367.815 is amended to read as follows:

(1) Any person who offers a business opportunity and makes representations that are false, misleading or deceptive shall be liable to the purchaser of such business opportunity in an amount equal to the sum of his actual damages or fifteen hundred dollars ($1,500), whichever is greater, as well as the cost of the action together with reasonable attorney's fees, as determined by the court.

(2) All persons registering pursuant to KRS 367.805 shall furnish a bond of twenty-five thousand dollars ($25,000) with a surety acceptable to the ***department*** ~~[division]~~ to insure the veracity of all statements contained in the registration, and any and all persons who are sold a business opportunity in reliance on the registration or any other representations made by the offeror shall be entitled to be compensated from the bond if it is shown that such statements in the registration or representations made during the sales transaction were false, misleading or deceptive.

(3) A person who has furnished a bond described in subsection (2) of this section may petition the division for release of the bond by submitting a verified statement that such person has not offered business opportunities in the state for the last five (5) years.

Section 30. The General Assembly confirms Executive Order 93-528 to the extent it is not otherwise confirmed, except that the Applications and Regulation Branch of the Division of Law and Regulatory Compliance is renamed the Applications and Registration Branch.

The Committee on Banking and Insurance reported **HB 426** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 426, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.2-260 is amended to read as follows:

(1) The commissioner shall deliver a copy of the examination report to the person examined, together with a notice affording such person twenty (20) days or such additional reasonable period as the commissioner for good cause may allow within which to review the report and recommend changes therein.

(2) If so requested by the person examined, within the period allowed under subsection (1) of this section, or if deemed advisable by the commissioner without such request, the commissioner shall hold a hearing relative to the report and shall not file the report in the department for public inspection until after such hearing and his order thereon, except that the commissioner may furnish a copy of the report to the Governor or Attorney General of the state pending final decision thereon.

(3) If no such hearing has been requested or held, ***the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order within sixty (60) days of the end of the period allowed under subsection (1) of this section. The order of the commissioner shall:***

(a) Adopt the examination report as filed or with modifications or corrections. If the examination report reveals that the person is operating in violation of or has violated any law, administrative regulation, or prior order of the commissioner, the commissioner may order the person to take such action to cure the violations and impose such penalties as the commissioner considers necessary and appropriate; or

(b) Reject the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refiling as provided in KRS 304.2-250; or

(c) Call for a hearing for purposes of obtaining additional documentation, data, information, and testimony.

(4) Upon entry of the commissioner's order, the examination report, with such modifications, if any, thereof as the commissioner deems proper, shall be ~~[accepted by the commissioner and]~~ filed in the department for public inspection ~~[upon expiration of the review period provided for in subsection (1) of this section. The report shall in any event be so accepted and filed within six (6) months after final hearing thereon]~~, except that the commissioner may withhold from public inspection any examination report for so long as he deems such withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest ***and except that the commissioner shall withhold from public inspection any examination report of a domestic insurer as provided in KRS 304.2-270***.

(5)~~[(4)]~~ The commissioner shall forward to the person examined a copy of the examination report as filed for public inspection, together with ***the order of the commissioner*** ~~[any recommendations or statements relating thereto which he deems proper]~~.

(6)~~[(5)]~~ If the report concerns the examination of a domestic insurer, a copy of the report, ~~[or a summary thereof approved by the commissioner,]~~ when filed for public inspection, or if withheld from public inspection under subsection ***(4)***~~[(3)]~~ of this section, together with the ***order*** ~~[recommendations or statements]~~ of the commissioner ~~[or his examiner]~~, shall be presented by the insurer's chief executive officer to the insurer's board of directors or similar governing body at a meeting thereof which shall be held within ninety (90) days next following receipt of the report ***and order*** [~~in final form by the insurer~~]. A copy of the report ***and order*** shall also be furnished by the secretary of the insurer, if incorporated, or by the attorney-in-fact if a reciprocal insurer, or Lloyd's plan insurer, to each member of the insurer's board of directors or board of governors, if a reciprocal insurer, or Lloyd's plan insurer, and the certificate of the secretary or attorney-in-fact, which shall be filed promptly with the department, that a copy of the examination report ***and order,*** has been so furnished shall be deemed to constitute knowledge of the contents of the report ***and order*** by each such member.

(7)[~~(6)~~] The report when so filed in the department shall be admissible in evidence in any action or proceeding brought by the commissioner against the person examined, or against its officers, employees or agents. In any such action or proceeding, the commissioner or his examiners may, however, at any time testify and offer proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished, or filed in the department.

Section 2. KRS 304.2-270 is amended to read as follows:

The report of examination of a domestic insurer, although filed in the department as provided in KRS 304.2-260 shall nevertheless not be for public inspection except as to those portions of the report showing the insurer's current financial condition. The comments and recommendations of the examiner(s) shall be deemed confidential information and shall not be available for public inspection, except that the commissioner may in his discretion ***disclose the content of an examination report, preliminary examination report or results, or any matter relating to an examination report, to the insurance department of any other state or country, or to law enforcement officials of this or any other state, or to an agency of the federal government at any time, if the agency or office receiving the report or matters relating to the report agrees in writing to hold it confidential and in a manner consistent with this section and KRS 304.2-260*** [~~furnish the complete report to any other supervisory official of another state upon request~~].

Section 3. KRS 304.3-240 is amended to read as follows:

(1) Each authorized insurer shall annually, before the first day of March, file with the commissioner a true statement of its financial condition, transactions, and affairs as of December 31 preceding. The statement shall be on forms ***prescribed by the National Association of Insurance Commissioners and shall be completed according to the instructions of the National Association of Insurance Commissioners*** [~~and shall contain information as required by this code and by the commissioner~~], and shall be verified by the oaths of at least two (2) of the insurer's principal officers. The annual statement of a reciprocal insurer shall be made and verified by its attorney-in-fact.

(2) The commissioner shall annually during November furnish each such insurer duplicate copies of annual statement forms as next required to be filed. The statement forms shall be in general form and context as approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner.

(3) The annual statement of an alien insurer shall relate only to its assets, transactions, and affairs in the United States unless the commissioner requires otherwise. The statement shall be verified by the insurer's United States manager or by its officers duly authorized.

(4) The commissioner may suspend or revoke the authority of any insurer failing to file its annual statement when due or failing so to file during any extension of time therefor which the commissioner, for good cause, may grant.

(5) Notwithstanding the provisions of this section or any other law of this Commonwealth, an authorized insurer may, subject to the requirements of regulations adopted by the commissioner, publish financial statements or information based on financial statements prepared on a basis which is in accordance with requirements of a competent authority and which differs from the basis of the statements which have been filed with the commissioner in compliance with this section. Such differing financial statements or information based on such financial statements shall not be made the basis for the application of any provision of this chapter not relating solely to the publication of financial information unless such provision specifically so requires.

Section 4. KRS 304.37-010 is amended to read as follows:

As used in this subtitle, the following terms shall have the respective meanings set forth, unless the context shall otherwise require:

(1) The term "commissioner" shall mean the Commissioner of Insurance or the Department of Insurance, as appropriate.

(2) "Insurer" includes every person engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts of insurance.

(3) An "insurance holding company system" consists of two (2) or more affiliated persons, one (1) or more of which is an insurer.

(4) An "affiliate", or person "affiliated" with a specific person, is a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(5) A "person" is an individual, a corporation, a partnership, an association, a joint stock company, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any bank in its fiduciary capacity or securities broker performing no more than the usual and customary broker's function.

(6) A "subsidiary" of a specified person is an affiliate controlled by the person directly or indirectly through one (1) or more intermediaries.

(7) The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

(8) The terms "control", "controlling", "controlled by", and "under common control with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a loan contract or commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ***ten percent (10%)*** [~~fifteen percent (15%)~~] or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by KRS 304.37-020(12) that control does not exist in fact. The commissioner may determine, after forwarding all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

Section 5. KRS 304.37-020 is amended to read as follows:

(1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign or alien insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. For an alien insurer, the domiciliary state shall be deemed to be its state of entry. Any insurer which is subject to registration under this section shall register within sixty (60) days after June 16, 1972, or fifteen (15) days after it becomes subject to registration, whichever is later, ***and annually thereafter by April 1 of each year for the previous calendar year,*** unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(2) Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

(a) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(b) The identity of every member of the insurance holding company system;

(c) The following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:

1. Loans to, other investments in, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
2. Purchases, sales, or exchanges of assets;
3. Transactions not in the ordinary course of business;
4. Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered in the ordinary course of the insurer's business;
5. All management and service contracts and all cost-sharing arrangements[~~, other than cost allocation arrangements based upon generally accepted accounting principles~~];
6. Reinsurance agreements covering all or substantially all of one (1) or more lines of insurance of the ceding company;
7. Dividend and other distributions to shareholders; and
8. Consolidated tax allocation agreements;

(d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate for a loan made to any member of the insurance holding company system; and

(e) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

(3) It shall not be necessary to disclose information on the registration statement filed pursuant to subsection (2) of this section if the information is not material for the purposes of this section. Unless the commissioner by administrative regulation or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, or investments, involving one-half of one percent (.05%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

(4) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within thirty days (30) after the end of the month in which it learns of each change or addition.

(5) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(6) Subject to KRS 304.37-030(5), each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the dividend or distribution declaration.

(7) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, if the information is reasonably necessary to enable the insurer to comply with the provisions of this subtitle.

(8) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(9) The commissioner may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(10) The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section.

(11) The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by administrative regulation or order shall exempt it from the provisions of this section.

(12) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the persons and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

(13) The failure to file a registration statement or any amendment thereto required by this section within the time specified for the filing shall be a violation of this subtitle.

SECTION 6. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this subtitle or of any rule, administrative regulation, or order issued by the commissioner may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at the meeting shall be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this subtitle or of any rule, administrative regulation, or order issued by the commissioner, the insurer or the commissioner may apply to the Circuit Court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of KRS 304.37-130 or any rule, administrative regulation, or order issued by the commissioner to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders, and for any other equitable relief as required by the nature of the case and the interest of the insurer's policyholders, creditors, shareholders, or the public.

(2) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this subtitle or any rule, administrative regulation, or order issued by the commissioner, the Circuit Court for Franklin County or the Circuit Court for the county in which the insurer has its principal place of business may, upon notice the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue the appropriate order to effectuate the provisions of this subtitle.

(3) Notwithstanding any other provisions of law, for the purposes of this subtitle the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

Section 7. KRS 304.45-030 is amended to read as follows:

(1) A risk retention group shall, pursuant to the provisions of this chapter, be chartered and licensed to write only liability insurance pursuant to this subtitle, and, except as otherwise provided in this subtitle, shall comply with all of the laws, regulations, and requirements applicable to such insurers chartered and licensed in this state and with KRS 304.45-040 to the extent such requirements are not a limitation on laws, regulations, or requirements of this state.

(2) ***Notwithstanding any other provision to the contrary, all risk retention groups chartered in this state shall file with the department and the National Association of Insurance Commissioners (NAIC), an annual statement in a form prescribed by the NAIC and completed in accordance with the NAIC instructions and the NAIC accounting practices***

and procedures manual.

(3) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the commissioner of this state a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional kinds of liability insurance. The group shall not offer any additional kinds of liability insurance in this state or any other state until a revision of such plan or study is approved by the commissioner.

(4)[~~(3)~~] At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the identity of the initial members of the group, the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the group intends to operate. Upon receipt of the information, the commissioner shall forward such information to the National Association of Insurance Commissioners. Providing notification to the National Association of Insurance Commissioners is in addition to and shall not be sufficient to satisfy the requirements of KRS 304.45-040 and all other sections of this subtitle.

(5)[~~(4)~~] ***A risk retention group shall, within ten (10) days, notify the commissioner of any changes in the identity of those individuals who provide administrative services or otherwise influence or control the activities of the group, the coverages afforded, and the states in which the group operates.***

(6) A risk retention group chartered and licensed in this state as a product liability risk retention group under the provisions of KRS Chapter 304 in effect prior to July 13, 1990, may continue to act as such without complying with this subtitle as long as it complies with the provisions of KRS Chapter 304 in effect prior to July 13, 1990. The exception provided in this subsection shall cease to apply to any product liability risk retention group which offers any other kind of liability insurance other than product liability or completed operations liability insurance.

Section 8. KRS 304.45-040 is amended to read as follows:

Risk retention groups chartered and licensed in states other than this state and seeking to do business as a risk retention group in this state shall observe and abide by the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(a) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering and licensing, its principal place of business, and such other information, including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under KRS 304.45-020(11);

(b) A copy of its plan of operations or a feasibility study and revisions of such plan or study submitted to its state of domicile, but the provision relating to the submission of a plan of operation or a feasibility study shall not apply as to any kind or classification of liability insurance which was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and was offered before such date by any risk retention group which had been chartered and operating for not less than three (3) years before such date; and

(c) A statement of registration which designates the Secretary of State as its agent for the purpose of receiving service of legal documents or process.

(2) Any risk retention group doing business in this state shall submit to the commissioner:

(a) A copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners;

(b) A copy of each financial, market conduct, or other examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(c) Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

(d) Such information as may be required to verify its continuing qualification as a risk retention group under KRS 304.45-020(11).

(3) ***A risk retention group shall, within ten (10) days, notify the commissioner of any changes in any of the information required in subsections (1) and (2).***

(4) Any risk retention group shall submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within sixty (60) days after a request by the commissioner of this state. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioners' examiner handbook. Such examinations shall be conducted in accordance with KRS 304.2-210 to 304.2-300.

(5)[~~(4)~~] Any ***application used or any*** policy issued by a risk retention group shall contain in ten (10) point boldface type the following legend:

NOTICE

THIS POLICY IS ISSUED BY YOUR RISK RETENTION GROUP. YOUR RISK RETENTION GROUP MAY NOT BE SUBJECT TO ALL OF THE INSURANCE LAWS AND REGULATIONS OF YOUR STATE. STATE INSURANCE INSOLVENCY GUARANTY FUNDS ARE NOT AVAILABLE FOR YOUR RISK RETENTION GROUP.

(6)[~~(5)~~] In the solicitation or sale of insurance, a risk retention group shall not:

(a) Solicit or sell insurance to any person who is not eligible for membership in such group; and

(b) Solicit or sell insurance issued by, or otherwise operate, a risk retention group that is in a hazardous financial condition or is financially impaired.

(7)[~~(6)~~] No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of such risk retention group, except if all members of the risk retention group are insurance companies.

(8)[~~(7)~~] A risk retention group shall not offer insurance policy coverage prohibited by statute or regulation or declared unlawful by the highest court of this state.

(9)[~~(8)~~] A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a commissioner if there has been a finding of financial impairment after an examination under subsection (3) of this section.

(10)[~~(9)~~] A risk retention group registered in this state as a product liability risk retention group under the provisions of KRS Chapter 304 in effect prior to July 13, 1990, may continue to act as such without complying with this subtitle as long as it complies with the provisions of KRS Chapter 304 in effect prior to July 13, 1990. The exception provided in this subsection shall cease to apply to any product liability risk retention group which offers kinds of liability insurance other than product liability or completed operations liability insurance.

Section 9. KRS 304.45-060 is amended to read as follows:

(1) A purchasing group which intends to do business in this state shall, prior to doing business, furnish notice to the commissioner which shall:

(a) Identify the state in which the purchasing group is domiciled;

(b) Specify the kinds and classification of liability insurance which the purchasing group intends to purchase;

(c) Identify the insurance company or companies from which the purchasing group intends to purchase its insurance and the domicile or domiciles of such insurance company or insurance companies;

(d) Specify the method by which and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state;

(e) Identify the principal place of business of the purchasing group; and

(f) Provide such other information as may be required by the commissioner to verify that the purchasing group is qualified under KRS 304.45-020(10) and is otherwise in compliance with the laws of this state.

(2) ***A purchasing group shall, within ten (10) days, notify the commissioner of any changes in any of the items set forth in subsection (1).***

(3) The purchasing group shall register with and designate the Secretary of State as its agent solely for the purpose of receiving legal documents or process, except that such requirement shall not apply in the case of a purchasing group:

(a) Which in any state of the United States:

1. Was domiciled before April 1, 1986; and

2. Is domiciled on and after October 27, 1986;

(b) Which:

1. Before October 27, 1986, purchased insurance from an insurer licensed in any state; and

2. Since October 27, 1986, purchased its insurance from an insurer licensed in any state;

(c) Which was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 (P.L. 97-45) before October 27, 1986; and

(d) Which does not purchase insurance that was not authorized for purposes of an exemption under that act, as in effect before October 27, 1986.

(4)[~~(3)~~] Any purchasing group which was doing business in this state prior to July 13, 1990, shall, within thirty (30) days after July 13, 1990, furnish notice to the commissioner pursuant to the provisions of this subtitle and furnish the information required pursuant to this subtitle.

Section 10. KRS 304.45-130 is amended to read as follows:

(1) No person shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state from a

risk retention group unless such person is licensed as an insurance agent in accordance with Subtitle 9 of this chapter.

(a) However, no such license shall be required of salaried employees of a risk retention group not compensated based on the volume of business.

(b) A risk retention group is responsible for the acts of its agents or other persons acting on its behalf in the solicitation, negotiation, or procurement of liability insurance or the acceptance of premiums for liability insurance.

(c) Any person required by this section to be licensed as an insurance agent shall give notice to each applicant that any policy issued by a risk retention group may not be subject to all of the insurance laws and administrative regulations of the Commonwealth and that state insurance insolvency guaranty funds are not available for risk retention groups.

(2) No person shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state for a purchasing group from an authorized insurer, risk retention group chartered in a state, or a surplus lines insurer eligible to do business in this state unless such person is licensed as insurance agent or surplus lines broker in accordance with Subtitles 9 and 10 of this chapter.

(3) No person shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance coverage in this state for any member of a purchasing group under a purchasing group's liability insurance policy unless such person is licensed as an insurance agent in accordance with Subtitle 9 of this chapter.

(a) No license shall be required of salaried employees of an insurer or of a purchasing group who are not compensated based on the volume of business.

(b) An insurer issuing a liability insurance policy to a purchasing group is responsible for the acts of its agents or other persons acting on its behalf in the solicitation, negotiation, or procurement of liability insurance or the acceptance of premiums for liability insurance.

Section 11. KRS 304.5-140 is amended to read as follows:

(1) (a) For the purposes of subsection (3)(c) of this section, a "qualified United States financial institution" means an institution that:

1. Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

2. Is regulated, supervised, and examined by the United States federal or state authorities having regulatory authority over banks and trust companies; and

3. Has been determined by the commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(b) A "qualified United States financial institution" means, for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

1. Is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

2. Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(2) Credit for reinsurance shall be allowed a ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraphs (a), (b), (c), (d), or (e) of this subsection. If meeting the requirements of paragraphs (c) or (d) of this subsection, the requirements of paragraph (f) of this subsection shall also be met.

(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is authorized to transact insurance or reinsurance in Kentucky.

(b) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in Kentucky. An accredited reinsurer is one which:

1. Files with the commissioner evidence of its submission to Kentucky's jurisdiction;

2. Submits to Kentucky's authority to examine its books and records;

3. Is licensed to transact insurance or reinsurance in at least one (1) state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state;

4. Files annually with the commissioner a copy of its annual statement filed with the insurance regulatory official of its state of domicile and a copy of its most recent audited financial statement, and either:

a. Maintains a surplus as regards policyholders in an amount which is not less than twenty million dollars ($20,000,000) and whose accreditation has not been denied by the commissioner within ninety (90) days of its submission; or

b. Maintains a surplus as regards policyholders in an amount less than twenty million dollars ($20,000,000) and whose accreditation has been approved by the commissioner.

5. Credit shall not be allowed a ceding insurer under this paragraph if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

(c) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in or, in the case of a United States branch of an alien assuming insurer, is entered through a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien insurer:

1. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars ($20,000,000); and

2. Submits to the authority of the commissioner to examine its books and records.

However, subparagraph 1 of this paragraph shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(d) 1. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution for the payment of valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by authorized insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust fund shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars ($20,000,000). In the case of a group ***including incorporated and*** ~~[of]~~ individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States; and, in addition, the group shall maintain a trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group, ***the incorporated members of which group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members;*** and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary insurance regulatory official and its independent public accountants.

2. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in subparagraph 1 of this paragraph, and which is under the supervision of the Department of Trade and Industry of the United Kingdom and submits to the commissioner's authority to examine its books and records and bears the expense of the estimation, and which has aggregate policyholders' surplus of ten billion dollars ($10,000,000,000), the trust shall be in an amount equal to the group's several liabilities attributable to business written in the United States plus the group shall maintain a joint trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group, and each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary insurance regulatory official and its independent public accountant.

3. The trust shall be established in a form approved by the commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust shall remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

4. No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

(e) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraphs (a), (b), (c), or (d) of this subsection, but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction or reinsurance ceded to a residual market mechanism reinsurance association, or the members thereof, created pursuant to law or which has been voluntarily created as such by its members with the approval of the commissioner.

(f) If the assuming insurer is not authorized or accredited to transact insurance or reinsurance in Kentucky, the credit permitted by paragraphs (c) and (d) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give the court jurisdiction, and shall abide by the final decision of the court or of any appellate court in the event of an appeal; and

2. To designate the Secretary of State or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(3) A reduction from liability for the reinsurance ceded by an insurer to an assuming insurer not meeting the requirements of subsection (2) of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and the reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

(a) Cash;

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(c) Clean, irrevocable, unconditional letters of credit issued or confirmed by a qualified United States financial institution no later than December 31 in respect of the year for which filing is being made, and in the possession of the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance, or confirmation, shall, notwithstanding the issuing, or confirming, institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(d) Any other form of security acceptable to the commissioner.

(4) Cession of bulk reinsurance by a domestic insurer is subject to KRS 304.24-420.

(5) Credit shall be allowed as an asset or as a deduction from liability, to any ceding insurer for reinsurance ceded to an assuming insurer qualified therefor under subsections (2), (3), or (4) of this section, except that no such credit shall be allowed unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

(6) Upon request of the commissioner an insurer shall promptly inform the commissioner in writing of the cancellation or any other material change of any of its reinsurance treaties or arrangements.

(7) Subsections (1) to (3) of this section shall apply to all cessions after July 14, 1992, under reinsurance agreements which have had an inception, anniversary, or renewal date not less than six (6) months after July 14, 1992.

The Committee on Business Organizations and Professions reported **HB 380** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 380, AN ACT relating to alcoholic beverages.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 243 IS CREATED TO READ AS FOLLOWS:

Twenty-five percent (25%) of all fees and moneys paid into the State Treasury for licenses permitting the sale of distilled spirits and wine at retail by the package and by the drink and restaurant wine licenses shall be credited to a revolving trust and agency account, as provided in KRS 45.253, for the Department of Alcoholic Beverage Control. These moneys shall be used solely for the administration and enforcement of KRS Chapters 241, 242, 243, and 244. The moneys in the account shall not lapse at the close of the fiscal year.

Section 2. The following KRS section is repealed:

243.080 Credit for local licenses on state retail licenses.

Calendar

HB 368 taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Orders of the Day

HB 287, with Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lewis moved the adoption of Floor Amendment No. 4 to **HB 287**. Agreed.

Representative Lewis moved that **HB 287**, as amended, be passed.

On the roll call the vote was: Yeas 76, Nays 15. (See February 15, 1994 roll call on **HB 287** - Appendix)

HB 287, as amended, was passed and the title agreed to.

Representative Lewis moved that the vote by which **HB 287**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Representative Stumbo moved that the rules be suspended to introduce guests. Agreed.

HB 34, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Wayne moved the adoption of Floor Amendment No. 1 to **HB 34**. Agreed.

Representative Wayne moved that **HB 34**, as amended, be passed.

Representative Fox moved that **HB 34** be laid on the Clerk's Desk. Rejected.

Representative Little inquired if a local impact statement was necessary on **HB 34**.

The Speaker noted that the local impact statement was included and ruled **HB 34** was in order.

Representative Wayne moved that **HB 34**, as amended, be passed.

On the roll call the vote was: Yeas 54, Nays 39. (See February 15, 1994 roll call on **HB 34** - Appendix)

HB 34, as amended, was passed and the title agreed to.

Representative Wayne moved that the vote by which **HB 34**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 35, HB 40, HB 74** and **HB 244** have been examined and found correctly enrolled . Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -2:56 p.m.)

HB 35, HB 40, HB 74 and **HB 244** delivered to the Senate and signed by the President. Delivered to the Governor on February 15, 1994 at 3:17 p.m.

Floor Amendments

Floor Amendment No. 1 to **HB 256**, by Representative Lindsay:

On page 2, between lines 16 and 17, by inserting the following:

"Section 2. KRS 158.6453 is amended to read as follows:

(1) The State Board for Elementary and Secondary Education shall be responsible for creating and implementing a statewide, primarily performance-based assessment program to ensure school accountability for student achievement of the goals set forth in KRS 158.645. ***The statewide assessment program shall not include measurement of a student's ability to become a self-sufficient individual or to become a responsible member of a family, work group, or community.*** The program shall be implemented as early as the 1993-94 school year but no later than the 1995-96 school

year. The board shall also be responsible for administering an interim testing program to assess student skills in reading, mathematics, writing, science, and social studies in grades four (4), eight (8), and twelve (12). The tests shall be designed to provide the state with national comparisons and shall be the same as, or similar to those used by the National Assessment of Educational Progress. The interim testing program shall begin during the 1991-92 school year and shall be administered to a sample of students representative of each school and the state as a whole. The test scores shall be used, along with other factors described in KRS 158.6451, to establish a baseline for determining school success during the 1993-94 school year.

(2) Upon July 13, 1990, the state board shall contract with three (3) or more authorities in the field of performance assessment to design the specifications for the interim and full-scale statewide assessment development effort. The bid specifications shall include requirements that the successful bidder:

(a) Be a consultant to the Council on School Performance Standards as it develops the educational outcomes expected of students;

(b) Direct the development of the interim and full-scale assessment program; and

(c) Direct the development of the formula to be used to determine successful schools pursuant to KRS 158.6455.

The assessment authorities shall review the bids and make a recommendation to the board. The authorities shall have no pecuniary interest with the successful bidder.

(3) In addition to statewide testing for the purpose of determining school success, the board shall have the responsibility of assisting local school districts and schools in developing and using continuous assessment strategies needed to assure student progress.

(4) By October 1 of each year, local boards of education shall publish in the newspaper with the largest circulation in the county an annual performance report on district accomplishments and activities pertaining to performance goals including, but not limited to, retention rates and student performance, the districts' goals for the succeeding year, and other items as may be set forth in State Board for Elementary and Secondary Education administrative regulations.

"Section 3. KRS 158.6451 is amended to read as follows:

(1) Upon July 13, 1990, the Council on School Performance Standards established by Executive Order 89-151 shall be reconvened by the chairman to frame the following six (6) goals for the schools of the Commonwealth in measurable terms which define the outcomes expected of students:

(a) Schools shall expect a high level of achievement of all students.

(b) Schools shall develop their students' ability to:

1. Use basic communication and mathematics skills for purposes and situations they will encounter throughout their lives;
2. Apply core concepts and principles from mathematics, the sciences, the arts, the humanities, social studies, and practical living studies to situations they will encounter throughout their lives;
3. Become a self-sufficient individual;
4. Become responsible members of a family, work group, or community, including demonstrating effectiveness in community service;
5. Think and solve problems in school situations and in a variety of situations they will encounter in life; and
6. Connect and integrate experiences and new knowledge from all subject matter fields with what they have previously learned and build on past learning experiences to acquire new information through various media sources.

(c) Schools shall increase their students' rate of school attendance.

(d) Schools shall reduce their students' dropout and retention rates.

(e) Schools shall reduce physical and mental health barriers to learning.

(f) Schools shall be measured on the proportion of students who make a successful transition to work, post-secondary education, and the military.

(2) The Council on School Performance Standards shall employ necessary staff and shall be attached to the Department of Education for administrative purposes. Members of the council and its committees may receive reimbursement of actual expenses for attending meetings and may be reimbursed for other actual and necessary expenses incurred in the performance of their duties authorized by the council. The expenses shall be paid out of the appropriation for the council.

(3) ***(a)*** The Council on School Performance Standards shall establish a number of committees with statewide representation of certified personnel to frame the goals in measurable terms which specify the expected outcomes. The council shall make periodic progress reports and a final report by December 1, 1991, to the Governor, the State Board for Elementary and Secondary Education, and the Legislative Research Commission. After submitting its final report the council shall cease to exist. The State Board for Elementary and Secondary Education shall adopt the goals of the council.

(b) By December, 1994, the State Board for Elementary and Secondary Education shall review and revise the learner outcomes for the goals to assure that all outcomes are measurable.

(4) By July 1, 1993, the State Board for Elementary and Secondary Education shall disseminate to local school districts and schools a model curriculum framework which is directly tied to the goals, outcomes, and assessment strategies developed pursuant to this section and KRS 158.645 and 158.6453. The framework shall provide direction to local districts and schools as they develop their curriculum. The framework shall identify teaching and assessment strategies, instructional material resources, ideas on how to incorporate the resources of the community, a directory of model teaching sites, and alternative ways of using school time.

Section 4. KRS 158.6455 is amended to read as follows:

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

(1) The State Board for Elementary and Secondary Education shall promulgate administrative regulations to establish a system of determining successful schools and dispensing appropriate rewards. The system shall be based on the following:

(a) A school shall be the unit of measure to determine success;

(b) School success shall be determined by measuring a school's improvement over a two (2) year period;

(c) A school shall be rewarded for an increased proportion of successful students, including those students who are at risk of school failure;

(d) A threshold level for school improvement shall be established by the board to determine the amount of success needed for a school to receive a reward. The threshold definition shall establish the percentage of increase required in a school's percentage of successful students as compared to a school's present proportion of successful students, with consideration given to the fact that a school closest to having one hundred percent (100%) successful students will have a lower percentage increase required;

(e) Rewards shall be given to the school on behalf of the full-time, part-time, and itinerant instructional staff of a school who generate the reward when the school achieves at least one percent (1%) gain over its threshold as defined in paragraph (d) of this subsection. Substitute teachers shall not be used in calculating the reward;

(f) Rewards shall be calculated by applying the percentage set by the General Assembly in the biennial budget to the current annual salary of each certified staff person employed in the school on the last working day of the year of the reward. The reward for part-time and itinerant staff shall be calculated for the proportion of time spent in the school. In determining the percentage to be applied to a school for calculation of the rewards for the school's staff, consideration shall be given to the fact that schools already having a high percentage of successful students shall have a lower requirement for a percentage increase in its number of successful students. The staff person's identity in connection to his share of the reward shall be maintained when his share of the reward is deposited to the school's account;

(g) The certified staff members shall by majority rule collectively decide on the ways the reward funds shall be spent. Each individual staff person shall use the amount he earned in accordance with the decisions made by the total staff. Rewards shall not be added to a staff person's base salary and shall not be defined as compensation for retirement purposes under KRS 161.220(10); and

(h) The Department of Education shall send the school's reward to the local district office for transmittal to the school.

(2) The State Board for Elementary and Secondary Education, after adopting the goals of the Council on School Performance Standards and determining the definition of a successful student, shall adopt by administrative regulation the formula to be used to determine successful schools. The formula shall be a calculus of factors which reflect the school ***goals***~~[outcomes]~~ described in KRS 158.6451***, except there shall be no measurement of the goals included in subsection (1)(b)3 and (1)(b)4***.

(3) A school that does not reach its threshold level as defined in paragraph (d) of subsection (1) of this section but maintains the previous proportion of successful students shall be required to develop a school improvement plan and shall be eligible to receive funds from the school improvement fund pursuant to KRS 158.805. A school that does not reach its threshold level but maintains the previous proportion of successful students after the second biennial review shall be required to meet the provisions of subsection (4) of this section.

(4) A school in which the proportion of successful students declines by less than five percent (5%) shall be required to develop a school improvement plan, shall be eligible to receive funds from the school improvement fund, and shall have one (1) or more Kentucky distinguished educators assigned to the school to carry out the duties as described in KRS 158.782. If the school does not meet its original threshold after the next biennial review, the school shall be subject to the requirements of subsection (5) of this section.

(5) ***(a) Except as provided in paragraph (b) of this subsection,*** a school in which the proportion of successful students declines by five percent (5%) or more shall be declared by the State Board for Elementary and Secondary

Education to be a "school in crisis." When a school is declared to be a "school in crisis," the following actions shall be required:

1.[~~(a)~~] The full-time and part-time certified staff of that school shall be placed on probation;

2.[~~(b)~~] The principal shall immediately notify the students' parents of the students' right to transfer to a successful school, with procedures for initiating the request;

3.[~~(c)~~] Within thirty (30) days after the declaration by the state board under this subsection or no later than thirty (30) days before the start of the next school year, whichever is later, any student in that school may request and shall be allowed to transfer to a successful school as determined under the provisions of subsection (2) of this section. The superintendent shall select the receiving successful school in the home district or make arrangements with a neighboring district. If two (2) districts cannot agree, the superintendent of the student's resident district shall request the State Board for Elementary and Secondary Education to resolve the issue and make a decision on the placement of the student within thirty (30) days of the request. The board of the district in which the student resides shall be responsible for all tuition and transportation costs incurred as a result of a student transferring from a "school in crisis" to a successful school. If a decline in student enrollment causes overstaffing at the "school in crisis," personnel shall be reduced or transferred pursuant to KRS 161.760 and 161.800.

4.[~~(d)~~] One (1) or more Kentucky distinguished educators shall be assigned to the school by the commissioner of education to carry out the duties as described in KRS 158.782. Notwithstanding any other statute to the contrary, at the end of six (6) months, the Kentucky distinquished educator shall evaluate and make a recommendation to the superintendent regarding the retention, dismissal, or transfer of each full-time and part-time certified staff member. Recommendations for transfer shall conform to any employer-employee bargained contract which is in effect. Recommendations for dismissal shall be binding on the superintendent who shall notify the staff member pursuant to KRS 161.790. This evaluation process shall continue every six (6) months until the school is no longer a "school in crisis" as determined by the State Board for Elementary and Secondary Education; and

5.[~~(e)~~] The school shall be required to develop a school improvement plan and shall be eligible to receive funds from the school improvement fund.

(b) A school qualifying as a "school in crisis" pursuant to paragraph (a) of this subsection on the basis of the 1993-1994 school year assessment shall be subject to subsection (4) of this section until the school's threshold level is calculated for the 1995-1996 school year.

(6) The State Board for Elementary and Secondary Education shall develop a system of rewards and sanctions for certified staff who are not assigned to a school in a local school district. The system shall be analogous to the system described in subsections (1) through (5) of this section. Rewards shall be given to non-school-based staff when the district's proportion of successful students increases above a threshold adopted by the state board and comparable to the threshold adopted for schools. Sanctions shall be imposed when the proportion of successful students in the district declines in the same proportion used to determine school sanctions under subsections (3), (4), and (5) of this section. A school district that does not meet its threshold shall be required to develop a district improvement plan defined in KRS 158.650.

(7) ***(a) Except as provided in paragraph (b) of this subsection,*** a school district in which the proportion of successful students declines by five percent (5%) or more shall be assigned one (1) or more Kentucky distinguished educators to assist the system, evaluate personnel, and notwithstanding any other statute to the contrary, make personnel recommendations every six (6) months on retention, dismissal, or transfer. Personnel recommendations shall be made to the superintendent. Recommendations on the superintendent's status shall be made to the local board of education. If the recommendation is to terminate the superintendent, the board shall terminate the contract pursuant to KRS 160.350. If a district has a declining proportion of successful students for two (2) consecutive biennial assessment periods, the district shall be declared an education development district pursuant to KRS 158.685 and the board members and the superintendent shall be removed under the provisions of KRS 156.132 and 156.136.

(b) A school district qualifying for sanctions pursuant to paragraph (a) of this subsection on the basis of the 1993-1994 school year assessment shall be subject to subsection (6) of this section until the district's threshold level is calculated for the 1995-1996 school year.

(8) The State Board for Elementary and Secondary Education shall adopt administrative regulations to establish a process whereby a school shall be allowed to appeal a performance judgment which it considers grossly unfair. The state board may adjust a performance judgment on appeal when evidence of highly unusual circumstances warrants the conclusion that the performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the biennial assessment period which are beyond the control of the school."

On page 2, line 17, after "Section" by changing "2" to "3".

Orders of the Day

HB 322, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative R. Smith moved the adoption of Floor Amendment No. 1 to **HB 322**. Agreed.

Representative R. Smith moved that **HB 322**, as amended, be passed.

On the roll call the vote was: Yeas 87, Nays 9. (See February 15, 1994 roll call on **HB 322** - Appendix)

HB 322, as amended, was passed and the title agreed to.

Representative R. Smith moved that the vote by which **HB 322**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 45, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Gray moved the adoption of the Committee Substitute to **HB 45**. Agreed.

Representative Gray moved that **HB 45**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 90, Nays 2. (See February 15, 1994 roll call on **HB 45** - Appendix)

HB 45, by way of Committee Substitute, was passed and the title agreed to.

Representative Gray moved that the vote by which **HB 45**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 297 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved that **HB 297** be passed.

On the roll call the vote was: Yeas 84, Nays 4. (See February 15 , 1994 roll call on **HB 297** - Appendix)

HB 297 was passed and the title agreed to.

Representative Long moved that the vote by which **HB 297** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 316 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative R. Smith moved that **HB 316** be passed.

On the roll call the vote was: Yeas 92, Nays 0. (See February 15 , 1994 roll call on **HB 316** - Appendix)

HB 316 was passed and the title agreed to.

Representative R. Smith moved that the vote by which **HB 316** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 318 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative R. Smith moved that **HB 318** be passed.

On the roll call the vote was: Yeas 97, Nays 0. (See February 15 , 1994 roll call on **HB 318** - Appendix)

HB 318 was passed and the title agreed to.

HB 319 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative R. Smith moved that **HB 319** be passed.

On the roll call the vote was: Yeas 94, Nays 0. (See February 15 , 1994 roll call on **HB 319** - Appendix)

HB 319 was passed and the title agreed to.

Representative Stumbo moved that the vote by which **HB 319** was passed be reconsidered and said motion be placed on

the table. Agreed.

HB 320 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative R. Smith moved that **HB 320** be passed.

On the roll call the vote was: Yeas 88, Nays 0. (See February 15 , 1994 roll call on **HB 320** - Appendix)

HB 320 was passed and the title agreed to.

Representative R. Smith moved that the vote by which **HB 320** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 321, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative R. Smith moved the adoption of the Committee Substitute to **HB 321**. Agreed.

Representative R. Smith moved that **HB 321**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 94, Nays 0. (See February 15, 1994 roll call on **HB 321** - Appendix)

HB 321, by way of Committee Substitute, was passed and the title agreed to.

Representative R. Smith moved that the vote by which **HB 321**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 91, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Coleman moved the adoption of the Committee Substitute to **HB 91**. Agreed.

Representative Coleman moved that **HB 91**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 87, Nays 5. (See February 15, 1994 roll call on **HB 91** - Appendix)

HB 91, by way of Committee Substitute, was passed and the title agreed to.

Representative Coleman moved that the vote by which **HB 91**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 206, with Committee Substitute, Committee Amendment and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Donnermeyer moved the adoption of the Committee Substitute to **HB 206**. Agreed.

Representative Donnermeyer moved the adoption of Committee Amendment No. 1 to the Committee Substitute to **HB 206**. Agreed.

Representative Donnermeyer moved the adoption of Floor Amendment No. 4 to the Committee Substitute to **HB 206**. Agreed.

Representative Donnermeyer moved that **HB 206**, by way of Committee Substitute as amended, be passed.

Representative Ford moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 206**.

On the roll call on the passage of Floor Amendment No. 1 to the Committee Substitute to **HB 206** the vote was **Yeas 25**--Allen, Altman, Bentley, Bryant, Buis, Cave, Collins, Farrow, Ford, Gee, Jensen, Johnson, Lindsay, Lyne, Maricle, Mason, Mullinix, Napier, Noland, Nunn, Riner, Sanders, Todd, Turner, Zimmerman. **Nays 63**--Ackerson, Adams, Adkins, Arnold, Ballard, Bondurant, Bowling, Brown, Bruce, Burch, Butler, Callahan, L. Clark, Clarke, Coleman, Crenshaw, Curd, Cyrus, Damron, Deskins, DeWeese, Donnermeyer, Fox, French, Gedling, Geveden, Graham, Gray, Hancock, Hatcher, Heleringer, Lear, Lee, LeMaster, Lewis, Little, Long, Maggard, Marzian, McElroy, Moberly, Morris, Nesler, Northup, Palumbo, Rapier, Rasche, Reinhardt, Ridley, Riggs, Scorsone, Scott, Shacklette, Simpson, R. Smith, Stacy, Stengel, Stumbo, Trapp, Treesh, Wayne, Worthington, Yates.

The motion to adopt Floor Amendment No. 1 to the Committee Substitute to **HB 206** was rejected.

Representative Donnermeyer moved that **HB 206**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 78, Nays 10. (See February 15, 1994 roll call on **HB 206** - Appendix)

HB 206, by way of Committee Substitute as amended, was passed.

Representative Donnermeyer moved the adoption of the Floor Title Amendment to **HB 206**. Agreed; and the title was agreed to.

Representative Donnermeyer moved that the vote by which **HB 206**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 97, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved the adoption of the Committee Substitute to **HB 97**. Agreed.

Representative Stumbo moved that **HB 97**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 60, Nays 35. (See February 15, 1994 roll call on **HB 97** - Appendix)

HB 97, by way of Committee Substitute, was passed and the title agreed to.

Representative Stumbo moved that the vote by which **HB 97**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 572, by Representatives Yates and Northup: AN ACT relating to executive branch ethics.

HB 573, by Representative Donnermeyer: AN ACT relating to the Department of Information Systems.

HB 574, by Representative Northup: AN ACT relating to alternative crops and enterprises, and making an appropriation therefor.

HB 575, by Representative Kerr: AN ACT relating to the duties of the State Board of Elections.

HB 576, by Representative Riggs: AN ACT relating to marriages.

HB 577, by Representative Bentley: AN ACT relating to oil and gas.

HB 578, by Representative Lewis: AN ACT relating to limitations of civil actions.

HB 579, by Representatives Mason and Curd: AN ACT relating to the Kentucky Industries for the Blind.

HB 580, by Representatives Marzian, Callahan, Donnermeyer and L. Clark: AN ACT relating to fireworks.

HCR 48, by Representative Farley: A CONCURRENT RESOLUTION directing the Legislative Research Commission to create a special task force to study the feasibility of providing four-year higher education opportunities in Ashland, Kentucky .

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills and Resolutions have been posted for Committee consideration:

Labor and Industry: **HB 449, HB 534**

Judiciary: **HB 9, HB 138**

State Government: **HCR 24, HCR 25, HCR 33, HCR 34, HCR 35, HCR 36, HCR 38, HCR 39, HCR 40, HCR 41, HCR 43, HB 57, HB 264, HB 265, HB 266, HB 267, HB 268, HB 464, SCR 44, SB 61**

Appropriations and Revenue: **HB 374**

The Clerk announced that the following Bill has been withdrawn from Committee Consideration:

State Government: **SB 46**

Floor Amendments (Continued)

Floor Amendment No. 1 to the Committee Substitute to **HB 204**, by Representative Stengel:

On page 8, below line 5, to add the following:

SECTION 6. A NEW SECTION OF KRS CHAPTER 610 IS CREATED TO READ AS FOLLOWS:

(1) Prior to the release of a child's juvenile record pursuant to Section 3, 4, or 5 of this Act, the clerk or other keeper of the record shall:

(a) Ensure that the requester is legally entitled to the record under Section 3, 4, or 5 of this Act;

(b) Determine that the record is releasable to the requester under Section 3, 4, or 5 of this Act;

(c) Segregate the records which are releasable to the requester under Section 3, 4, or 5 of this Act from all other records relating to that child which are in the possession of the clerk or other keeper of the record; and

(d) Deliver to the requester only those records to which the requester is entitled under Section 3, 4, or 5, of this Act.

(2) All records not specifically releasable to a requester under Section 3, 4, or 5 of this Act shall not be released and shall remain confidential."

Motions, Petitions and Communications (Continued)

Representative Stacy moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Stacy moved that he be recorded as voting "yea" on **HB 320**. Agreed.

Representative Lee moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Lee moved that he be recorded as voting "yea" on **HB 34**. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Maggard moved that his vote be changed from "yea" to "nay" on **HB 34**. Agreed.

Representative Nesler moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Nesler moved that he be recorded as voting "yea" on **HB 320**. Agreed.

Representative Ballard moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Ballard moved that he be recorded as abstaining on **HR 18**. Agreed.

Representative Moberly moved the adoption of the following **Legislative Citation No. 63**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to Leadership Madison County Class in recognition of your participation in this outstanding program. As prominent citizens of Madison County, it is commendable that you dedicate your time and efforts to bring about a better understanding of the private sector and public service institutions. Your participation in Leadership Madison County will enhance and prepare the community for a progressive future. The entire membership extends its very best wishes on this memorable occasion and expresses the hope for continued success and good fortune.

Representative Collins moved the adoption of the following **Legislative Citation No. 64**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest condolences and expressions of sympathy to The Johnny Callaham Family on the passing of Johnny Callaham. Judge Callaham was a life long Democrat and friend to Martin County and all of eastern Kentucky. He devoted his life's work to the progress and development of Martin County, Kentucky and its citizens. The entire membership joins Representatives Hubert Collins and Charles Geveden on this somber occasion in memory of a friend, Judge-Executive Johnny Callaham.

The following members filed requests to have their names added as co-sponsors to Bills under the rules previously suspended: **HB 45**, Representative Marzian; **HB 187**, Representative Richards; **HB 207**, **HB 276**, Representative Maricle; **HB 357**, Representatives Farrow, Gray; **HB 506**, Representative Treesh; **HB 538**, Representative Donnermeyer; **HB 559**, Representative Stumbo.

Announcements

The Clerk announced the following meetings:

Cities, 9:00 a.m., February 16, 1994, Room 131

Budget Review Subcommittee on Human Resources, 8:00 a.m., February 16, 1994, Room 125

Committee on Rules, upon adjournment, Speaker's Office

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Wednesday, February 16, 1994.

On the roll call the vote was **Yeas 82**–Ackerson, Adams, Adkins, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Bruce, Bryant, Buis, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hatcher, Jensen, Johnson, Kerr, Lee, Lewis, Lindsay, Little, Long, Lyne, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Yates, Zimmerman. **Nays 5**–Heleringer, Lear, LeMaster, Lile, Maggard.

The motion to adjourn was adopted.

WEDNESDAY, FEBRUARY 16, 1994

TWENTY-NINTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend Mark Hopper, First Baptist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Bruce, Keith, and Stengel.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of February 15, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 112, SB 138, SB 142, SB 150, SB 154, SB 159, SB 160, SB 161** and **SB 167**.

Message received on **HB 50**: The Senate has passed **HB 50** with Senate Floor Amendment No. 1 and Senate Committee Amendment No. 2 and respectfully requests concurrence of this Honorable Body.

Representative Stumbo moved that the rules be suspended to introduce special guests. Agreed.

Representative Stumbo moved that the rules be suspended to act upon Legislative Citations. Agreed.

Representative Stumbo moved the adoption of the following **Legislative Citation No. 65**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds your efforts and determination and offers its sincerest congratulations to the Kentucky School For The Deaf "Colonels Football Team" for the example you have set for others by proving that ones only boundaries exist in the mind. Your accomplishments during your athletic careers and your contributions have been outstanding. The "Colonels Football Team" has brought a great deal of pride to the Kentucky School For The Deaf and your community. The House of Representatives joins with Speaker Joe Clarke in honoring you on your many achievements and wishes you every success as you further your academic and athletic careers.

Representative Stumbo moved the adoption of the following **Legislative Citation No. 66**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds your efforts and determination and offers its sincerest congratulations to the Kentucky School For The Deaf Cheerleading Squad for your achievements during your athletic careers. Your contributions have been remarkable, and you have brought a great deal of pride to the Kentucky School For The Deaf and your community. The House of Representatives joins with Speaker Joe Clarke in honoring you on your many achievements as cheerleaders and wishes you every success as you further your academic and athletic careers.

Representative Stumbo moved that the rules be suspended to introduce guests. Agreed.

Introduction of Bills and Resolutions

HB 581, by Representative Ballard: AN ACT relating to mobile home parks.

HB 582, by Representative Ballard: AN ACT relating to health, safety, and welfare of the citizens of the Commonwealth.

HB 583, by Representative Hancock: AN ACT relating to city restaurant taxes.

HB 584, by Representative Coleman: AN ACT relating to the source of merchandise sold by transient merchants.

HB 585, by Representative Riggs: AN ACT relating to boating safety.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Appropriations and Revenue: **HB 568**

Business Organizations and Professions: **HB 569**

Counties and Special Districts: **HB 571**

Economic Development: **HB 574**

Education: **SB 88, SB 148, SB 162, HB 566, HB 579**

Elections and Constitutional Amendments: **HB 575**

Health and Welfare: **SB 107, HB 580**

Judiciary: **HB 570, HB 576, HB 578**

State Government: **SB 92, HCR 48, HB 572, HB 573**

Tourism Development and Industry: **HB 567, HB 577**

Report of Committees

The Committee on Rules reported the following Consent Bill has been posted for passage in the Regular Orders of the Day, February 17, 1994: **HB 180**

The Committee on Rules reported that **HB 115, HB 41, HB 204** and **HB 127** have been posted for passage in the Orders of the Day for February 17, 1994.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Business Organizations and Professions: **HB 546, HB 569**

Health and Welfare: **HB 580**

Report of Committees (Continued)

The Committee on Cities reported **HB 401,** with Committee Amendment and Committee Substitute attached thereto, **HB 466,** with Committee Substitute attached thereto, **HB 504, HB 505, HB 508, HB 532** and **HCR 47** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 401, AN ACT relating to safety officers in urban-county governments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 67A.075 is amended to read as follows:

(1) The legislative body of urban-county governments may appoint as needed safety officers. Safety officers shall have ~~[such]~~ duties as prescribed by ordinance, which may include but not be limited to:

(a) Issuance of citations for violation of motor vehicle offenses as provided for in KRS Chapters 186 and 189, provided that safety officers shall not have the authority to issue citations for moving violations.

(b) Issuance of citations for violation of any motor vehicle or traffic safety ordinance of the urban-county government ~~[wherein he has been appointed]~~.

(c) Control and direction of traffic on public thoroughfares.

(d) Removal of vehicles in violation of state or local law consistent with ***those*** ~~[such]~~ laws.

(2) The ordinance prescribing the duties of safety officers shall set out ~~[in particular]~~ the urban-county ordinances and the sections of KRS Chapters 186 and 189 for which citation authority will exist.

(3) A safety officer may issue a citation for a misdemeanor or a violation committed in his presence as provided ~~[for]~~ in this section. The procedures for ~~[such]~~ citations shall be the same as provided in KRS 431.015.

(4) Safety officers appointed by authority of this section shall have only the limited powers as provided by this section and shall not have the powers of peace officers to make arrests or carry deadly weapons.

(5) Safety officers shall successfully complete one hundred twenty (120) hours of appropriate training certified by the Kentucky Law Enforcement Council prior to being appointed as a safety officer.

(6) Safety officers shall be compensated and receive employment benefits as provided [~~for~~] by urban-county ordinance.

(7) While in the process of securing information to complete accident reports and notwithstanding any statute to the contrary, safety officers may issue citations for violations of KRS 186.430, 186.450, 186.510, and 186.540.

Section 2. KRS 186.510 is amended to read as follows:

The licensee shall have his license in his immediate possession at all times when driving a motor vehicle and shall display it upon demand to the circuit clerk or examiner, a peace officer, a member of the Kentucky State Police, or a field deputy or inspector of the Department of Vehicle Regulation or Transportation Cabinet ***or, pursuant to KRS 67A.075, an urban-county safety officer who is in the process of securing information to complete an accident report***. It shall be a defense to any charge under this section if the person so charged produces in court an operator's license, issued to him before his arrest and valid at the time of his arrest.

The Committee Title Amendment to **HB 401** is as follows:

By amending the title to read as follows: "AN ACT relating to safety officers."

The Committee Substitute to **HB 401** is as follows:

HB 401, AN ACT relating to safety officers in urban-county governments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 67A.075 is amended to read as follows:

(1) The legislative body of urban-county governments may appoint as needed safety officers. Safety officers shall have [~~such~~] duties as prescribed by ordinance, which may include but not be limited to:

  (a) Issuance of citations for violation of motor vehicle offenses as provided for in KRS Chapters 186 and 189, provided that safety officers shall not have the authority to issue citations for moving violations.

  (b) Issuance of citations for violation of any motor vehicle or traffic safety ordinance of the urban-county government [~~wherein he has been appointed~~].

  (c) Control and direction of traffic on public thoroughfares.

  (d) Removal of vehicles in violation of state or local law consistent with ***those*** [~~such~~] laws.

(2) The ordinance prescribing the duties of safety officers shall set out [~~in particular~~] the urban-county ordinances and the sections of KRS Chapters 186 and 189 for which citation authority will exist.

(3) A safety officer may issue a citation for a misdemeanor or a violation committed in his presence as provided [~~for~~] in this section. The procedures for [~~such~~] citations shall be the same as provided in KRS 431.015.

(4) Safety officers appointed by authority of this section shall have only the limited powers as provided by this section and shall not have the powers of peace officers to make arrests or carry deadly weapons.

(5) Safety officers shall successfully complete one hundred twenty (120) hours of appropriate training certified by the Kentucky Law Enforcement Council prior to being appointed as a safety officer.

(6) Safety officers shall be compensated and receive employment benefits as provided [~~for~~] by urban-county ordinance.

(7) While in the process of securing information to complete accident reports and notwithstanding any statute to the contrary, safety officers may issue citations for violations of KRS 186.430, 186.450, 186.510, and 186.540.

Section 2. KRS 83A.088 is amended to read as follows:

(1) The legislative body of any city may authorize the employment of safety officers as needed. Safety officers shall have duties as prescribed by ordinance, which may include, but not be limited to:

  (a) Issuance of citations for violation of motor vehicle offenses as provided for in KRS Chapters 186 and 189. Safety officers shall not have the authority to issue citations for moving violations.

  (b) Issuance of citations for violation of any motor vehicle or traffic safety ordinance enacted by the city.

  (c) Control and direction of traffic on public thoroughfares.

  (d) Removal of vehicles in violation of state or local laws.

(2) The ordinance prescribing the duties of safety officers shall set out in particular the city ordinances and the sections of KRS Chapters 186 and 189 for which citation authority will exist.

(3) A safety officer may issue a citation for a misdemeanor or a violation committed in his presence. The procedures for citations issued by safety officers shall be as provided in KRS 431.015.

(4) Safety officers appointed by authority of this section shall have only the limited powers as provided by this section and shall not have the powers of peace officers to make arrests or carry deadly weapons.

(5) Safety officers shall successfully complete one hundred twenty (120) hours of appropriate training certified by the Kentucky Law Enforcement Council prior to being appointed as a safety officer.

(6) This section shall not be a limitation on the power of a safety officer to make an arrest as a private person as provided in KRS 431.005.

(7) While in the process of securing information to complete accident reports and notwithstanding any statute to the contrary, safety officers may issue citations for violations of KRS 186.430, 186.450, 186.510, and 186.540.

Section 3. KRS 186.510 is amended to read as follows:

The licensee shall have his license in his immediate possession at all times when driving a motor vehicle and shall display it upon demand to the circuit clerk or examiner, a peace officer, a member of the Kentucky State Police, or a field deputy or inspector of the Department of Vehicle Regulation or Transportation Cabinet ***or, pursuant to KRS 67A.075 or 83A.088, a safety officer who is in the process of securing information to complete an accident report***. It shall be a defense to any charge under this section if the person so charged produces in court an operator's license, issued to him before his arrest and valid at the time of his arrest.

HB 466, AN ACT relating to consent annexation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 81A.412 is amended to read as follows:

A city may annex any area which meets the requirements of KRS 81A.410, if each of the owners of record of ***the land to be annexed gives prior consent*** [~~such land consents~~] in writing to the annexation. In ***this*** [~~such~~] event, the city shall not be required to ***enact the notification ordinance required by KRS 81A.420(1) or to comply with the notice requirements of KRS 81A.425, and it shall not be required to*** wait the sixty (60) day period provided for in KRS 81A.420(2) prior to enacting a final ordinance annexing the area. ***When a city has obtained the prior written consent of each owner of record of the land to be annexed, the city may enact a single ordinance finally annexing the land described in the ordinance. If the city has elected to establish the zoning for the new territory pursuant to KRS 100.209 prior to the completion of annexation under this section, the ordinance annexing the territory shall include a map showing the zoning. Upon the enactment of this ordinance, the territory shall become a part of the city for all purposes.***

The Committee Substitute to **HB 466** is as follows:

HB 466, AN ACT relating to consent annexation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 81A.412 is amended to read as follows:

A city may annex any area which meets the requirements of KRS 81A.410, if each of the owners of record of ***the land to be annexed gives prior consent*** [~~such land consents~~] in writing to the annexation. In ***this*** [~~such~~] event, the city shall not be required to ***enact the notification ordinance required by KRS 81A.420(1) or to comply with the notice requirements of KRS 81A.425, and it shall not be required to*** wait the sixty (60) day period provided for in KRS 81A.420(2) prior to enacting a final ordinance annexing the area. ***When a city has obtained the prior written consent of each owner of record of the land to be annexed, the city may enact a single ordinance finally annexing the land described in the ordinance. If the city has elected to establish the zoning for the new territory pursuant to KRS 100.209 prior to the completion of annexation under this section, the ordinance annexing the territory shall include a map showing the zoning. Upon the enactment of this ordinance, the territory shall become a part of the city.***

HB 504, AN ACT relating to retirement benefits in cities of the third class.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 95.560 is amended to read as follows:

(1) In cities of the third class, any member of the police or fire department having served twenty (20) years or longer in the police or fire department may petition the board of trustees for retirement; and if his petition is granted, the board may order paid to him monthly fifty percent (50%) of his monthly salary at the time of retirement.

(2) In order to adjust retirement benefits to the purchasing power of the dollar, the board may annually order an increase in benefits paid pursuant to this section and KRS 95.550. The board may order an increase in benefits by any amount up to the increase in the consumer price index calculated pursuant to KRS 64.527, but [~~in no case shall~~] the annual increase ***shall not*** exceed five percent (5%). The board may grant the first increase in 1990.

(3) The board may provide a group, hospital and medical insurance plan for retirees, if providing insurance will not jeopardize the capacity of the board to pay retirement and survivor benefits. The board may include retiree spouses

and dependent children under the age of nineteen (19) in the plan, but shall not pay the premiums for spouse or dependent child coverage.

Section 2. KRS 95.624 is amended to read as follows:

(1) In cities of the third class, any member of the police or fire department having served twenty (20) years or longer in the police or fire department may petition the board of trustees for retirement; and if his petition is granted, the board may order paid to him monthly fifty percent (50%) of his monthly salary at the time of retirement. If this petition for retirement is denied, any policeman or firefighter has the right of appeal in accordance with the Rules of Civil Procedure.

(2) The pension payable for periods of service between twenty (20) and twenty-five (25) years shall be fifty percent (50%) of salary plus two percent (2%) of salary for each year in excess of twenty (20). The pension payable for twenty-five (25) years of service shall be sixty percent (60%) of salary. The pension payable for periods of service between twenty-five (25) and thirty (30) years shall be sixty percent (60%) of salary plus three percent (3%) of salary for each year in excess of twenty-five (25). The pension payable for thirty (30) years of service shall be seventy-five percent (75%) of salary.

(3) The pensions or benefits paid for disability or death from the policemen's and firefighter's pension fund in cities of the third class shall be as follows:

(a) If any member of the police and fire department becomes temporarily totally disabled, physically or mentally, the board of trustees of the pension fund shall order paid to him monthly, during his disability, until he has recovered and returned to active duty, a sum of not more than one-half (1/2) his salary per month, the amount to be determined by the board. This provision shall not apply if a salary is paid during the same period.

(b) If any member of the police or fire department becomes permanently disabled, physically or mentally, so as to render necessary his retirement from service in the department, the board of trustees shall retire him from service and order paid to him monthly fifty percent (50%) of his monthly salary at the time of his retirement.

(c) If any member of the police or fire department is killed or dies as the result of an injury received in the performance of duty, or dies of any disease contracted by reason of his occupation, or dies while in the service from any cause as a result of his service in the department, or dies in service or while on the retired list from any cause after one (1) year of service in the department and leaves a widow or a child under eighteen (18) years of age, the board of trustees shall order a pension paid to the widow, while unmarried, of one-half (1/2) of salary per month and for each child until it reaches the age of eighteen (18) years, twenty-four dollars ($24) per month. If the deceased member was unmarried and childless, a pension shall be paid to his dependent father and mother of one-fourth (1/4) of salary per month. If one (1) parent is dead, the other shall receive the entire one-fourth (1/4) salary.

(4) In order to adjust retirement benefits to the purchasing power of the dollar, the board may annually order an increase in benefits paid pursuant to this section. The board may order an increase in benefits by any amount up to the increase in the consumer price index calculated pursuant to KRS 64.527, but ~~[in no case shall]~~ the annual increase ***shall not*** exceed five percent (5%). The board may grant the first increase in 1990.

(5) The board may provide a group hospital and medical insurance plan for retirees, if providing insurance will not jeopardize the capacity of the board to pay retirement and survivor benefits. The board may include retiree spouses and dependent children under the age of nineteen (19) in the plan, but shall not pay the premiums for spouse or dependent child coverage.

HB 505, AN ACT relating to retirement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 95.860 is amended to read as follows:

(1) Upon death of a member due to occupational causes, regardless of length of service, his surviving widow shall be entitled immediately upon cessation of salary or annuity, as the case may be, to an annuity equal to fifty percent (50%) of the member's last rate of salary ***plus the total increase the retired member may have received in his annuity pursuant to KRS 95.859(3)***. This annuity shall be payable until she dies or remarries. No surviving widow shall receive an annuity of less than one hundred and fifty dollars ($150) per month. When Social Security benefits are increased, the minimum shall be increased by a like percentage, provided the increase shall not exceed five percent (5%). In addition, if minor children, under age eighteen (18), survive the member, the widow shall receive twenty-five percent (25%) of the member's last rate of salary until the last child attains age eighteen (18). The combined payments to a widow and minor children, excluding cost-of-living increases ***or increases in the survivor benefit due to increases the retired member may have received in his annuity pursuant to KRS 95.859(3)***, shall not exceed seventy-five percent (75%) of his final rate of salary.

(2) If a widow does not survive the member, or if she remarries, and minor children under age eighteen (18) exist, the children shall be entitled to the benefits provided in KRS 95.861(3).

(3) If neither a widow nor minor children, eligible for benefits survive the member, each dependent parent shall be entitled to an annuity equal to twenty-five percent (25%) of the member's last rate of salary, or fifty percent (50%) to both

parents.

(4) If a widow would receive from a combination of: (a) survivor benefits pursuant to this section, excluding benefits for minor children ***or increases in the survivor benefit due to increases the retired member may have received in his annuity pursuant to KRS 95.859(3)***, and (b) workers' compensation benefits, excluding dependent children's allowances or payments for medical expenses or legal fees related to the workers' compensation claim, an amount greater than one hundred percent (100%) of the deceased member's last rate of salary, then the pension system survivor benefits shall be reduced to the point that the combined payments equal one hundred percent (100%) of the last rate of salary. The survivor benefit shall not be reduced, however, below an amount equal to two and one-half percent (2-1/2%) of average salary for each year of the deceased member's service. Any reduction in the survivor payment shall be based upon workers' compensation benefits applicable at the time the survivor payment is granted, and not upon subsequent increases in either benefit. If workers' compensation benefits are reduced at a subsequent time, the surviving spouse shall inform the board, and the board shall increase the survivor's benefit by the amount of the reductions, but not by more than an amount which would increase the survivor's benefit to fifty percent (50%) of last rate of salary, excluding cost-of-living increases ***or increases in the survivor benefit due to increases the retired member may have received in his annuity pursuant to KRS 95.859(3)***. The board of trustees may pay estimated benefits to a surviving spouse, upon qualification for the benefits, based upon an estimate of workers' compensation benefits until such amounts are actually determined, at which time a final calculation of the spouse's actual benefits shall be determined and the account corrected retroactive to the effective date of the survivor benefit. If workers' compensation benefits are paid in lump sums, the board shall reduce the survivor benefit on a monthly rather than a lump-sum basis. The amount of the monthly reduction shall be based upon the life expectancy of the survivor. The board may request the assistance of the general manager of Kentucky retirement systems to calculate the reduction in survivor benefits when lump-sum payments are involved, and the general manager shall provide such assistance upon request.

(5) A surviving child or parent receiving benefits pursuant to this section shall receive the same cost-of-living increase granted to retirees pursuant to KRS 95.859(3). A surviving spouse who does not receive an increase pursuant to subsection (1) of this section shall receive the same increase an annuitant receives pursuant to KRS 95.859(3).

Section 2. KRS 95.861 is amended to read as follows:

(1) Upon death of a member occurring while in service, arising from any cause other than in the performance of duty, provided the member has had at least three (3) years of total service, his widow shall receive an annuity equal to one and one-half percent (1-1/2%) of average salary for each year of total service, credited to the member, ***plus the total increase the retired member may have received in his retirement annuity pursuant to KRS 95.859(3),*** subject to a maximum payment, excluding cost-of-living increases ***of the member or the widow***, to the widow of fifty percent (50%). If the member has had at least ten (10) years of total service, the widow shall receive an annuity of no less than one hundred and fifty dollars ($150) per month, and when Social Security benefits are increased, the minimum shall be increased by a like percentage, but the increase shall not exceed five percent (5%). Payment of the annuity shall be subject to the following conditions:

(a) The widow had been married to the member at least one (1) year prior to his death;

(b) The widow is at least forty-five (45) years of age, otherwise payment will be deferred until she attains such age, except that if she is or becomes totally disabled before age forty-five (45), or has a minor child or children by the member in her care under age eighteen (18), (including adopted children provided the proceedings for adoption were initiated at least one (1) year prior to death of member) payment of the widow's annuity will begin immediately together with an additional allowance on account of the child or children;

(c) The widow's annuity will terminate in any event when the widow remarries. The annuity of each child or children shall continue until each child attains age eighteen (18).

(2) If the widow has minor children under age of eighteen (18), the annuity to the widow shall be increased one-half (1/2) on account of the first child and one-fourth (1/4) on account of each additional child, subject to a maximum combined payment, excluding cost-of-living increases ***or increases the retired member may have received in his annuity pursuant to KRS 95.859(3)***, to the widow and children of seventy-five percent (75%) of the average salary as defined in KRS 95.851(13).

(3) If the pensioner is not survived by a widow and there are minor children the following benefits shall be paid: (a) one (1) minor child, fifty percent (50%) ***of the average salary plus the total increase the retired member may have received in his annuity pursuant to KRS 95.859(3)***, (b) two (2) minor children, fifteen percent (15%) ***of the average salary*** additional, (c) three (3) or more minor children, ten percent (10%) ***of the average salary*** additional, subject to a maximum combined payment, excluding cost-of-living increases ***of the member or the minor children***, of seventy-five percent (75%) of the average salary as defined in KRS 95.851(13). The annuity of each child or children shall continue until each child attains age eighteen (18), or, in the case of a child regularly employed in full-time educational activities the age of twenty-three (23). The annuity payments shall be reduced in reverse order.

(4) These benefits shall also be payable upon death of the member while on retirement, provided marriage was in effect for at least one (1) year before death.

(5) A surviving child receiving benefits pursuant to this section shall receive the same cost-of-living increases granted to retirees pursuant to KRS 95.859(3). A surviving spouse who does not receive an increase pursuant to subsection (1) of this section shall receive the same increase an annuitant receives pursuant to KRS 95.859(3).

HB 508, AN ACT relating to city licenses.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 243.070 is amended to read as follows:

The city legislative body of any city in which traffic in alcoholic beverages is not prohibited under KRS Chapter 242 may impose license fees for the privilege of manufacturing and trafficking in alcoholic beverages. Only such licenses may be issued as correspond, in their provisions and the business authorized, to the licenses provided for in subsections (1), (2), (3), (6), (7), (8), (16), (17), (18)***,*** ~~[and]~~ (19)***, (23), (24), (26), (27), and (28)*** of KRS 243.030 and subsections (1), (2), (3), (4)***,*** ~~[and]~~ (7) ***and (11)*** of KRS 243.040. The fees imposed shall not exceed twice the amount of the fees imposed in KRS 243.030 and 243.040 for such licenses, except that the fee for a Sunday distilled spirits and wine retail drink license shall not exceed three hundred dollars ($300), the fee for a malt beverage retailer's license ***shall*** ~~[may be fixed at]~~ not ***exceed*** ~~[exceeding]~~ two hundred dollars ($200), the fee for a brewer's license shall not exceed five hundred dollars ($500), and the fee for a distiller's license shall not exceed five hundred dollars ($500).

HB 532, AN ACT relating to retirement benefits for police and firefighters.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 95.775 is amended to read as follows:

(1) If any member of the police ***or*** ~~[and]~~ fire ***department*** ~~[departments]~~ of ***a city*** ~~[such cities]~~ has served twenty (20) years or more and has reached his fifty-first birthday ~~[in such police or fire departments]~~, and if his application to be relieved from ***the*** ~~[such]~~ police or fire ***department*** ~~[departments]~~ is granted, the ~~[said]~~ board of trustees shall order ***payment of*** ~~[and direct that such person be paid]~~ a monthly pension equal to one-half (1/2) of the amount of the salary ***the*** ~~[said]~~ person is or was in receipt of as a member of ***the*** ~~[said]~~ department at the time of granting application.

(2) The board of trustees may annually order an increase in benefits paid pursuant to this section and KRS 95.773 in order to adjust retirement benefits to the purchasing power of the dollar. Annual increases in benefits may be in amounts up to the annual increase in the consumer price index calculated pursuant to KRS 64.527, but shall not exceed five percent (5%).

HCR 47, A CONCURRENT RESOLUTION directing a study of the statutory differences which exists between Kentucky's classes of cities.

WHEREAS, Section 156 of the Constitution of the Commonwealth of Kentucky requires cities to be classified in one of six classes of cities; and

WHEREAS, such classifications have resulted in many statutory differences between cities of varying classifications; and

WHEREAS, local governments, state agencies, and others are in great need, regularly request, and lack the expertise and resources to produce such information; and

WHEREAS, such information could render itself useful for the possible amendment of statutory language which may be obsolete, redundant, or inefficient;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the Legislative Research Commission is directed to study the statutory differences which exists between the classifications of cities in the Commonwealth.

Section 2. That the study shall be completed by July 31, 1995, for distribution to the members of the General Assembly and the general public.

Section 3. Staff services to be utilized in completing this study are estimated to cost $10,000, and shall be provided from the regular commission budget, subject to the limitations and other research responsibilities of the commission.

The Committee on Education reported **HB 187,** with Committee Substitute attached thereto, **HB 312, HB 458,** with Committee Substitute attached thereto, **SB 2, SB 12, SB 15, SB 24, SB 50** and **SB 62,** with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 187, AN ACT relating to the primary program.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.160 is amended to read as follows:

(1) The State Board for Elementary and Secondary Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:

(a) Courses of study for the different grades and kinds of common schools***. The following shall be included:***

1. ***a.*** ~~[, including]~~ Procedures for developing an ungraded primary program as defined in KRS 158.030 ~~[which shall be implemented by the beginning of the 1992-93 school year, and the program, in its entirety, shall be fully implemented]~~ for all students who have not entered the fourth grade in every elementary school in every district***, except as provided in subparagraph 1.b. of this paragraph*** ~~[by the beginning of the 1993-1994 school year]~~. The primary program shall include the following critical attributes: developmentally appropriate educational practices, multiage and multiability classrooms; continuous progress; authentic assessment; qualitative reporting methods; professional teamwork; and positive parent involvement. The implementation of the primary program may take into consideration the necessary arrangements required for students attending part-time.

b. ***A school council established pursuant to KRS 160.345 may establish an alternative primary program. An alternative program shall include developmentally appropriate educational practices and continuous student progress as critical attributes. The school council shall notify its superintendent of the decision to implement an alternative program and shall revise the action plan for program implementation to reflect the program's design. Students attending an alternative primary program shall meet the State Board for Elementary and Secondary Education's criteria for successful completion of the primary school program for promotion to the fourth grade as required in KRS 158.030.***

2. The courses of study for students shall include American sign language and it shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;

(b) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;

(c) The minimum requirements for high school graduation. Prior to the beginning of the 1994-95 school year, the State Board for Elementary and Secondary Education shall review graduation requirements in light of the expected outcomes for students and schools set forth in KRS 158.6451;

(d) Taking, and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number;

(e) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the State Board for Elementary and Secondary Education shall adopt the Uniform State Building Code;

(f) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The regulations shall permit a student who received a physical examination no more than six (6) months prior to his initial admission to Head Start to substitute that physical examination for the physical examination required by the State Board for Elementary and Secondary Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the State Board for Elementary and Secondary Education;

(g) The transportation of children to and from school;

(h) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;

(i) The preparation of budgets and salary schedules for the several school districts under the management and control of the State Board for Elementary and Secondary Education;

(j) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and

(k) The disposal of real and personal property owned by local boards of education.

(2) At the request of a local school council, any local school district superintendent shall request that the State Board for Elementary and Secondary Education waive any administrative regulation promulgated by that board. Prior to the 1994-95 school year, the requested waiver shall be granted to any school meeting the standards adopted pursuant to subsection (1) of this section. After the 1994-95 school year begins, a school shall exceed its threshold to be granted a waiver from regulations. Regulations relating to health and safety, civil rights, any state regulation required by a federal law, and regulations promulgated pursuant to KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful schools shall not be subject to waiver. Any waiver granted under this subsection shall be subject to revocation upon a determination by the State Board for Elementary and Secondary Education that the school holding the waiver has subsequently failed to reach its threshold level as provided for in KRS 158.6455.

(3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the State Board for Elementary and Secondary Education and be certified upon application to the board by such schools.

The Committee Substitute to **HB 187** is as follows:

HB 187, AN ACT relating to the primary program.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.160 is amended to read as follows:

(1) The State Board for Elementary and Secondary Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:

(a) Courses of study for the different grades and kinds of common schools***, subject to the following conditions:***

1. ***a.*** ~~[, including]~~ Procedures for developing an ungraded primary program as defined in KRS 158.030 ~~[which shall be implemented by the beginning of the 1992-93 school year, and the program, in its entirety, shall be fully implemented]~~ for all students who have not entered the fourth grade in every elementary school in every district ***shall be included, except as provided in subparagraph 1.b. of this paragraph*** ~~[by the beginning of the 1993-1994 school year]~~. The primary program shall include the following critical attributes: developmentally appropriate educational practices, multiage and multiability classrooms; continuous progress; authentic assessment; qualitative reporting methods; professional teamwork; and positive parent involvement. The implementation of the primary program may take into consideration the necessary arrangements required for students attending part-time.

b. ***A school council established pursuant to KRS 160.345 may determine that implementing multiage and multiability classrooms need not apply for every grouping of students for every activity throughout the entire day. The school council shall revise the action plan to reflect any changes in the primary program's design.***

2. The courses of study for students shall include American sign language ***which*** ~~[and it]~~ shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;

(b) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;

(c) The minimum requirements for high school graduation. Prior to the beginning of the 1994-95 school year, the State Board for Elementary and Secondary Education shall review graduation requirements in light of the expected outcomes for students and schools set forth in KRS 158.6451;

(d) Taking, and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number;

(e) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the State Board for Elementary and Secondary Education shall adopt the Uniform State

Building Code;

(f) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The regulations shall permit a student who received a physical examination no more than six (6) months prior to his initial admission to Head Start to substitute that physical examination for the physical examination required by the State Board for Elementary and Secondary Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the State Board for Elementary and Secondary Education;

(g) The transportation of children to and from school;

(h) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;

(i) The preparation of budgets and salary schedules for the several school districts under the management and control of the State Board for Elementary and Secondary Education;

(j) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and

(k) The disposal of real and personal property owned by local boards of education.

(2) At the request of a local school council, any local school district superintendent shall request that the State Board for Elementary and Secondary Education waive any administrative regulation promulgated by that board. Prior to the 1994-95 school year, the requested waiver shall be granted to any school meeting the standards adopted pursuant to subsection (1) of this section. After the 1994-95 school year begins, a school shall exceed its threshold to be granted a waiver from regulations. Regulations relating to health and safety, civil rights, any state regulation required by a federal law, and regulations promulgated pursuant to KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful schools shall not be subject to waiver. Any waiver granted under this subsection shall be subject to revocation upon a determination by the State Board for Elementary and Secondary Education that the school holding the waiver has subsequently failed to reach its threshold level as provided for in KRS 158.6455.

(3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the State Board for Elementary and Secondary Education and be certified upon application to the board by such schools.

HB 312, AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 527 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of unlawful possession of a weapon on school property when he deposits, possesses or carriers, whether openly or concealed, any firearm or other deadly weapon, destructive device, or booby trap device, not used solely for instructional or school-sanctioned ceremonial purposes, in any public or private school building or bus, on any public or private school campus, grounds, recreation area, athletic field or any other property owned, used or operated by any board of education, school, board of trustees, regents, or directors for the administration of any public or private educational instruction. The provisions of this chapter shall not apply to institutions of postsecondary or higher education.

(2) Each chief administrator of a public or private school shall display about the school in prominent locations including, but not limited to, sports arenas, gymnasiums, stadiums and cafeterias, a sign at least six (6) inches high and fourteen (14) inches wide stating:

UNLAWFUL POSSESSION OF A WEAPON ON SCHOOL
PROPERTY IN KENTUCKY IS A FELONY PUNISHABLE
BY A MAXIMUM OF FIVE (5) YEARS IN PRISON AND A
TEN THOUSAND DOLLAR ($10,000) FINE.

(3) The provisions of this section prohibiting the unlawful possession of a weapon on school property shall not apply to:

(a) An adult who possesses a firearm, if the firearm is contained within a private vehicle operated by the adult and is not handled by the adult, or by any other person acting with expressed or implied consent of the adult, while the vehicle is on school property;

(b) Any pupils who are members of the reserve officers training corps or pupils enrolled in a course of instruction or members of a school club or team, to the extent they are required to carry arms or weapons in

the discharge of their official class or team duties;

(c) Any peace officer or police officer authorized to carry a concealed weapon pursuant to KRS 527.020;

(d) Persons employed by the Armed Forces of the United States or members of the National Guard when in discharge of their official duties and acting under orders requiring them to carry arms or weapons;

(e) Civil officers of the United States in the discharge of their official duties:

(f) Officers and soldiers of the militia and the National Guard when called into actual service; or

(g) Any other persons, including, but not limited to, exhibitors of historical displays, who have been authorized to carry a firearm by the principal, assistant principal, administration, or board of trustees of the public or private institution.

(4) Unlawful possession of a weapon on school property is a Class D felony.

SECTION 2. A NEW SECTION OF KRS CHAPTER 527 IS CREATED TO READ AS FOLLOWS:

It shall be an affirmative defense to any prosecution for possession of a weapon on school property that the person's behavior was in strict compliance with one of the following classifications:

(1) A person hunting during the lawful hunting season on lands owned by any public or private educational institution and designated as open to hunting by the administrator of the educational institution;

(2) A person possessing unloaded hunting weapons while traversing the grounds of any public or private educational institution for the purpose of gaining access to public or private lands open to hunting with the intent to hunt on the public or private lands, unless the lands of the educational institution are posted prohibiting the entry;

(3) A person possessing guns or knives when conducting or attending a "gun and knife show" when the program has been approved by the administrator of the educational institution; or

(4) A person entering the property for the sole purpose of delivering or picking up passengers and who does not remove, utilize, or allow to be removed or utilized from the vehicle any weapon prohibited by Section 1 of this Act.

Section 3. KRS 527.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

(1) *"Booby trap device" shall have the same meaning as set forth in KRS 237.030.*

(2) "Deface" means to remove, deface, cover, alter*,* or destroy the manufacturer's serial number or any other distinguishing number or identification mark.

(3) "Destructive device" shall have the same meaning as set forth in KRS 237.030.

(4)[~~(2)~~] "Firearm" means any weapon which will expel a projectile by the action of an explosive.

(5)[~~(3)~~] "Handgun" means any pistol or revolver originally designed to be fired by the use of a single hand, or any other firearm originally designed to be fired by the use of a single hand.

HB 458, AN ACT relating to deaf or hard of hearing students attending public institutions of higher education.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 164.478 is amended to read as follows:

(1) It is the intent of the General Assembly to increase the educational level of deaf and hard of hearing persons by assuring them an equal opportunity to obtain an education in the public institutions of higher education.

(2) The public institutions of higher education shall make their programs accessible to deaf and hard of hearing students by providing support services necessary for such students to fully participate in the programs. The support services shall include, but not be limited to, interpreters and notetakers in the classroom, and equal access to all support services available to those who are not deaf or hard of hearing. Appropriate *assistive listening devices and alerting* [~~emergency warning~~] devices shall be available in dormitories housing deaf or hard of hearing students.

(3) (a) Primary funding for support services at the institutions, excluding costs of capital equipment or modifications for installation of *assistive listening devices and alerting* [~~warning~~] devices, shall come from vocational rehabilitation funds pursuant to KRS 151B.185 to 151B.195 and subject to the restrictions and requirements for such services set forth in the federally-approved state plan for vocational rehabilitation services. The institutions of higher education and the *Department* [~~office~~] of Vocational Rehabilitation shall cooperate to assure that funds are used to effectively provide support services for deaf or hard of hearing students.

(b) The General Assembly shall appropriate funds to the *Department of Vocational Rehabilitation* [~~Council on Higher Education~~] to cover the costs of support services at the institutions for *students* [~~residents of Kentucky~~] who are deaf or hard of hearing *and are not otherwise eligible under the Title I state plan for the Department of Vocational Rehabilitation* [~~students and who do not qualify for support services from vocational rehabilitation funding or other sources of funding~~]. The funds shall be distributed to institutions based upon actual costs of providing support services to individual students ***or established fees for service***.

[~~(c) The provision of support services to a deaf or hard of hearing student shall not be refused or delayed because of a disagreement between the institution and the Office of Vocational Rehabilitation as to who is responsible for funding. In such case it shall be the responsibility of the institution to provide the services and resolve the disagreement.~~]

The Committee Substitute to **HB 458** is as follows:

HB 458, AN ACT relating to deaf or hard of hearing students attending public institutions of higher education.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 164.478 is amended to read as follows:

(1) It is the intent of the General Assembly to increase the educational level of deaf and hard of hearing persons by assuring them an equal opportunity to obtain an education in the public institutions of higher education.

(2) The public institutions of higher education shall make their programs accessible to deaf and hard of hearing students by providing support services necessary for such students to fully participate in the programs. The support services shall include, but not be limited to, interpreters and notetakers in the classroom, and equal access to all support services available to those who are not deaf or hard of hearing. Appropriate ***assistive listening devices and alerting*** [~~emergency warning~~] devices shall be available in dormitories housing deaf or hard of hearing students.

(3) (a) ***The General Assembly shall appropriate funds to the Department of Vocational Rehabilitation excluding costs of capital equipment or modifications for installation of assistive listening or alerting devices to cover the costs of support services at the institutions for students who are deaf or hard of hearing*** [~~Primary funding for support services at the institutions, excluding costs of capital equipment or modifications for installation of warning devices, shall come from vocational rehabilitation funds pursuant to KRS 151B.185 to 151B.195 and subject to the restrictions and requirements for such services set forth in the federally approved state plan for vocational rehabilitation services. The institutions of higher education and the office of vocational rehabilitation shall cooperate to assure that funds are used to effectively provide support services for deaf or hard of hearing students~~].

(b) The ***Department of Vocational Rehabilitation shall administer funding of support services at institutions for students who are deaf or hard of hearing contingent on General Assembly funding. The institutions of higher education and the Department of Vocational Rehabilitation shall cooperate to assure that funds are used to effectively provide support services to students who are deaf and hard of hearing*** [~~General Assembly shall appropriate funds to the Council on Higher Education to cover the costs of support services at the institutions for residents of Kentucky who are deaf or hard of hearing students and who do not qualify for support services from vocational rehabilitation funding or other sources of funding. The funds shall be distributed to institutions based upon actual costs of providing support services to individual students~~].

(c) The ***funds shall be distributed to institutions based upon actual costs or established fees for service of providing support services to individual students*** [~~provision of support services to a deaf or hard of hearing student shall not be refused or delayed because of a disagreement between the institution and the Office of Vocational Rehabilitation as to who is responsible for funding. In such case it shall be the responsibility of the institution to provide the services and resolve the disagreement~~].

SB 2, AN ACT relating to the Kentucky Higher Education Student Loan Corporation and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 164A.020 is amended to read as follows:

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

(1) "Board" means the board of directors of the corporation.

(2) "Bonds" or "notes" means the bonds or bond anticipation notes authorized to be issued by the corporation pursuant to this chapter.

(3) "Corporation" means the Kentucky Higher Education Student Loan Corporation, an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky created to perform essential governmental services.

(4) "Eligible institution" means any educational institution described as an eligible institution in the federal act which has, if required by the guarantee agency, a contract in force with the guarantee agency pursuant to the federal act, and this chapter.

(5) "Eligible lender" means the Kentucky Higher Education Assistance Authority, a de jure political subdivision of the Commonwealth of Kentucky and the corporation and all other entities described as eligible lenders in the federal act which have in force a contract with the guarantee agency providing for loan guarantees to be issued by the guarantee agency to the subject lender under the federal act and this chapter.

(6) "Federal act" means the Higher Education Act of 1965, as ***from time to time*** amended, codified as Title 20, United States Code, Sections ***1001***[~~1071~~] et seq.

(7) "Guarantee agency" means the Kentucky Higher Education Assistance Authority duly organized and existing pursuant to the statutory laws of the Commonwealth of Kentucky or any agency authorized as a guarantor pursuant to the federal act.

(8) "Qualified student" means a student who qualifies for an insured student loan under the federal act.

(9) "Insured student loan" means ***a loan*** [~~an obligation representing advances of money~~] to a qualified student ***on which*** [~~evidenced by one (1) or more promissory notes~~] the payment of principal [~~of~~] and interest [~~on which~~] is ***at least ninety-eight percent (98%)*** insured by the guarantee agency and reinsured [~~to the extent of not less than eighty percent (80%) of the principal amount thereof~~] by the Secretary of Education of the United States ***in accordance with the requirements of*** [~~under~~] the federal act, or ***at least ninety-eight percent (98%)*** [~~fully~~] insured as to principal amount by the United States [~~Secretary of Education~~] under the federal act ***or the Health Professions Educational Assistance Act of 1976, codified as Title 42, United States Code, section 294 et seq. as from time to time amended***. As used in connection with the purchase, making or acquisition of insured student loans by the corporation, the term insured student loan shall further mean and refer to any contingent interest, security interest, pledge, commitment, chose in action***,*** or other property interest in any such loan.

Section 2. KRS 164A.080 is amended to read as follows:

(1) The corporation ***may*** [~~is hereby authorized to~~] provide for the issuance, at one (1) time or from time to time, of not exceeding five hundred fifty-three million dollars ($553,000,000) in bonds of the corporation to carry out and effectuate its corporate purposes and powers. In anticipation of the issuance of [~~such~~] bonds***,*** the corporation ***may*** [~~also is hereby authorized to~~] provide for the issuance, at one (1) time or from time to time, of bond anticipation notes. The principal of and the interest on [~~such~~] bonds or notes shall be payable solely from the funds [~~herein~~] provided for [~~such~~] payment. Any [~~such~~] notes may be made payable from the proceeds of bonds or renewal notes or, ***if*** [~~in the event~~] bond or renewal note proceeds are not available, [~~such~~] notes may be paid from any available revenues or assets of the corporation. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the corporation at ***the*** [~~such~~] price or prices and under ***the*** [~~such~~] terms and conditions [~~as may be~~] determined by the corporation. Any [~~such~~] bonds or notes shall bear interest at ***a*** [~~such~~] rate or rates [~~as may be~~] determined by the corporation. Notes shall mature at ***a*** [~~such~~] time or times not exceeding five (5) years from their date or dates and bonds shall mature at ***the*** [~~such~~] time or times not exceeding thirty (30) years from their date or dates, as [~~may be~~] determined by the corporation. The corporation shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached [~~thereto~~], and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the state. ***If*** [~~In case~~] any officer whose ***signature*** [~~signatures~~] or a facsimile of whose signature ***appears*** [~~shall appear~~] on any bonds or notes or coupons attached ***to them*** [~~thereto~~] shall cease to be ***an*** [~~such~~] officer before the delivery ***of the bonds or notes, the*** [~~thereof, such~~] signature or [~~such~~] facsimile shall [~~nevertheless~~] be valid and sufficient for all purposes [~~the same~~] as if he had remained in office until ***the*** [~~such~~] delivery. The corporation may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the corporation may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the approval of a resolution of the corporation authorizing the sale of its bonds or notes, ***the*** [~~such~~] bonds or notes may be sold in ***a*** [~~such~~] manner, either at public or private sale, and for ***a*** [~~such~~] price ***the*** [~~as said~~] corporation shall determine to be for the best interest of the corporation and best effectuate the purposes of this chapter ***if the*** [~~provided that such~~] sale ***is*** [~~shall be~~] approved by the corporation.

(2) The proceeds of any bonds or notes shall be used solely for the purposes for which ***they are*** issued and shall be disbursed in ***a*** [~~such~~] manner and under [~~such~~] restrictions, if any, [~~as~~] the corporation may provide in the resolution authorizing the issuance of [~~such~~] bonds or notes or in the trust agreement [~~hereinafter mentioned~~] securing ***bonds or notes*** [~~the same~~]. The principal of and interest on any bonds issued by the corporation shall be payable [~~solely and~~] only from the proceeds derived by the corporation from insured student loans made and purchased from the proceeds of ***the*** [~~such~~] bonds. [~~No such bond proceeds may be expended for the purchase or making of any insured student loan unless such insured student loan is insured as to the principal and interest payments by the United States of America or the guarantee agency, and the guarantee agency has reinsured such insured student loan with the United States of America to the maximum extent permitted by the Higher Education Act of 1965, as amended.~~]

(3) Prior to the issuance of any bonds or notes that are not secured by the repayment of student loans at least ninety-eight percent (98%) insured by the guarantee agency and reinsured by the United States of America, the corporation

shall obtain approval of the issuance from the General Assembly in accordance with the provisions of KRS 56.870(1). This requirement shall not apply to bond issues which are refunded for the purpose of achieving debt service savings and which do not extend the term of the original bonds.

Section 3. Whereas, recent amendments to the federal Act, enacted in Public Law 103-66, reduce the maximum and minimum rates of insurance and reinsurance of insured student loans disbursed on or after October 1, 1993, thereby precluding the corporation from financing, making, or purchasing the loans under its current statutory authority, an emergency is declared to exist and this Act shall become effective upon its passage and approval by the Governor.

SB 12, AN ACT relating to the college access program.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

Notwithstanding KRS 164.753(4)(d), the Kentucky Higher Education Assistance Authority may award college access program grants pursuant to KRS 164.753(4), to the extent funds are available for the purpose, to financially needy part-time and full-time undergraduate students enrolled or accepted for enrollment at participating institutions that are colleges, business schools, schools of nursing, or vocational schools located within the Commonwealth. Grants under this section to recipients attending colleges shall be awarded only for attendance in a program of study of at least two (2) academic years duration that leads to a degree, and shall not exceed the prevailing amount charged for tuition at publicly supported community colleges in Kentucky. Grants under this section shall be awarded to students enrolled or accepted for enrollment at publicly operated vocational-technical institutions only for attendance in a program of study of at least two (2) academic year duration that leads to a certificate or diploma. Awards to recipients attending business schools, schools of nursing, or vocational schools shall not exceed the prevailing amount charged for tuition at publicly operated vocational-technical institutions in Kentucky. The provisions of this section shall not limit the authority's capability to use funds appropriated for this purpose to match federal funds, make grant awards, adopt administrative regulations that conform to the requirements of federal laws and regulations for full participation in federally funded student financial assistance programs.

SB 15, AN ACT relating to superintendent screening committees, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 160.352 is amended to read as follows:

(1) *For purposes of this section the term "minority" means American Indian; Alaskan Native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific Islander; or other ethnic group underrepresented in a local school district.*

(2) Each board of education shall appoint a superintendent of schools after receiving the recommendations of a screening committee. A screening committee shall be established within thirty (30) days of a determination by a board of education that a vacancy has occurred or will occur in the office of superintendent.

(3)[~~(2)~~] A screening committee shall be composed of:

(a) Two (2) teachers, elected by the teachers in the district;

(b) One (1) board of education member, appointed by the board chairman;

(c) One (1) principal, elected by the principals in the district; [~~and~~]

(d) One (1) parent, elected by the presidents of the parent-teacher organizations of the schools in the district*; and*

(e) If a minority member is not elected or appointed to a screening committee in districts with a minority population of eight percent (8%) or more, as determined by the enrollment on the preceding October 1, the committee membership shall be increased to include one (1) minority parent. This minority parent member shall be elected by the minority parents in an election conducted by the local school board. Minority parents in the district shall be given adequate notice of the date, time, place, and purpose of the election.

(4)[~~(3)~~] Prior to appointing a superintendent of schools, the board of education shall consider the recommendations of the screening committee, but the board shall not be required to appoint a superintendent from the committee's recommendations.

Section 2. Whereas it is necessary to ensure that the minority population has representation on superintendent screening committees, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor.

SB 24, AN ACT relating to teachers' loans and scholarships.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS 164.740 THROUGH 164.770 IS CREATED TO READ AS FOLLOWS:

(1) It is the intent of the General Assembly to establish a teacher scholarship program to attract and encourage the most academically talented individuals to become certified Kentucky teachers and render teaching service in Kentucky schools.

(2) For purposes of this section the terms listed below shall have the following meanings:

(a) "Critical shortage area" means an understaffing of teachers in particular subject matters at the secondary level, in grade levels, or in geographic locations at the elementary and secondary level, as determined by the commissioner of education in consultation with the authority. The commissioner and the authority may use any source considered reliable including, but not limited to, local education agencies to identify the critical shortage areas.

(b) "Eligible program of study" means an undergraduate or graduate program of study which is preparatory to initial teacher certification or recertification in a critical shortage area, but does not lead to a certificate, diploma, or degree in theology, divinity, or religious education.

(c) "Participating institution" means an institution of higher education located in Kentucky which offers an eligible program of study and has in force an agreement with the authority providing for administration of this program.

(d) "Qualified teaching service" means teaching the major portion of each school day for at least seventy (70) days each semester in a public school of the Commonwealth or a private school certified pursuant to KRS 156.160(3).

(e) "Semester" means a period of about eighteen (18) weeks, which usually makes up one-half (1/2) of a school year or one-half (1/2) of a participating institution's academic year.

(3) The authority may, to the extent of appropriations and other funds available to it pursuant to subsection (9) of this section, award teacher scholarships to persons eligible under subsection (4) of this section, who declare an intention to enter the teaching profession and render qualified teaching service. Each teacher scholarship shall be evidenced by a promissory note that requires repayment or cancellation pursuant to subsection (6) of this section.

(4) Kentucky residents who are enrolled or accepted for enrollment in an eligible program of study on a full-time basis at a participating institution shall be eligible, except for limitations imposed in subsection (6)(b) of this section, to apply for teacher scholarships pursuant to this section if they meet the following criteria:

(a) High school graduates enrolling in college full-time for the first time shall rank academically in the top twenty percent (20%) of their high school graduating classes, or shall score at or above the eightieth percentile on a test approved by the Council on Higher Education for admission to Kentucky's institutions of higher education, or shall be recommended by an academic course teacher, with the approval of the principal, stating that in his professional opinion the individual is capable of performing, and will perform, in college at or above the academic performance level necessary to qualify for entry into a teacher education program;

(b) Certified teachers shall agree to pursue appropriate recertification and to render qualified teaching service in a critical shortage area upon completion of the recertification program;

(c) Applicants, other than certified teachers, with earned college credits shall have attained at least the equivalent of a 2.5 grade point average on a 4.0 scale for all undergraduate work; and

(d) Applicants who have previously earned graduate level credits shall have attained at least the equivalent of a 3.0 grade point average on a 4.0 scale for all graduate work.

(5) The authority shall establish, by administrative regulation, the maximum annual amount of scholarship to be awarded under this section. The aggregate amount of scholarships awarded to an individual, including any amount received pursuant to KRS 156.611, 156.613, 164.768, or 164.770, shall not exceed twenty thousand dollars ($20,000), and the amount of each scholarship to be awarded shall not exceed the applicant's total cost of education minus other financial assistance received or expected to be received by the applicant during the academic period.

(6) (a) The authority shall award teacher scholarships only to eligible students who agree to render qualified teaching service as certified teachers.

(b) A teacher scholarship shall not be awarded or a promissory note cancellation shall not be granted to any person who is in default on any obligation to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 until financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the authority for cause.

(c) Recipients shall render one (1) semester of qualified teaching service for each semester of scholarship received, except that recipients who teach in a critical shortage area designated by the authority shall render one (1) semester of qualified teaching service as repayment for two (2) semesters of scholarships received. Upon completion of each semester of qualified teacher service, the authority shall cancel the appropriate

number of promissory notes.

(d) ***If the recipient of a teacher scholarship fails to complete an eligible program of study at a participating institution or fails to render qualified teaching service in any semester following certification or recertification, unless the failure is temporarily waived for cause by the authority, the recipient shall immediately become liable to the authority for repayment of the sum of all outstanding promissory notes and accrued interest. Persons liable for repayment of scholarships under this paragraph shall be liable for interest accruing from the dates on which the teacher scholarships were disbursed;***

(e) ***Recipients who have outstanding loans or scholarships under KRS 156.611, 156.613, 164.768, or 164.770 respectively, and who render qualified teaching service, shall have their notes canceled in accordance with subsection (6)(c) of this section.***

(f) ***The authority shall establish, by administrative regulation, the terms and conditions for the award, cancellation, and repayment of teacher scholarships including, but not limited to, the selection criteria, amount of scholarship payments, deferments, the rate of repayment, and the interest rate thereon.***

(g) ***Notwithstanding any other statute to the contrary, the maximum interest rate applicable to repayment of a promissory note under this section shall be twelve percent (12%) per annum, except that if a judgment is rendered to recover payment, the judgment shall bear interest at the rate of five percent (5%) greater than the rate actually charged on the promissory note.***

(7) ***A repayment obligation imposed by this section shall not be voidable by reason of the age of the recipient at the time of receiving the teacher scholarship.***

(8) ***Failure to meet repayment obligations imposed by this section shall be cause for the revocation of a person's teaching certificate, subject to the procedures set forth in KRS 161.120.***

(9) ***All moneys repaid to the authority under this section shall be added to the appropriations made for purposes of this section, and the funds and unobligated appropriations shall not lapse.***

(10) ***The authority may execute appropriate contracts and promissory notes for administering this section.***

(11) ***If available funds are insufficient for all requested scholarships for eligible applicants during any fiscal year, the authority shall give priority consideration to eligible applicants who previously received teacher scholarships. If funds are insufficient to make all requested renewal scholarships to eligible applicants, the authority shall reduce all scholarship awards to the extent necessary to provide scholarships to all qualified renewal applicants. If, after awarding all eligible renewal applicants, funds are not depleted, initial applications shall be ranked according to regulatory selection criteria and awards made to the most highly qualified applicants until funds are depleted. The regulatory selection criteria shall provide that after awarding all eligible renewal applicants, the proportion of awards to minority applicants shall equal or exceed the proportion of eligible minority applicants to the total number of eligible applicants.***

Section 2. KRS 164.7515 is amended to read as follows:

The Kentucky Higher Education Assistance Authority shall promote, support, and assist in the program created in KRS 158.798 by:

(1) Establishing liaison and assisting in the coordination of any college-level scholarship programs established pursuant to KRS 158.798;

(2) Educating higher education institutions, college students, and businesses as to the benefits, activities, and methods of participation in this program;

(3) Providing scholarships, grants, loans, recognition, and work study assistance to college students in this program, when available, and pursuant to KRS 164.740 to ***Section 1 of this Act*** [~~164.770~~].

Section 3. The following KRS sections are repealed:

164.768 Legislative intent – Student loans for specified majors.

164.770 Legislative intent – Student loans for teacher education.

SB 50, AN ACT relating to school employees.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 160.380 is amended to read as follows:

(1) As used in this section:

(a) "Relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.

(b) "Vacancy" shall mean any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.

(2) (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the State Board for Elementary and Secondary Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year. ***No superintendent of schools shall appoint or transfer himself to another position within the school district.***

(b) When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.

(c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.

(d) When a vacancy occurs in a local district, the superintendent shall conduct a search to locate minority teachers to be considered for the position.

(e) Effective July 1, 1991, no relative of a superintendent of schools shall be an employee of the school district. However, this shall not apply to a relative who is an employee of the school district prior to July 13, 1990, and who is certified for the position he holds, as long as the superintendent is holding office on July 1, 1991, and it shall not apply to a superintendent's spouse who has at least twenty (20) years of service in school systems. A superintendent's spouse who is employed under this provision shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise teacher aides and student teachers. However, the superintendent shall not promote his relative who continues employment under an exception of this subsection.

(f) No superintendent shall employ a relative of a school board member of the district, unless on July 13, 1990, the board member's relative is an employee of the district, the board member is holding office, and the relative was not initially hired by the district during the tenure of the board member. A relative employed in 1989-90 and initially hired during the tenure of a board member serving on July 13, 1990, may continue to be employed during the remainder of the board member's term. However, the superintendent shall not promote any relative of a school board member who continues employment under the exception of this subsection.

(g) No principal's relative shall be employed in the principal's school, except a relative who is not the principal's spouse and who was employed in the principal's school during the 1989-90 school year. No spouse of a principal shall be employed in the principal's school, except a principal's spouse who was employed in the principal's school during the 1989-90 school year for whom there is no position for which the spouse is certified to fill in another school operated in the district. The provisions of KRS 161.760 shall not apply to any transfer made in order to comply with the provisions of this paragraph.

(3) No superintendent shall employ in a position which involves supervisory or disciplinary power over a minor, any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor. Each superintendent shall request all conviction information for any applicant for initial employment from the Justice Cabinet prior to employing the applicant.

(4) (a) If a school term has begun and a position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the required records. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.

(b) Employment shall be contingent on the receipt of records documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165.

(c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the district of a record documenting a criminal act as defined above and no further procedures shall be required.

(5) Each application or renewal form, provided by the employer to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A

CONDITION OF EMPLOYMENT."

(6) Any request for records under subsection (3) of this section shall be on a form approved by the Justice Cabinet, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.

(7) The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988. Initial employment shall include first time applicants and applicants who were former employees of the district but have not been employed by the district for six (6) months.

SB 62, AN ACT relating to education.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.029 is amended to read as follows:

(1) There is hereby established a State Board ***of*** ~~[for Elementary and Secondary]~~ Education, which shall consist of eleven (11) members appointed by the Governor and confirmed by the Senate and the House of Representatives of the General Assembly, with the executive director of the Council on Higher Education serving as an ex officio nonvoting member. Seven (7) members shall represent each of the Supreme Court districts as established by KRS 21A.010, and four (4) members shall represent the state at large. Each of the appointed members shall serve for a four (4) year term, except the initial appointments shall be as follows: the seven (7) members representing Supreme Court districts shall serve a term which shall expire on April 14, 1994; and the four (4) at-large members shall serve a term which shall expire on April 14, 1992. Subsequent appointments shall be submitted to the Senate and to the House of Representatives for confirmation in accordance with KRS 11.160. Each appointment by the Governor shall be agreed upon by both chambers in order for the person to be confirmed. Each confirmed appointee shall take office on April 15.

(2) Appointments shall be made without reference to occupation, political affiliation, or similar consideration. No member at the time of his appointment or during the term of his service shall be engaged as a professional educator. Pursuant to KRS 63.080, a member shall not be removed except for cause.

(3) A vacancy in the membership of the board shall be filled by the Governor for the unexpired term with the consent of the Senate and the House of Representatives. In the event that the General Assembly is not in session at the time of the appointment, the consent of the Senate and the House of Representatives shall be obtained during the time the General Assembly next convenes.

(4) At the first regular meeting of the board in each fiscal year, a chairperson shall be elected from its voting membership.

(5) The members shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(6) The commissioner of education shall serve as the executive secretary to the board.

(7) The primary function of the board shall be to develop and adopt policies and administrative regulations by which the Department of Education shall be governed in planning, coordinating, administering, supervising, operating, and evaluating the educational programs, services, and activities within the Department of Education which are within the jurisdiction of the board.

Section 2. KRS 156.010 is amended to read as follows:

(1) The Department of Education shall consist of the Superintendent of Public Instruction who shall be the chief executive officer of the department, the organizational structure of the department as set forth in this section and the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(2) The Superintendent of Public Instruction shall appoint a deputy superintendent ***of*** ~~[for Elementary and Secondary]~~ education, who shall directly supervise an office of instruction, headed by an office head and composed of Divisions of Teacher Education and Certification, Curriculum and Staff Development, Compensatory Education, Support Services, Community Education, and Student Services; and an Office of Education for Exceptional Children, headed by an office head and composed of Divisions of Categorical Programs, Support Services, Coordinated Programs, the Kentucky School for the Blind, the Kentucky School for the Deaf, and an Office of Secondary Vocational Education composed of Divisions of Program Services, Staff Development, and Support Services.

(3) The Superintendent of Public Instruction shall appoint a deputy superintendent for research, who shall directly supervise an Office of Research and Planning, headed by an office head and composed of Divisions of Accreditation, Planning, Research, and Evaluation; and an Office of Communication Services, headed by an office head and composed of Divisions of Media Services, Recognition and Special Events, Public Information, and Printing Services. The Superintendent shall also appoint a deputy superintendent for administration, who shall directly supervise an Office of School Administration and Finance, headed by an office head and composed of Divisions of Buildings and Grounds, Pupil Transportation, Pupil Attendance, School District Finance, Textbook Services, Surplus Property, School Food Services, and Insurance Services; and an Office of Internal Administration, headed by an office head and composed of Divisions of Purchasing, Accounting, Budget Analysis, Computer Services, Personnel Services, and Equal Education Opportunity. Directly attached and responsible to the Superintendent of Public Instruction also shall be an Office of Legal Services headed by an office head, an assistant who shall be secretary to the State Board ***of*** ~~[for Elementary and~~

~~Secondary]~~ Education, a chief executive assistant to the Superintendent, and an ombudsman responsible for coordination and referral of correspondence from the public as it relates to departmental services and functions.

(4) The Superintendent of Public Instruction shall establish the organizational units below the division level, and arrange the units within the organizational structure of the Department of Education as set forth in subsections (1) to (3) of this section to provide required program and administrative services and assure effective execution of the department's responsibilities. The Superintendent shall further, and as appropriate, abolish or assign, within the organizational structure of the Department of Education established by subsections (1) to (3) of this section, those assistant office head positions and principal assistant positions within the department not specifically mentioned in this section but existing as of July 1, 1988.

(5) As of July 1, 1988, all appropriate transfers of functions, personnel, funds, equipment, facilities, and records shall be made within the Department of Education to implement the provisions of this section and actions taken pursuant hereto.

(6) The Superintendent of Public Instruction shall have general supervision of all assistants, agents, and employees. He shall be responsible for implementing policies promulgated by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. He may clothe his assistants with full power of attorney to act for him in the supervision, inspection, and administration of the schools over which he has supervisory and administrative control.

(7) All employees shall be reimbursed for necessary traveling expenses incurred in the performance of their official duties, and no part of the reimbursement shall be included in or accounted as a part of their salaries.

(8) The Superintendent of Public Instruction, through his appropriate deputy superintendents, assistants, office heads, and division directors, shall exercise all the administrative functions of the state in relation to the management and control of the public common schools, community education, the Kentucky School for the Blind, and the Kentucky School for the Deaf. The Department of Education shall exercise also those powers relating to television in aid of education and other proper public functions, as provided in KRS 156.070.

(9) The Kentucky School for the Blind Advisory Board, the Kentucky School for the Deaf Advisory Board, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, the State Advisory Committee for Educational Improvement, and the State Textbook Commission shall be administratively attached to the office of the chief state school officer, but each shall continue to exercise all the functions conferred upon it by law.

(10) The State Department of Education, in the operation and management of its schools and the programs at these schools, shall meet all required federal and state standards relating to facilities and personnel qualifications; however, no license or license fee shall be required for any school or program operated by the State Department of Education.

(11) The Department of Education shall be the sole state agency for the purpose of developing and approving state plans required by state or federal laws and regulations as prerequisites to receiving federal funds ***of*** ~~[for Elementary and Secondary]~~ education.

(12) The provisions of subsections (1), (2), (3), (4), (5), (6), and (8) of this section shall remain effective until January 1, 1991.

(13) Effective January 1, 1991, the commissioner of education shall be the chief executive of the Department of Education. The commissioner shall be responsible for administering, structuring, and organizing the department and its services including, but not limited to, the following:

(a) Technical assistance with curriculum design, school administration and finance, computer and technology services, media services, community education, secondary vocational education, education for exceptional children, and professional development;

(b) Compensatory education;

(c) Research and planning, which shall include, but not be limited to, a statewide research and development effort to identify or develop the best educational practices to be used in the public schools of the Commonwealth. Appropriations for this purpose may be used within the department or for contracting with other individuals, agencies, universities, laboratories, or organizations;

(d) Kentucky School for the Blind and the Kentucky School for the Deaf;

(e) Performance and outcome assessments;

(f) Monitoring the management of school districts, including administration and finance, implementation of state laws and regulations, and student performance; and

(g) Implementing state laws and the policies promulgated thereunder by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education and the Education Professional Standards Board.

(14) The commissioner of education may delegate to his assistants any authority to act for him in the supervision, inspection, and administration of the schools to the extent he has supervisory and administrative control.

Section 3. KRS 156.024 is amended to read as follows:

Prior to submission of the formal budgetary requests of the Department of Education, established in KRS 156.010, to the Governor and executive branch, complete copies of the budget areas in the board's jurisdiction shall be forwarded to the State

Board ***of*** [~~for Elementary and Secondary~~] Education to enable it to fully investigate and review said requests and make recommendations to the Governor.

Section 4. KRS 156.035 is amended to read as follows:

(1) The Kentucky State Board ***of*** [~~for Elementary and Secondary~~] Education is recognized to be a public body corporate and politic, and an agency and instrumentality of the Commonwealth in the performance of essential governmental functions.

(2) For the benefit of programs under its control and supervision, the board is authorized to implement the provisions of any act of Congress appropriating and apportioning funds to the state, to receive funds appropriated by the Kentucky General Assembly, to provide for the proper apportionment and disbursement of such funds in accordance with state or federal laws, and to accept and provide for the administration of any gifts, donations, or devises.

(3) (a) The board is authorized to expend funds necessary for errors and omissions insurance premiums for insurance to cover the defense of, and any damages and costs awarded in, any civil action brought against individual board members on account of an act made in the scope and course of their performance of legal duties as board members.

(b) The authorization of the expenditure of public funds for insurance is deemed critical to continuing to attract qualified individuals to become members of state boards, and is deemed to authorize the expenditure of public funds for a public purpose.

(c) Nothing in this subsection shall be construed as a waiver of the sovereign immunity of the Commonwealth with respect to claims against the State Board of Education, the Department of Education, or any of their respective officers, agents, or employees.

Section 5. KRS 156.040 is amended to read as follows:

(1) The members of the State Board ***of*** [~~for Elementary and Secondary~~] Education shall have the same qualifications as school board members, except that members shall be at least thirty (30) years of age. Appointments shall be made without reference to occupation, political affiliation, or similar considerations. No member at the time of his appointment or during the term of his service shall be engaged as a professional educator.

(2) The members of the State Board ***of*** [~~for Elementary and Secondary~~] Education shall have the same qualifications as local board members pursuant to KRS 160.180, except the members of the State Board ***of*** [~~for Elementary and Secondary~~] Education shall be at least thirty (30) years of age and shall have a bachelor's degree from an accredited college or university.

Section 6. KRS 156.060 is amended to read as follows:

For meetings of the State Board ***of*** [~~for Elementary and Secondary~~] Education, a majority of the voting members shall constitute a quorum for the transaction of business. The board shall meet not less than every three (3) months and at other times it may be called as provided in this section. Special meetings of the board may be called by the chairperson, and upon written request of two (2) members, the chairperson shall call a special meeting of the board to be held not later than twenty (20) days following receipt of the written request. The chairperson shall give notice through the secretary by registered or certified mail, return receipt requested, to each member of the board at least ten (10) days prior to the time of any meeting unless all members of the board waive notice in writing. The offices of the board shall be at the seat of government in the Department of Education and shall be provided by the state. Members of the board may receive a per diem of one hundred dollars ($100) for each regular or special meeting attended and actual expenses for attending meetings, and may be reimbursed for other actual and necessary expenditures incurred in the performance of their duties authorized by the board. The per diem and expenses shall be paid out of the appropriation for the board.

Section 7. KRS 156.070 is amended to read as follows:

(1) The State Board ***of*** [~~for Elementary and Secondary~~] Education shall have the management and control of the common schools and all programs operated in these schools, including interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for the Blind, and community education programs and services.

(2) The State Board ***of*** [~~for Elementary and Secondary~~] Education may designate an organization or agency to manage interscholastic athletics in the common schools, provided that the rules, regulations, and bylaws of any organization or agency so designated shall be approved by the board, and provided further that the board shall adopt administrative regulations providing for the appeal to the board of any decisions made by the designated managing organization or agency. The state board or any agency designated by the state board to manage interscholastic athletics shall not promulgate rules, administrative regulations, or bylaws which prohibit pupils in grades seven (7) to eight (8) from participating in any high school sports except for high school varsity wrestling, soccer, and football, or from participating on more than one (1) school-sponsored team at the same time in the same sport. The State Board ***of*** [~~for Elementary and Secondary~~] Education, or an agency designated by the board to manage interscholastic athletics, may promulgate administrative regulations restricting, limiting, or prohibiting participation in high school varsity wrestling, soccer, and football for students who have not successfully completed the eighth grade.

(3) (a) The State Board ***of*** [~~for Elementary and Secondary~~] Education is hereby authorized to lease from the State Property and Buildings Commission, or others, whether public or private, any lands, buildings, structures,

installations, and facilities suitable for use in establishing and furthering television and related facilities as an aid or supplement to classroom instruction, throughout the Commonwealth, and for incidental use in any other proper public functions. The lease may be for any initial term commencing with the date of the lease and ending with the next ensuing June 30, which is the close of the then current fiscal biennium of the Commonwealth, with exclusive options in favor of the board to renew the same for successive ensuing bienniums, July 1 in each even year to June 30 in the next ensuing even year; and the rentals may be fixed at the sums in each biennium, if renewed, sufficient to enable the State Property and Buildings Commission to pay therefrom the maturing principal of and interest on, and provide reserves for, any revenue bonds which the State Property and Buildings Commission may determine to be necessary and sufficient, in agreement with the board, to provide the cost of acquiring the television and related facilities, with appurtenances, and costs as may be incident to the issuance of the bonds.

(b) Each option of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education to renew the lease for a succeeding biennial term may be exercised at any time after the adjournment of the session of the General Assembly at which appropriations shall have been made for the operation of the state government for such succeeding biennial term, by notifying the State Property and Buildings Commission in writing, signed by the chief state school officer, and delivered to the secretary of the Finance and Administration Cabinet as a member of the commission. The option shall be deemed automatically exercised, and the lease automatically renewed for the succeeding biennium, effective on the first day thereof, unless a written notice of the board's election not to renew shall have been delivered in the office of the secretary of the Finance and Administration Cabinet before the close of business on the last working day in April immediately preceding the beginning of the succeeding biennium.

(c) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall not itself operate leased television facilities, or undertake the preparation of the educational presentations or films to be transmitted thereby, but may enter into one (1) or more contracts to provide therefor, with any public agency and instrumentality of the Commonwealth having, or able to provide, a staff with proper technical qualifications, upon which agency and instrumentality the board, through the chief state school officer and the Department of Education, is represented in such manner as to coordinate matters of curriculum with the curricula prescribed for the public schools of the Commonwealth. Any contract for the operation of the leased television or related facilities may permit limited and special uses of the television or related facilities for other programs in the public interest, subject to the reasonable terms and conditions as the board and the operating agency and instrumentality may agree upon; but any contract shall affirmatively forbid the use of the television or related facilities, at any time or in any manner, in the dissemination of political propaganda or in furtherance of the interest of any political party or candidate for public office, or for commercial advertising. No lease between the board and the State Property and Buildings Commission shall bind the board to pay rentals for more than one (1) fiscal biennium at a time, subject to the aforesaid renewal options. The board may receive and may apply to rental payments under any lease and to the cost of providing for the operation of the television or related facilities not only appropriations which may be made to it from state funds, from time to time, but also contributions, gifts, matching funds, devises, and bequests from any source, whether federal or state, and whether public or private, so long as the same are not conditioned upon any improper use of the television or related facilities in a manner inconsistent with the provisions of this subsection.

(4) The state board may, on the recommendation and with the advice of the chief state school officer, prescribe, print, publish, and distribute at public expense such administrative regulations, courses of study, curriculums, bulletins, programs, outlines, reports, and placards as each deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. All administrative regulations published or distributed by the board shall be inclosed in a booklet or binder on which the words "informational copy" shall be clearly stamped or printed.

(5) Upon the recommendation of the chief state school officer or his designee, the state board shall establish policy or act on all matters relating to programs, services, publications, capital construction and facility renovation, equipment, litigation, contracts, budgets, and all other matters which are the administrative responsibility of the Department of Education.

Section 8. KRS 156.071 is amended to read as follows:

The State Board ***of*** ~~[for Elementary and Secondary]~~ Education may, any statute to the contrary notwithstanding, delegate the taking of evidence, and the rendition of a written recommendation of disposition to the full board, to a panel of the board, to a single member of the board acting as a hearing officer, or to a hearing officer appointed by the board relative to any hearing, appeal, or decision, judicial or quasi-judicial in nature, which the board is empowered or directed, by this or any other chapter, to conduct, hear, or make; provided, the full board, as provided by statute, makes the final decision or determination, based upon the evidence submitted. For the purpose of serving as a hearing officer for the board, the board and the Department of Education shall not enter into a personal service contract; employ additional staff; or provide additional compensation to existing staff, except for compensatory time for staff who conduct school facility public hearings outside of their regular working hours.

Section 9. KRS 156.074 is amended to read as follows:

The State Board ***of*** ~~[for Elementary and Secondary]~~ Education, upon requisition to the Finance and Administration Cabinet, may secure price contract agreements for the purchase of supplies and equipment by district boards of education. The board by regulation shall specify the particular types of supplies and equipment for which contracts shall be secured and may revise such lists from time to time. The board, in consultation with the Finance and Administration Cabinet, shall fix standards of quality and quantity and shall develop standard specifications for supplies and equipment. The Finance and Administration Cabinet shall enter into price contract agreements under the law relating to state purchasing. Such contracts shall establish sources of supply, maximum prices to be paid, and shall set forth the length of time for which such contracts shall be valid, not to exceed one (1) year.

Section 10. KRS 156.076 is amended to read as follows:

The chief state school officer shall furnish full information on established price contracts to each district board of education. Any board of education may purchase supplies and equipment from the vendor to whom the contract has been awarded, under the terms of the contract. Any board of education may advertise for its own bids on supplies and equipment which meet the specifications of the contracts awarded by the Division of Purchases. Any board of education, after advertising for bids, may award contracts if the chief state school officer certifies that the bid offers supplies and equipment which meet the standards and specifications fixed by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education and that the bid price is lower than that established by the price contract agreement.

Section 11. KRS 156.095 is amended to read as follows:

(1) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall establish, direct, and maintain a statewide program of professional development to improve instruction in the public schools.

(2) Each local school district superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator. The manner of appointment, qualifications, and duties of the professional development coordinator shall be as established by State Board ***of*** ~~[for Elementary and Secondary]~~ Education regulations.

(3) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall provide an annual training program for local school district professional development coordinators. The training program may include, but not be limited to, the demonstration of various approaches to needs assessment; instruction in methods to involve both teachers and administrators in actively planning, delivering, and evaluating programs; presenting options for meeting professional development needs, especially through individualized programs; and identification of resources needed for quality, motivational professional development programs.

(4) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall provide for a series of state sponsored, professional development programs for certified personnel throughout the Commonwealth. Professional development shall focus on the following areas during the 1990-91 and 1991-92 school years:

(a) The Kentucky Education Reform Act of 1990;

(b) School-based decision making;

(c) Performance-based student assessment;

(d) Nongraded primary programs;

(e) Research-based instructional practices;

(f) Instructional uses of technology; and

(g) Effective awareness and sensitivity training so teachers can motivate and nurture students of diverse cultures.

(5) The Department of Education shall provide professional development activities at times and locations which are convenient for school personnel. During the 1990-91 and 1991-92 school years, school districts shall use the four (4) days designated for professional development in KRS 158.070 to acquire skills and knowledge in the areas listed in subsection (4) of this section. The master professional development plan shall reflect the districts' choices from the required areas for the 1990-91 and 1991-92 school years. A district's master professional development plan which has been developed in conjunction with the district improvement plan pursuant to KRS 158.685, shall be exempt from the requirements of this subsection.

(6) Local school districts with an enrollment of twenty thousand (20,000) or more students shall be exempt from the requirements of this section if they meet the standards for professional development established by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 12. KRS 156.097 is amended to read as follows:

(1) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall develop regulations to establish a program of educational institutes for teachers. The purpose of such institutes shall be the general improvement of instruction within the Commonwealth.

(2) Teacher institutes shall be held during the summer months at various college campuses selected by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. Each institute shall be of one (1) week duration.

(3) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall develop specific criteria relating to the selection of eligible teachers for institute participation, with an emphasis on selecting teachers with a demonstrated record of effective teaching.

(4) Any teacher selected and agreeing to participate in a particular teacher institute session shall be reimbursed for expenses

incurred in attendance, and shall be awarded a stipend in an amount to be determined by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(5) The program shall encourage business and industry within the Commonwealth to become institute sponsors for teachers within the respective communities of such business and industry.

Section 13. KRS 156.101 is amended to read as follows:

(1) The purpose of this section is to encourage and require the maintenance and development of effective instructional leadership in the public schools of the Commonwealth and to recognize that principals with the assistance of assistant principals, supervisors of instruction, guidance counselors, and directors of special education have the primary responsibility for instructional leadership in the schools to which they are assigned.

(2) For the purpose of this section, instructional leader shall be defined as an employee of the public schools of the Commonwealth holding a valid certificate as a principal, assistant principal, supervisor of instruction, guidance counselor, or director of special education.

(3) In order to carry out the purpose of this section, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall establish a statewide program to improve and maintain the quality and effectiveness of instructional leadership in the public schools of the Commonwealth.

(4) The instructional leader improvement program shall contain the following provisions:

(a) Each instructional leader employed by the public schools of the Commonwealth shall participate in a continuing intensive training program designed especially for instructional leaders;

(b) Every two (2) years each instructional leader shall complete an intensive training program approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education to include no less than forty-two (42) participant hours of instruction;

(c) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall prescribe specific criteria for the training program and may contract for the training with qualified agencies or institutions; and

(d) Completion of the required participant hours shall be reported to the State Department of Education and to the local school district. If an instructional leader fails to complete the required hours of training, he shall be placed on probation for one (1) year and, if the training is not completed during the probationary period, his certificate shall be revoked.

(5) As a means of improving the educational productivity of Kentucky's public schools, of providing a method by which the citizens of the Commonwealth can be assured of measures of accountability of the performance of certified school employees, and of providing encouragement and incentives for certified school employees to improve their performance, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall establish a statewide program for improving the performance of all certified school personnel, including instructional leaders.

(6) The certified employee evaluation programs shall contain the following provisions:

(a) Each certified school employee, including the superintendent, shall be evaluated by a system developed by the local school district and approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education;

(b) The local school district shall annually review the evaluation plan to insure compliance with this section. Revisions to the evaluation plan shall be approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education; and

(c) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall develop written guidelines for local school districts to follow in developing and implementing an evaluation system and shall require the following:

1. All evaluations of certified employees below the level of the district superintendent shall be in writing on evaluation forms and under evaluation procedures developed by a committee composed of an equal number of teachers and administrators;
2. The immediate supervisor of the certified school employee shall be designated as the primary evaluator;
3. All monitoring or observation of performance of a certified school employee shall be conducted openly and with full knowledge of the employee;
4. Evaluation shall include a conference between the evaluator and the person evaluated;
5. Evaluators shall be trained, tested, and certified in accordance with regulations adopted by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education in the proper techniques for effectively evaluating certified school employees and in the use of the school district evaluation system;
6. The evaluation system shall include a plan whereby the person evaluated is given assistance for becoming more proficient as a teacher or administrator; and
7. The training requirement for evaluators contained in subsection (6)(c)5. of this section shall not apply to district board of education members.

(7) The State Department of Education shall visit school districts within the Commonwealth as needed to review and insure

implementation of the evaluation system by the local school district. The department shall establish an appeals procedure for certified school employees who feel that the local school district failed to properly implement the approved evaluation system. The appeals procedure shall not involve requests from individual certified school employees for review of the judgmental conclusions of their personal evaluations.

(8) The State Department of Education shall select and train evaluators from outside each local school district to conduct evaluations as needed of a sample of certified school employees within each district in order to validate the effectiveness and accuracy of the local school districts' evaluators.

(9) Local school districts with an enrollment of sixty-five thousand (65,000) or more students shall be exempt from the requirements of this section except for subsection (10) of this section provided they meet the standards established by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education for local school district evaluation systems.

(10) The local board of education shall establish an evaluation appeals panel for certified personnel which shall consist of two (2) members elected by the certified employees of the district and one (1) member appointed by the board of education who is a certified employee of the board. Certified employees who think they were not fairly evaluated may submit an appeal to the panel for a timely review of their evaluation.

(11) This section shall be known as the "Effective Instructional Leadership Act."

Section 14. KRS 156.105 is amended to read as follows:

(1) Prior to July 1, 1992, the Department of Education shall establish a Principals Assessment Center, which shall consist of the National Association of Secondary School Principals assessment process or a similar validated process. The department may operate assessment centers regionally and shall provide for assessor training.

(2) In addition to any applicable certification and experience requirements, to be qualified and eligible for initial or continued employment as a school principal, effective July 1, 1994, the principal or applicant shall have successfully completed the assessment center process. A newly hired principal who is relocating from outside the state to begin his duties after June 30, 1994, shall successfully complete the assessment center process within one (1) year of assuming his duties as principal.

(3) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall adopt administrative regulations to establish the criteria for successful completion of the assessment center process.

(4) All principals hired prior to July 13, 1990, shall be required to successfully complete the beginning teacher committee training program, pursuant to KRS 161.030(8) by July 1, 1991. All principals hired after July 13, 1990, shall be required to complete the beginning teacher committee training program pursuant to KRS 161.030(8) within one (1) year after their appointment.

Section 15. KRS 156.111 is amended to read as follows:

(1) Prior to July 1, 1992, the Department of Education shall establish a Superintendents Training Program and Assessment Center. The assessment center shall be modeled after the American Association of School Administrators assessment process or a similar validated process. The department may provide assessment centers regionally and shall provide for assessor training. The center shall include, but not be limited to, training for superintendents in the following subjects:

(a) Core concepts of management;

(b) School-based decision making;

(c) Kentucky school law;

(d) Kentucky school finance; and

(e) School curriculum and assessment.

(2) At the conclusion of the training, each participant shall complete a written comprehensive examination based on the content of the training.

(3) In addition to any applicable certification and experience requirements, to be qualified and eligible for continued employment as a school superintendent, effective July 1, 1994, the school superintendent shall have successfully completed the assessment center process. A person hired for the first time as superintendent in Kentucky after July 1, 1992, shall successfully complete the assessment center process within one (1) year of assuming his duties as superintendent.

(4) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall adopt administrative regulations to govern the training content, number of hours, written examination, and criteria for successful completion of the training and assessment center process. The board shall also establish the continuing professional development requirements for school superintendents, to be effective July 1, 1994.

Section 16. KRS 156.132 is amended to read as follows:

As used in this section, except subsection (1), "public school officer" means a person who previously served as a superintendent of schools or board member during which time charges were brought against him under this section.

(1) The chief state school officer shall recommend, by written charges to the proper school authorities having immediate

jurisdiction, the removal of any superintendent of schools, principal, teacher, or other public school officer as to whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance.

(2) The chief state school officer shall recommend by written charges the suspension by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education of any district board member, superintendent of schools, or other public school officer as to whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, nonfeasance, or who shall be removed pursuant to KRS 158.6455(7). The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall, after a summary hearing as provided by administrative regulations, suspend any district board of education member, superintendent of schools, or other public school officer, who in the opinion of the majority of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education is guilty of immorality, misconduct in office, incompetence, willful neglect of duty, nonfeasance, or who shall be removed pursuant to KRS 158.6455(7). The action by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education may be taken upon a recommendation of the chief state school officer, or the action may be taken by a majority vote of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education without recommendation from the chief state school officer.

(3) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education may suspend a district superintendent of schools or other public school officer under subsection (2) of this section or remove him pursuant to subsection (5) of this section only if after thirty (30) days of receipt of the written charges specified in subsection (1) of this section, the district board of education has refused to act, has acted in bad faith, arbitrarily, or capriciously, or if a recommendation to the district board would have been futile.

(4) Any officer suspended by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education under subsection (2) of this section shall be furnished with a written statement, specifying in detail the reasons for suspension and naming a date and place at which the officer may appear before the State Board ***of*** ~~[for Elementary and Secondary]~~ Education to answer the charges. The date shall be not less than thirty (30) nor more than forty (40) days after the service of the charges upon the officer. Within twenty (20) days after receipt of the charges, the officer may notify the State Board ***of*** ~~[for Elementary and Secondary]~~ Education of his intention to appear and answer such charges. If the officer fails to notify the board of his intention to appear and answer such charges, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education may remove the officer by a majority vote and the dismissal shall be final.

(5) As an alternative to first seeking suspension, the chief state school officer may recommend by written charges the removal by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education of any district board member, superintendent of schools, or other public school officer whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance, or who shall be removed pursuant to KRS 158.6455(7). The officer against whom the written charges are issued by the chief state school officer shall be furnished with the written charges and notice of the date and place at which the officer may appear before the state board to answer the charges. The date shall be not less than thirty (30) nor more than forty (40) days after the service of the charges upon the officer. Within twenty (20) days after receipt of the charges, the officer may notify the State Board ***of*** ~~[for Elementary and Secondary]~~ Education of his intention to appear and answer the charges. If the officer fails to notify the board of his intention to appear and answer the charges, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education may remove the officer by a majority vote and the dismissal shall be final.

(6) Upon receipt of the officer's notice of intention to appear and answer the charges, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall issue subpoenas necessary for the determination of the issues involved. The issues shall be heard at the time and place set and the hearing shall be public or private at the discretion of the accused former or current superintendent and shall be public when testimony is taken for board members. Both parties may be represented by counsel and may require the presence of witnesses upon subpoena. Each witness shall be required to take oath before an officer of the board. The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall provide for a stenographic report of the proceedings and furnish the officer with a copy.

(7) Upon completion of both sides of the case, but within ninety (90) days from the date the officer was suspended if applicable, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education may meet in closed session to consider the evidence and may by a majority vote remove the officer. If the board votes to remove the officer, the board shall prepare written findings specifying which charge or charges it found to be the basis for removal. If within ninety (90) days from the date of suspension if applicable, the state board has not removed the officer, or has dismissed the charges, the suspended officer shall be reinstated and shall be paid his full salary for the period of suspension.

(8) The officer shall have a right to appeal on the record to the Circuit Court located in the county of the school district. If the appeal is not made within thirty (30) days after removal, then the decision of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall be final. The appeal shall be an original action in court and shall be commenced by the filing of a petition against the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, in which petition the facts shall be alleged upon which the officer relies for a reversal or modification of the order of removal. Upon service or waiver of summons in the appeal, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall forthwith transmit to the clerk of the court for filing a transcript of the original notice of charges and a transcript of all evidence considered at the hearing, where the cause shall be at issue without further pleading and shall be advanced and heard without delay. The court shall examine the transcript and record of the hearing before the State Board ***of*** ~~[for Elementary and Secondary]~~

Education to determine whether the decision of the state board was arbitrary and capricious. The court shall grant or deny the relief asked for in the petition. Either the officer or the State Board ***of*** ~~[for Elementary and Secondary]~~ Education may appeal the action of the court to the Court of Appeals. If the decision of the court is against removal, the officer shall be paid his full salary from the date of suspension. The payment shall be made from funds appropriated to the State Department of Education.

Section 17. KRS 156.136 is amended to read as follows:

The State Board ***of*** ~~[for Elementary and Secondary]~~ Education, upon suspension of any officer or district board of education member under KRS 156.132, shall name a person to fill the vacancy caused by such suspension. Persons appointed by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education to fill vacancies under KRS 156.132 and this section shall hold office only during the time an officer is suspended, not to exceed ninety (90) days from the date of suspension. At the expiration of such period, vacancies shall be filled in the manner provided by law for the office. Persons appointed by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education to fill vacancies caused by suspension shall be paid from funds of the district board of education. Any person employed to fill the position of a superintendent who has been removed by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education under KRS 156.132 shall be employed by the district board of education for periods not to exceed one (1) year if the superintendent has appealed to the courts and if the courts have not taken final action.

Section 18. KRS 156.138 is amended to read as follows:

The Attorney General, upon the written recommendation of either the Governor, the Auditor of Public Accounts, the chief state school officer, or the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, shall institute the necessary actions to recover school funds, from any source, which he believes have been erroneously or improperly allowed or paid to any person.

Section 19. KRS 156.147 is amended to read as follows:

(1) There is hereby created an Education Management Selection Commission. The commission shall consist of six (6) members to be appointed as follows: Three (3) by the Governor, one (1) by the President Pro Tempore of the Senate, one (1) by the Speaker of the House of Representatives, and one (1) jointly by the President Pro Tempore and the Speaker. The commission is temporary in nature and shall terminate after the State Board ***of*** ~~[for Elementary and Secondary]~~ Education has signed a contract of employment with the first commissioner of education. The members shall serve without compensation, but shall be reimbursed for their reasonable and necessary actual expenses.

(2) The commission shall conduct a national search to identify the best qualified individual for the State Board ***of*** ~~[for Elementary and Secondary]~~ Education to appoint as the first commissioner of education to carry out the duties of the chief state school officer. The individual shall be agreed upon by a unanimous vote of all of the members of the commission.

(3) The commission shall meet as soon as practicable after it is constituted. The members shall elect a chairperson, who shall be responsible for convening future meetings. The Governor's office and the Legislative Research Commission shall provide staff support to the commission.

Section 20. KRS 156.148 is amended to read as follows:

(1) Effective January 1, 1991, the commissioner of education shall be the chief state school officer. He shall possess the professional qualifications determined by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education as appropriate for the office.

(2) The commissioner shall be appointed by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, serve at the pleasure of the board, and receive compensation as set by the board, the provisions of KRS 64.640 notwithstanding.

(3) The commissioner of education shall be the executive and administrative officer of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education in its administration of all educational matters and functions placed under its management and control. He shall carry out all duties assigned to him by law; shall execute under the direction of the state board the educational policies, orders, directives, and administrative functions of the board; and shall direct the work of all persons employed in the Department of Education.

(4) The commissioner of education shall be reimbursed for all actual and necessary traveling expenses incurred by him in the performance of his duties.

Section 21. KRS 156.152 is amended to read as follows:

The chief state school officer, as executive officer of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, upon application and requisition to the Finance and Administration Cabinet, is hereby authorized and directed to secure price contract agreements for the purchase of school buses by all district boards of education. The Finance and Administration Cabinet shall enter into price contract agreements under established purchasing procedure in keeping with the law relating to state purchasing. The price contract agreement shall establish sources of supply, maximum prices to be paid, and shall set forth the length of time for which contracts shall be valid.

Section 22. KRS 156.153 is amended to read as follows:

(1) All school buses for which bids are made or bid contracts awarded shall meet the standards and specifications of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. The term "school bus," as used in this section, shall mean any

motor vehicle which meets the standards and specifications for school buses as provided by law or by the standards or specifications of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education authorized by law and used solely in transporting school children and school employees to and from school under the supervision and control and at the direction of school authorities, and shall further include school bus accessory equipment and supplies and replacement equipment considered to be reasonably adaptable for purchase from price contract agreements.

(2) All school buses manufactured prior to 1983 shall be equipped with exterior fender mounted front view and side view mirrors so as to meet the 1984 standards and specifications of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 23. KRS 156.154 is amended to read as follows:

The chief state school officer shall make available to all district boards of education full information respecting established price contract agreements, and any or all districts may procure buses from sources and at prices, terms, and conditions incorporated in the price contract agreements. Any district board of education may take its own bids on school buses which meet the specifications of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education for school buses for which price contracts have been established, provided the chief state school officer approves the bids and purchase contract as meeting specifications of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. However, no district board of education shall purchase school buses under the terms of this section unless the chief state school officer shall certify that the purchase price is lower than prices set forth in established price contract agreements for similar equipment.

Section 24. KRS 156.160 is amended to read as follows:

(1) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:

(a) Courses of study for the different grades and kinds of common schools, including procedures for developing an ungraded primary program as defined in KRS 158.030 which shall be implemented by the beginning of the 1992-93 school year, and the program, in its entirety, shall be fully implemented for all students who have not entered the fourth grade in every elementary school in every district by the beginning of the 1993-1994 school year. The primary program shall include the following critical attributes: developmentally appropriate educational practices, multiage and multiability classrooms; continuous progress; authentic assessment; qualitative reporting methods; professional teamwork; and positive parent involvement. The implementation of the primary program may take into consideration the necessary arrangements required for students attending part-time. The courses of study for students shall include American sign language and it shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;

(b) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;

(c) The minimum requirements for high school graduation. Prior to the beginning of the 1994-95 school year, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall review graduation requirements in light of the expected outcomes for students and schools set forth in KRS 158.6451;

(d) Taking, and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number;

(e) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall adopt the Uniform State Building Code;

(f) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The regulations shall permit a student who received a physical examination no more than six (6) months prior to his initial admission to Head Start to substitute that physical examination for the physical examination required by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education;

(g) The transportation of children to and from school;

(h) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;

(i) The preparation of budgets and salary schedules for the several school districts under the management and control of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education;

(j) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and

(k) The disposal of real and personal property owned by local boards of education.

(2) At the request of a local school council, any local school district superintendent shall request that the State Board ***of*** ~~[for Elementary and Secondary]~~ Education waive any administrative regulation promulgated by that board. Prior to the 1994-95 school year, the requested waiver shall be granted to any school meeting the standards adopted pursuant to subsection (1) of this section. After the 1994-95 school year begins, a school shall exceed its threshold to be granted a waiver from regulations. Regulations relating to health and safety, civil rights, any state regulation required by a federal law, and regulations promulgated pursuant to KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful schools shall not be subject to waiver. Any waiver granted under this subsection shall be subject to revocation upon a determination by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education that the school holding the waiver has subsequently failed to reach its threshold level as provided for in KRS 158.6455.

(3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education and be certified upon application to the board by such schools.

Section 25. KRS 156.200 is amended to read as follows:

The chief state school officer shall receive and examine all reports required by law or by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education and, in person or through his assistants, shall examine and advise on the expenditures, business methods and accounts of all boards of education and all institutions placed under the management and control of the Department of Education as established in KRS 156.010. He shall see that all financial and educational accounts are accurately and neatly kept and that all reports are made according to the forms adopted by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 26. KRS 156.210 is amended to read as follows:

(1) The chief state school officer shall have access to the papers, books and records of all teachers, trustees, superintendents, or other public school officials.

(2) He may administer oaths and may examine witnesses under oath in any part of the state in any matter pertaining to the public schools, and may cause the testimony to be reduced to writing. He may issue process to compel attendance of witnesses before him and compel witnesses to testify in any investigation he is authorized to make.

(3) When he or his assistants find any mismanagement, misconduct, violation of law, or wrongful or improper use of any district or state school fund, or neglect in the performance of duty on the part of any official, he shall report the same, and any other violation of the school laws discovered by him, to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, which shall, through the chief state school officer or one (1) of his assistants, call in the county attorney or the Commonwealth's attorney in the county or district where the violation occurs, and the attorney so called in shall assist in the indictment, prosecution, and conviction of the accused. If prosecution is not warrantable, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education may rectify and regulate all such matters.

Section 27. KRS 156.230 is amended to read as follows:

(1) The chief state school officer shall annually prepare or cause to be prepared, and submit for approval and publication by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, a list of all public and private high schools or other secondary schools in the state, showing the classification of each.

(2) He shall, from time to time, prepare or cause to be prepared, and submit for approval and publication by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, such bulletins, programs, outlines of courses, placards, and courses of study as he deems useful in the promotion of the interests of the public schools.

(3) He shall also prepare for publication the administrative regulations, minimum standards for schools, and educational policies or programs adopted by the board for the operation, regulation, and government of the schools under its supervision.

Section 28. KRS 156.240 is amended to read as follows:

The chief state school officer shall prepare for publication biennially, the complete school laws of the state, including abstracts of decisions of the Court of Justice, and opinions and interpretations of the Attorney General and the chief state school officer. He shall explain the true intent and meaning of the school laws and the published administrative regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, and in doing so he shall freely consult the Attorney General.

Section 29. KRS 156.255 is amended to read as follows:

As used in KRS 156.255 to 156.295:

(1) "Accountant" means a certified public accountant or a public accountant registered with the State Board of Accountancy.

(2) "Board" means the board of education of a school district.

(3) "Committee" means the State Committee for School District Audits.

(4) "State board" means the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 30. KRS 156.275 is amended to read as follows:

(1) The committee shall select, to make the audit authorized under KRS 156.265, accountants who have no personal interest in the financial affairs of the board or of any of its officers or employees.

(2) Immediately upon completion of each audit, the accountant shall prepare a report of his findings and recommendations in such form and in such detail as the committee may prescribe. The report shall be to the committee and in such number of copies as specified by the committee. The committee shall furnish one (1) copy to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, one (1) copy to the district board of education to which the report pertains, one (1) copy to the chief state school officer and one (1) copy to the Auditor of Public Accounts. The district board of education shall keep a copy of the report on file in the office of the superintendent of schools of the district and the report shall be open to inspection by any interested person, subject to reasonable rules as to time and place of inspection.

Section 31. KRS 156.395 is amended to read as follows:

For purposes of KRS 156.400 to 156.476, unless the context requires otherwise, "instructional materials" means tools used to assist in student learning, as defined in administrative regulations promulgated by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 32. KRS 156.400 is amended to read as follows:

(1) The chief state school officer shall arrange the elementary and secondary school subjects included in the state courses of study as prescribed by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education into six (6) adoption groups.

(2) Contracts for each of the six (6) adoption groups shall be for a period of six (6) years and shall be executed on a staggered basis, with one (1) group being up for adoption each year. The six (6) adoption groups shall be arranged as nearly equal in number and purchase cost as possible. Subjects with rapidly changing or highly technical content may be considered more frequently than once during a six (6) year cycle.

(3) The chief state school officer may delay the purchase of books due to insufficient funds, but any purchases of books shall be in accordance with KRS Chapter 156.

Section 33. KRS 156.405 is amended to read as follows:

(1) The purpose of the State Textbook Commission is to provide a list of current and high quality textbooks to local school districts, which complement the educational program in Kentucky schools, and to provide for public participation in the adoption process.

(2) The State Textbook Commission shall consist of the chief state school officer and eleven (11) appointive members. The eleven (11) members shall be appointed by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education upon the recommendation of the chief state school officer for terms of four (4) years with two (2) appointments each year, except that every fourth year there shall be five (5) appointments. No member shall be eligible to serve more than two (2) full terms consecutively. All vacancies that occur on the State Textbook Commission shall be filled in like manner for the remainder of the unexpired terms. The State Textbook Commission shall receive assistance in the textbook selection process from professionals and lay citizens who will serve on a contractual basis and be referred to in this chapter as the "textbook reviewers."

(3) The State Textbook Commission shall:

- (a) Select and direct the activities of the textbook reviewers who develop selection criteria and review textbooks and programs;
- (b) Develop selection criteria and evaluation forms with the help of the textbook reviewers to be used in the state level selection process;
- (c) Approve the evaluative criteria and forms used by the commission and textbook reviewers;
- (d) Review the textbook reviewers' evaluations, and textbooks or programs as it deems necessary, in order to select from them a list of high quality books;
- (e) Select, approve, and publish a list of high quality textbooks.

(4) The textbook reviewers shall be comprised of twelve (12) individuals for the area or areas being considered for adoption. The textbook reviewers shall be approved by the State Textbook Commission based on the recommendation of the chief state school officer.

(5) The textbook reviewers shall:

- (a) Develop and submit to the commission subject specific evaluative criteria to be used in reviewing textbooks;
- (b) Review textbooks and programs to determine those of high quality, using evaluative criteria and forms approved by the commission;
- (c) Submit to the commission reviews and evaluative forms regarding reviewed textbooks and programs; and,

(d) Attend meetings and training sessions as requested by the commission and the Department of Education.

(6) Eight (8) of the appointive members of the State Textbook Commission shall have had not less than five (5) years' teaching or supervising experience in the public schools of Kentucky and must have had at the time of their appointment at least four (4) years of college training in a recognized institution of higher education. Five (5) members of the commission shall be classroom teachers actively employed in the public schools of Kentucky as teachers in subject field or fields for which the commission will select books. Two (2) members shall be principals, supervisors, or superintendents of public schools or public school systems. One (1) member shall be a member of the faculty of a public institution of higher education engaged in teacher education. One (1) member shall be the executive director of the Kentucky Educational Publishers Association or any other legitimate trade association of textbook publishers recognized by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, but shall not represent any particular publisher. This member shall have no vote but may otherwise participate in the business of the commission. Two (2) members shall be lay citizens. In recommending the members of the State Textbook Commission the chief state school officer shall give due regard to representation from rural and urban areas and both elementary and secondary levels when both educational levels are included in the subject field or fields for which adoptions are to be made. The lay citizens shall have children in the public elementary or secondary schools at the time of appointment.

(7) Textbook reviewers shall have the following qualifications: Six (6) of the textbook reviewers shall be instructional supervisors and classroom teachers in various and appropriate grade levels primary through grade twelve (12), with experience and training in the subject areas to be reviewed. One (1) reviewer shall have expertise and training in learning theory as applied to the classroom situation. One (1) reviewer shall be a current or former university faculty member with expertise in the content area of the textbooks to be reviewed. One (1) reviewer shall have experience and training in readability and formatting of textbooks. Three (3) reviewers shall be parents of children currently enrolled in public schools in Kentucky.

(8) Members of the State Textbook Commission, except the trade association member, shall receive fifty ($50) dollars per day and reimbursement for their actual expenses while attending commission meetings. Textbook reviewers shall receive remuneration based on the amount of textbooks and programs to be reviewed and criteria to be developed as determined by the chief state school officer. Textbook reviewers shall be hired through a personal service contract and remuneration shall not exceed a maximum of seven-hundred and fifty ($750) dollars annually. Textbook reviewers shall also receive reimbursement for actual expenses while attending reviewer or commission meetings.

(9) The meetings of the State Textbook Commission shall be open to the public and shall be held at least once every quarter and notice of such meeting shall be given in accordance with KRS 424.110 to 424.210.

(10) Not later than May 1 each year the chief state school officer shall call the State Textbook Commission into session. The members of the State Textbook Commission shall elect one (1) of its voting members as chairman and shall adopt administrative regulations for the procedure of the commission. The chief state school officer shall be the secretary of the commission.

Section 34. KRS 156.410 is amended to read as follows:

(1) The chief state school officer shall prepare minimum manufacturing standards, delineate content specifications, in accordance with the curriculum requirements of the program of studies for Kentucky schools: grades K-12, construct score cards, and formulate other criteria for use in the selection and adoption of textbooks in Kentucky. Criteria shall require that textbooks include the significance of the diverse ethnic contributors to society.

(2) It shall be the duty of the chief state school officer to prepare all necessary forms for use in the selection and adoption of textbooks, such as advertising for textbook bids; forms for bids, bonds, and contracts; and other forms.

(3) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education, upon the recommendation of the chief state school officer, shall have authority to prescribe:

(a) Administrative regulations pertaining to all textbook samples for use on the state and local levels; and

(b) Shall have authority to prescribe administrative regulations relating to the agents and representatives of textbooks as to the number participating and the methods and procedures for use in textbook adoptions on the state and local levels.

(4) The chief state school officer, on or before May 1 prior to any adoption year, shall properly advertise the subjects for which textbook adoptions will be made and notify the different publishers of the textbooks. The publishers, on or before July 15, of any adoption year, shall file with the chief state school officer textbook samples, filing fees, textbook bids and bonds, and other specified information relative to the books that they desire to offer for adoption.

(5) The chief state school officer shall:

(a) Review the bid information submitted by the publishers;

(b) Verify that the bid complies with the specifications; and

(c) Prepare a list of textbooks for consideration by the State Textbook Commission indicating those in compliance with the standards and specifications and those not in compliance, detailing areas of noncompliance.

Section 35. KRS 156.433 is amended to read as follows:

(1) The State Board ***of*** [~~for Elementary and Secondary~~] Education, upon recommendation of the chief state school officer, shall promulgate an administrative regulation identifying instructional materials eligible for purchase with state textbook funds. The regulation shall identify instructional materials which are subject to review before being approved for use, establish a procedure for the review, and a process for adding an instructional material to the approved list. The Department of Education may pay instructional materials reviewers an amount not to exceed seven hundred fifty dollars ($750) annually per reviewer for their services using funds from the appropriation for state textbooks.

(2) The Department of Education shall establish a list of all approved instructional materials for the use of school personnel.

Section 36. KRS 156.437 is amended to read as follows:

The State Board ***of*** [~~for Elementary and Secondary~~] Education, upon the recommendation of the chief state school officer, shall have the authority to prescribe administrative regulations for the listing by the State Textbook Commission, adoption by local adoption units, and the purchase of subject programs for the pupils in the public schools.

Section 37. KRS 156.439 is amended to read as follows:

(1) The State Board ***of*** [~~for Elementary and Secondary~~] Education shall promulgate by administrative regulations the method for calculating and distributing a district's textbook and instructional materials allocation. The district's allocation shall be used by schools to purchase:

  (a) Textbooks from the state adoption list;

  (b) Textbooks not on the state's approved list, if evidence is submitted that the textbook meets the selection criteria of the State Textbook Commission in KRS 156.405 (3)(b) and the subject specific criteria of the textbook reviewers pursuant to KRS 156.407(6);

  (c) Instructional materials, with an approved plan pursuant to subsection (2) of this section; or

  (d) Any combination of the above.

(2) The district shall identify all purchases made with the textbook and instructional materials allocation and shall keep on file a plan developed by each school, in accordance with administrative regulations promulgated by the State Board ***of*** [~~for Elementary and Secondary~~] Education, for providing the necessary textbooks and instructional materials for all grades, and subject areas, including the replacement of books and materials during the six (6) year adoption period. A school may carry forward to the next school year any part of its textbook and instructional materials allocation which has been distributed to the district. If a local board does not approve a school council's plan, the council may appeal to the commissioner.

Section 38. KRS 156.445 is amended to read as follows:

(1) No textbook shall be used in any public school in Kentucky as a basal textbook unless it has been approved and listed on the state multiple list of textbooks by the State Textbook Commission or unless a school district has applied for and received a waiver of this requirement from the State Board ***of*** [~~for Elementary and Secondary~~] Education pursuant to subsection (2) of this section. Any changes of textbooks made by the State Textbook Commission shall not become effective until grades and classes of the respective county and independent school districts have completed work for which the adopted book then in use was originally intended. Nothing in this section shall apply to the supplementary books that are needed from time to time.

(2) A local school board or school council may apply to the State Board ***of*** [~~for Elementary and Secondary~~] Education to adopt a basal textbook which is not on the multiple list by submitting evidence that the textbook it has chosen meets the selection criteria of the State Textbook Commission in KRS 156.405(3)(b) and the subject specific criteria of the textbook reviewers pursuant to KRS 156.407(6).

(3) In approving text materials for private and parochial schools for the purpose of KRS 156.160(3) such text materials shall be approved if they are comprehensive and appropriate to the grade level in question notwithstanding the fact that they may contain elements of religious philosophy.

Section 39. KRS 156.470 is amended to read as follows:

A copy of each textbook listed by the State Textbook Commission shall remain in the office of the chief state school officer as an official sample for the period of the adoption. After the adoption period such samples shall be sold by the State Board ***of*** [~~for Elementary and Secondary~~] Education.

Section 40. KRS 156.472 is amended to read as follows:

All administrative regulations of the State Board ***of*** [~~for Elementary and Secondary~~] Education and the statutory laws, which are applicable to textbook adoptions, purchases, and distribution by the county and independent school districts, shall apply to textbook adoptions, purchases, and distributions for the state college and university model and practice schools.

Section 41. KRS 156.474 is amended to read as follows:

(1) The State Board ***of*** [~~for Elementary and Secondary~~] Education, upon the recommendation of the chief state school officer, shall have the authority to prescribe the conditions whereby a school district may make multiple textbook adoptions for

the different school subjects by grades.

(2) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education, upon the recommendation of the chief state school officer, shall have the authority to prescribe the administrative regulations to govern the purchase of the multiple-adopted textbooks for the school district. The chief state school officer, subject to the approval of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, may purchase the textbooks from the publishers whose books have been adopted by the school district for grades kindergarten through twelve (12) and distribute them without cost to the pupils attending the public schools in the school district.

Section 42. KRS 156.476 is amended to read as follows:

(1) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education, upon the recommendation of the chief state school officer, shall select suitable textbooks, which include braille textbooks, and other materials printed in clear type of eighteen (18) to twenty-four (24) points in the different subject areas for children with impaired vision who are attending the public schools of the Commonwealth of Kentucky in grades kindergarten through twelve (12). These textbooks and materials shall not be subject to the official textbook bids, filing fees, textbook sampling, and the stipulated list prices, lowest wholesale prices, exchange prices, and the standards and specifications required for the textbooks approved and listed by the State Textbook Commission for regular use by the pupils attending the public schools of the State of Kentucky. The State Board ***of*** ~~[for Elementary and Secondary]~~ Education, upon the recommendation of the chief state school officer, may prescribe administrative regulations for determining the pupils eligible for the books, the number of books to be purchased, and the general administration of the program. The chief state school officer, subject to the approval of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, may purchase these books and distribute them without cost to the pupils with impaired vision attending the public schools of the state. All textbooks purchased under this section for the pupils with impaired vision are the property of the state.

(2) The Department of Education shall require any publisher of a textbook adopted for use in the public schools of the Commonwealth to furnish the American Printing House for the Blind with computer diskettes or tapes of those books either in the American Standard Code for Information Interchange, (ASCII), or in any other format which can be readily translated into braille by the American Printing House for the Blind.

Section 43. KRS 156.497 is amended to read as follows:

(1) There is created an Interagency Task Force on Family Resource Centers and Youth Services Centers which shall consist of sixteen (16) members appointed by the Governor. The sixteen (16) members appointed shall include one (1) representative from each of the following agencies or groups:

(a) Department of Education;
(b) Department for Employment Services of the Cabinet for Human Resources;
(c) Department for Health Services of the Cabinet for Human Resources;
(d) Department for Mental Health and Mental Retardation Services of the Cabinet for Human Resources;
(e) Department for Social Services of the Cabinet for Human Resources;
(f) Department for Social Insurance of the Cabinet for Human Resources;
(g) Justice Cabinet;
(h) Governor's Office;
(i) Workforce Development Cabinet;
(j) Parents;
(k) Teachers;
(l) Local school administrators;
(m) Local school boards;
(n) Local community mental health-mental retardation programs;
(o) Local health departments; and
(p) Local community action agencies.

(2) The task force shall be appointed and begin to meet immediately upon July 13, 1990, to formulate a five (5) year implementation plan establishing family resource and youth services centers designed to meet the needs of children and their families. The centers shall provide services which will enhance students' abilities to succeed in school. If resources are limited, students and families who are the most economically disadvantaged shall receive priority status for receiving services. The secretary of the Cabinet for Human Resources shall call the first meeting, at which time the task force by majority vote shall elect a task force chair to serve a one (1) year term. A new chair shall be elected annually thereafter, and the chair may succeed himself. The Cabinet for Human Resources shall provide adequate staff to assist in the development and implementation of the task force's plan.

(3) The plan developed by the task force shall include a five (5) year effort to implement a network of family resource centers across the Commonwealth. The centers shall be located in or near each elementary school in the Commonwealth

in which twenty percent (20%) or more of the student body are eligible for free school meals. The plan developed for the centers by the task force shall promote identification and coordination of existing resources and shall include, but not be limited to, the following components for each site:

(a) Full-time preschool child care for children two (2) and three (3) years of age;

(b) After school child care for children ages four (4) through twelve (12), with the child care being full-time during the summer and on other days when school is not in session;

(c) Families in training, which shall consist of an integrated approach to home visits, group meetings, and monitoring child development for new and expectant parents;

(d) Parent and child education (PACE) as described in KRS 158.360;

(e) Support and training for child day care providers; and

(f) Health services or referral to health services, or both.

(4) The plan developed by the task force shall include a five (5) year schedule to implement a network of youth services centers across the Commonwealth. The centers shall be located in or near each school, except elementary schools, serving youth over twelve (12) years of age and in which twenty percent (20%) or more of the student body are eligible for free school meals. The plan developed for the centers by the task force shall promote identification and coordination of existing resources and include, but not be limited to, the following components for each site:

(a) Referrals to health and social services;

(b) Employment counseling, training, and placement;

(c) Summer and part-time job development;

(d) Drug and alcohol abuse counseling; and

(e) Family crisis and mental health counseling.

(5) The task force shall complete its implementation plan for the program prior to January 1, 1991, and local school districts shall develop initial plans for their family resource centers and youth services centers by June 30, 1991. By June 30, 1992, family resource centers and youth services centers shall be established in or adjacent to at least one-fourth (1/4) of the eligible schools, with expansion by one-fourth (1/4) by June 30 of each year thereafter until the centers have been established in or adjacent to all eligible schools.

(6) A grant program is established to provide financial assistance to eligible school districts establishing family resource centers and youth services centers. The Cabinet for Human Resources shall award the grants pursuant to KRS 156.4977. A school district shall not operate a family resource center or a youth services center which provides abortion counseling or makes referrals to a health care facility for purposes of seeking an abortion.

(7) The task force shall continue to monitor the family resource centers and the youth services centers, review grant applications, and otherwise monitor the implementation of the plan until December 31, 1995, at which time the task force shall cease to exist. During its existence, the task force shall report at least annually to the secretary of the Cabinet for Human Resources, the State Board *of* [~~for Elementary and Secondary~~] Education, the Governor, and the Legislative Research Commission.

(8) Members of the task force may be reimbursed for actual expenses for attending meetings and for other actual and necessary expenses incurred in the performance of their duties authorized by the task force. The expenses shall be paid out of the appropriation for the task force.

Section 44. KRS 156.666 is amended to read as follows:

(1) There is established the Council for Education Technology which shall be an advisory group attached to the State Board *of* [~~for Elementary and Secondary~~] Education. The council shall develop a master plan for education technology.

(2) The council shall consist of the Commissioner of the Department of Information Systems, the Secretary of the Education and Humanities Cabinet, and the Executive Director of the Council on Higher Education who shall serve as ex officio voting members and eight (8) voting members appointed by the Governor within thirty (30) days after April 3, 1992. The members shall be as follows:

(a) One (1) member of the State Board *of* [~~for Elementary and Secondary~~] Education;

(b) One (1) member of the House of Representatives;

(c) One (1) member of the Senate; and

(d) Five (5) citizens of the Commonwealth.

A majority of the membership present at any meeting shall constitute a quorum for the official conduct of business.

(3) Members shall be appointed for four (4) year terms and may be reappointed. The initial members of the board shall be appointed as follows: two (2) members shall be appointed for terms of two (2) years; two (2) members shall be appointed for terms of three (3) years; and four (4) members shall be appointed for terms of four (4) years. Members shall receive no compensation but may be reimbursed for actual and necessary expenses in accordance with state laws and regulations.

(4) Terms of members serving pursuant to KRS 156.665 shall terminate on April 3, 1992.

(5) Immediately upon receiving notice of the appointment of all members, the chief state school officer shall call an organizational meeting. At this meeting the chief state school officer shall preside as temporary chairman, and the council shall elect from among the members a chairman and any other officers it deems necessary, and define the duties of the officers.

(6) Meetings shall be held at least two (2) times per year at a time and place designated by the chairman. The Department of Education shall provide staff support for the council.

(7) The duties and responsibilities of the council shall include, but not be limited to, the following:

(a) Developing a long-range master plan for the efficient and equitable use of technology at all levels from primary school through higher education, including vocational and adult education. The plan shall focus on the technology requirements of classroom instruction, literacy laboratories, student record management, financial and administrative management, distance learning, and communications as they relate to the Commonwealth's outcome goals for students as described in KRS 158.6451;

(b) Creating, overseeing, and monitoring a well-planned and efficient statewide network of technology services designed to meet the educational and informational needs of the schools;

(c) Working with private enterprise to encourage the development of technology products specifically designed to answer Kentucky's educational needs;

(d) Encouraging an environment receptive to technological progress in education throughout the Commonwealth;

(e) Recommending a policy governing the granting of right of ways for the laying of fiber optic cable in a manner to insure that all of Kentucky's citizens are served equitably, that the fiber optic system is available for educational technology purposes, and that the private and public sectors are partners in the venture; and

(f) Receiving, holding, investing, and administering all funds received by the council for the purpose of carrying out its duties and responsibilities, as set out in this section. These funds shall be spent with the aim of achieving equality of education throughout the Commonwealth.

Section 45. KRS 156.670 is amended to read as follows:

(1) The Council for Education Technology shall develop the master plan for education technology and submit the plan to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education and the Legislative Research Commission for approval. Implementation of each stage of the master plan shall begin immediately upon approval of the board and the Legislative Research Commission. The plan shall outline the Commonwealth's five (5) year activities related to purchasing, developing, and using technology to:

(a) Improve learning and teaching and the ability to meet individual students' needs to increase student achievement;

(b) Improve curriculum delivery to help meet the needs for educational equity across the state;

(c) Improve delivery of professional development;

(d) Improve the efficiency and productivity of administrators; and

(e) Encourage development by the private sector and acquisition by districts of technologies and applications appropriate for education.

(2) The five (5) year plan shall cover all aspects of education technology, including but not limited to, its use in educational instruction and administration, video and computer systems, software and hardware, multiple delivery systems for satellite, microwave, cable, instructional television fixed service, fiber optic, and computer connections products, the preparation of school buildings for technological readiness, and the development of staff necessary to implement the plan.

(3) The five (5) year plan shall include specific recommendations to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education for the adoption of administrative regulations to establish and implement a uniform and integrated system of standards and guidelines for financial accounting and reporting which shall be used by all school districts.

(4) The integrated technology-based communications system shall provide comprehensive, current, accurate, and accessible information relating to management, finance, operations, instruction, and pupil programs which are under the jurisdiction of the Department of Education.

(5) To facilitate communication among teachers, parents, students, and prospective employers of students, and to provide access to many vital technological services, the five (5) year plan shall include the installation of a telephone in each classroom.

(6) In designing and implementing the five (5) year plan, the council shall consider seeking the active participation of private organizations whose knowledge and assistance will be useful.

(7) The council shall update as necessary the plan developed under subsection (2) of this section and report to the Legislative Research Commission at the completion of each implementation phase of the master plan.

(8) The council shall submit its recommendations to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, which

shall accept the recommendations, or return them to the council along with suggestions for changes to make the recommendations consistent with the policies of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 46. KRS 156.690 is amended to read as follows:

The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall initiate a program to assist and encourage each certified teacher to purchase a computer for his own personal use. The program shall include, but not be limited to, the following:

(1) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall obtain by competitive bidding or negotiation the lowest possible purchase prices for various personal computers on behalf of all interested teachers.

(2) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall arrange a suitable training program in the use of these computers with the vendor awarded the contract.

Section 47. KRS 156.740 is amended to read as follows:

(1) The Interagency Commission on Educational and Job Training Coordination is hereby created. Its membership shall be composed of the following individuals, serving in an ex-officio capacity:

(a) The chairman of the Council on Higher Education;

(b) The executive director of the Council on Higher Education;

(c) The chairman of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education;

(d) The commissioner of the Department of Education;

(e) The chairman of the State Board for Adult and Technical Education;

(f) The secretary of the Cabinet for Workforce Development; and

(g) The chairman of the Board for the Kentucky Higher Education Assistance Authority.

(2) Members shall serve by virtue of their office. The chairman of the commission shall be chosen annually by a simple majority vote of the members. A quorum for conducting business shall be one-half (1/2) of the members plus one (1). The chair shall rotate annually, so that no person or agency holds the chairmanship in successive years.

Section 48. KRS 157.010 is amended to read as follows:

The school fund shall consist of the fund dedicated by the Constitution and laws of this Commonwealth for the purpose of sustaining a system of common schools therein. The annual resources of the fund shall consist of:

(1) The interest on the bond of the Commonwealth for one million three hundred twenty-seven thousand dollars ($1,327,000) at the rate of six percent (6%) per annum payable on the first day of January and July of each year.

(2) The interest on the proceeds of fifty-two thousand dollars ($52,000) formerly invested in Liberty Loan Bonds under authority of Chapter 6 of the Acts of 1920, now invested by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(3) The dividends from whatever remains of the original investment of seventy-three thousand five hundred dollars ($73,500) in the capital stock of the Bank of Kentucky.

(4) The interest on the bond of the Commonwealth for three hundred eighty-one thousand nine hundred eighty-six dollars and eight cents ($381,986.08) due the several counties and remaining a perpetual obligation against the Commonwealth for the benefit of the respective counties, at the rate of six percent (6%) per annum payable annually on the first day of July to the counties entitled to it and in the proportion to which they are entitled, to be used exclusively in aid of common schools.

(5) The interest at six percent (6%) per annum, payable on the first day of January and July each year, on six hundred six thousand six hundred forty-one dollars and three cents ($606,641.03) received from the United States under an act approved March 2, 1891, for which the Commonwealth has executed bond pursuant to Chapter 6 of the Acts of 1892.

(6) Such sums as are appropriated by the General Assembly in aid of the common schools.

Section 49. KRS 157.060 is amended to read as follows:

The officials of each educational institution and each school district supported in whole or in part from taxation shall make a report to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education or the State Board for Adult, Vocational Education and Vocational Rehabilitation at the close of each scholastic year, showing in detail all funds received from the state and from all other sources during the year, and a detailed statement of all expenditures for the year.

Section 50. KRS 157.061 is amended to read as follows:

The integrated technology-based communications system, established by KRS 156.670, shall be used by the Department of Education to conduct internal fiscal, management, and compliance audits of each school district in the Commonwealth on an annual basis. A copy of the audit shall be submitted to the Legislative Research Commission, the Governor, and the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 51. KRS 157.067 is amended to read as follows:

(1) To carry out the purpose of rewarding successful schools as provided in KRS Chapter 158, the Kentucky successful

schools trust fund is hereby established in the Finance and Administration Cabinet. Funds appropriated by the General Assembly in each biennial budget for payments of rewards to successful schools shall be credited to the fund and invested until needed for payments to successful schools. All interest earned on moneys in the funds shall be retained in the fund for reinvestment.

(2) Upon certification of eligibility by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, the Finance and Administration Cabinet shall issue a warrant and the State Treasurer shall issue a check to the eligible school. All moneys credited to the fund, including interest, shall be used only for payments to eligible schools and shall not lapse, but shall be carried forward in the next biennial budget.

Section 52. KRS 157.100 is amended to read as follows:

The chief state school officer, subject to the approval of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, shall purchase textbooks from the publishers whose books have been adopted by the State Textbook Commission and may purchase from any publisher other related media not approved by the State Textbook Commission and distribute them without cost to pupils attending grades kindergarten through twelve (12) of the public schools of the state, in the manner and upon the conditions set out in KRS 157.110 and 157.180.

Section 53. KRS 157.110 is amended to read as follows:

(1) In the purchase and distribution of textbooks for grades nine (9) through twelve (12), if sufficient funds are not available to furnish textbooks for all four (4) grades, the chief state school officer, subject to the approval of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, shall determine for what grades and subjects textbooks shall be provided.

(2) Local school districts, which do not provide a free textbook program for all students in grades nine (9) through twelve (12), shall establish, pursuant to State Board ***of*** ~~[for Elementary and Secondary]~~ Education administrative regulations, a process whereby pupils in grades nine (9) through twelve (12) may rent textbooks for a reasonable fee. Rental fees collected by the district shall be used for the maintenance of textbooks, the purchase of new textbooks, and the provision of free textbooks to pupils in grades nine (9) through twelve (12) who are unable to rent or purchase textbooks.

(3) No pupil shall be denied the use of textbooks due to an inability to rent or purchase them. Local school districts shall establish, pursuant to State Board ***of*** ~~[for Elementary and Secondary]~~ Education administrative regulations, a process by which to provide free textbooks to pupils unable to rent or purchase them, including a process by which those students shall be informed of the availability of, and guidelines and procedures for, obtaining free textbooks.

(4) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall adopt administrative regulations to insure the availability of free textbooks to those pupils in grades nine (9) through twelve (12) who are unable to rent or purchase textbooks and shall use the guidelines of the free and reduced price lunch programs to determine inability to rent or purchase textbooks. The regulations shall also provide for exceptional circumstances, under which pupils who do not meet free and reduced price lunch guidelines may be provided free textbooks.

Section 54. KRS 157.120 is amended to read as follows:

Purchases of books shall be upon requisitions of school superintendents. The chief state school officer shall prepare or cause to be prepared requisition forms on which each school superintendent shall requisition the books needed for the next ensuing school term in his district. The requisition shall be filed with the chief state school officer. The chief state school officer, under the direction of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, shall order from the various publishers the textbooks that have been requisitioned. The textbooks shall be shipped by the publisher, by prepaid freight, express or parcel post, as directed by the chief state school officer, direct to the school superintendent. The publishers shall issue invoices in triplicate and mail the invoices directly to the chief state school officer. Upon receipt of the books the school superintendent shall check the shipment against the departmental purchase order forms and send verified departmental purchase order forms to the chief state school officer as a receipt for the shipment. The State Board ***of*** ~~[for Elementary and Secondary]~~ Education may then order payment.

Section 55. KRS 157.130 is amended to read as follows:

The chief state school officer shall, subject to the approval of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, make rules and regulations governing the purchase, requisition, distribution, assignment to pupils, care, use, and return of textbooks and a plan for permanently labeling the textbooks as the property of the state.

Section 56. KRS 157.140 is amended to read as follows:

Each pupil, or his parent or guardian, shall be responsible to the teacher for all books not returned by the pupil, and a pupil not returning all books delivered to him shall not be entitled to the benefits of KRS 157.100 to 157.180 until the books are paid for by the pupil, or his parent or guardian, or accounted for in keeping with the regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 57. KRS 157.150 is amended to read as follows:

All textbooks purchased under the provisions of KRS 157.100 are the property of the state. Each superintendent making requisition for the books is custodian of the books in his district. He shall issue the books to the various schools in his district according to rules and regulations formulated by the chief state school officer and approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 58. KRS 157.160 is amended to read as follows:

The chief state school officer, subject to the approval of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, shall make rules and regulations for the disposal of textbooks which will no longer be used for instruction. Each superintendent may make obsolete textbooks available to the residents of his district. He may publicize in the newspaper the availability of the books and the procedure for obtaining them in accordance with this section. Any funds accruing from the sale of the books shall be paid into the local district's account.

Section 59. KRS 157.170 is amended to read as follows:

The chief state school officer, subject to the approval of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, shall make rules and regulations governing the sale of textbooks by superintendents to pupils, parents, or guardians of pupils attending the public schools of the state who desire to hold textbooks as their own property. Superintendents shall not sell textbooks to private or sectarian schools. Books sold under this section shall be sold at the retail contract price. Funds accruing from the sales shall be paid into the local district's account.

Section 60. KRS 157.190 is amended to read as follows:

(1) The chief state school officer, subject to the approval of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, shall provide basally adopted textbooks without cost to all children between the ages of six (6) and eighteen (18) who are confined in any state correctional institution in this state and who are regularly enrolled in classes of elementary and secondary grades. The textbooks shall be provided upon requisitions made by the person or persons in charge of the correctional institution.

(2) The chief state school officer may have an investigation made, at any time, to determine the need for the number and kinds of books requisitioned and to determine if the books are being properly maintained. If he finds anything improper about the requisitioning and use of the books, he shall report it to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(3) The books provided pursuant to this section shall be paid for out of the appropriations for the purchase of free textbooks for pupils attending public schools.

Section 61. KRS 157.200 is amended to read as follows:

(1) "Exceptional children and youth" means persons under twenty-one (21) years of age who differ in one (1) or more respects from average or normal children in physical, mental, learning, emotional, or social characteristics and abilities to such a degree that they need special educational programs or services for them to benefit from the regular or usual facilities or educational programs of the public schools in the districts in which they reside. The Department of Education, through administrative regulations promulgated by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, shall interpret the statutory definitions of exceptionality. An exceptionality is any trait so defined in this section by administrative regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. Requirements of average daily attendance for exceptional classes shall be regulated by statute, or in the absence of direction by administrative regulations promulgated by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. Categories of exceptionalities included within, but not limited by, this definition are as follows:

   (a) "Physically disabled or orthopedically impaired" means a severe orthopedic impairment which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes physical impairments caused by congenital anomaly, disease, and from other causes.

   (b) "Other health impaired" means limited strength, vitality or alertness, due to a chronic or acute health problem which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education.

   (c) "Communication disorder or speech or language impaired" means a disorder in language, articulation, voice, or fluency, which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education.

   (d) "Hearing impairment" means a physiological hearing loss:

      1. Ranging from mild to profound, which is either permanent or fluctuating, and of such a degree that the pupil is impaired in the processing of linguistic information via the auditory channel either with or without amplification; or

      2. That adversely affects educational performance so that specially designed instruction is required for the child or youth to benefit from education.

   The term shall include both deaf and hard of hearing children.

   (e) "Mental disability" means a deficit or delay in intellectual and adaptive behavior functioning, which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education, and which is typically manifested during the developmental period.

   (f) "Specific learning disability" means a disorder in one (1) or more of the psychological processes primarily involved in understanding or using spoken or written language which selectively and significantly interferes with the acquisition, integration, or application of listening, speaking, reading, writing, reasoning, or mathematical abilities. The disorder is lifelong, intrinsic to the individual, and adversely affects educational performance to the extent that specially designed instruction is required in order for the pupil to benefit from education. The term does not include a learning problem which is the direct result of:

1. A hearing impairment;
2. Visual, physical, mental, or emotional-behavioral disabilities; or
3. Environmental, cultural, or economic differences.

(g) "Emotional-behavioral disability" means a condition characterized by behavioral excess or deficit which significantly interferes with a pupil's interpersonal relationships or learning process to the extent that it adversely affects educational performance so that specially designed instruction is required in order for the pupil to benefit from education.

(h) "Multiple disability" means a combination of two (2) or more disabilities resulting in significant learning, developmental, or behavioral and emotional problems, which adversely affects educational performance and, therefore, requires specially designed instruction in order for the pupil to benefit from education. A pupil is not considered to have a multiple disability if the adverse effect on educational performance is solely the result of deaf-blindness or the result of speech or language disability and one (1) other disabling condition.

(i) "Deaf-blind" means auditory and visual impairments, the combination of which creates such severe communication and other developmental and learning needs that the pupil cannot be appropriately educated in special education programs designed solely for pupils with hearing impairments, visual impairments, or severe disabilities, unless supplementary assistance is provided to address educational needs resulting from the two (2) disabilities.

(j) "Visually disabled" means a visual impairment, which, even with correction, adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes both partially seeing and blind pupils.

(k) "Developmental delay" means a significant discrepancy between a child's current level of performance in basic skills such as cognition, language or communication, self-help, social-emotional, or fine or gross motor, and the expected level of performance for that age. The term shall be used only with children ages three (3) through five (5).

(l) "Traumatic brain injury" means an acquired impairment to the neurological system resulting from an insult to the brain which adversely affects educational performance and causes temporary or permanent and partial or complete loss of:

1. Cognitive functioning;
2. Physical ability; or
3. Communication or social-behavioral interaction.

The term does not include a brain injury that is congenital or degenerative, or a brain injury induced by birth trauma.

(m) "Autism" means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance. Characteristics of autism include:

1. Irregularity and impairment in communication;
2. Engagement in repetitive activity and stereotyped movement;
3. Resistance to environmental change or change in daily routine; and
4. Unusual responses to sensory experience.

The term does not include children with characteristics of an emotional-behavioral disability.

(n) "Gifted and talented student" means a pupil identified as possessing demonstrated or potential ability to perform at an exceptionally high level in general intellectual aptitude, specific academic aptitude, creative or divergent thinking, psychosocial or leadership skills, or in the visual or performing arts.

(2) "Special education" means specially designed instruction to meet the unique needs of an exceptional child or youth.

(3) "Special educational facilities" means physical facilities designed or adapted to meet the needs of exceptional children and youth, and approved according to regulations promulgated by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(4) "Related services" means such developmental, corrective, and other supportive services as are required to assist an exceptional child or youth to benefit from special education, and may include, but are not limited to, psychological services, physical and occupational therapy, identification and assessment of disabilities, counseling services, and medical services for diagnostic or evaluation purposes.

(5) "Transition services" means a coordinated set of activities for a pupil designed within an outcome-oriented process, that promotes movement from school to post-school activities. The term includes:

(a) Postsecondary education;

(b) Vocational training; and

(c) Integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation.

The coordinated set of activities shall be based on the individual pupil's needs, taking into account the pupil's preferences and interests, and shall include instruction, community experience, the development of employment, and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

Section 62. KRS 157.220 is amended to read as follows:

(1) The State Department of Education is hereby designated as the agency for cooperation with the state and federal governments, the nonpublic school programs and local schools of Kentucky in carrying out the provisions of KRS 157.200 to 157.280. The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall make necessary rules and regulations in keeping with the provisions of KRS 157.200 to 157.280 for their proper administration, including but not limited to establishment of classes, eligibility and admission of pupils, the curriculum, class size limitations, housing, special equipment, and instructional supplies.

(2) The State Department of Education is authorized to receive contributions and donations that may be made to carry out the provisions and requirements of KRS 157.200 to 157.280.

(3) Local supervision of special educational facilities for exceptional children shall be approved by the Department of Education according to rules and regulations approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 63. KRS 157.224 is amended to read as follows:

(1) The Commonwealth of Kentucky is committed to providing a comprehensive educational program for its exceptional children and youth. The Department of Education coordinates, directs, and monitors that program. State direction and implementation of a statewide exceptional education program is manifested in the biennial appropriation of funds to assure a quality educational opportunity for exceptional children and youth in existing, locally operated, exceptional classrooms.

(2) All county and independent boards of education shall operate special education programs pursuant to an application which has been approved by the Kentucky Department of Education pursuant to standards set out in regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. If any county or independent board of education fails to operate and implement special education programs in accordance with that application, the application of the county or independent board of education for funding pursuant to KRS 157.360 may be considered insufficient. The superintendent of each local school district shall certify its enrollment of exceptional children and youth to the Department of Education. The department shall audit student enrollment and monitor local district compliance in accordance with State Board ***of*** ~~[for Elementary and Secondary]~~ Education administrative regulations.

Section 64. KRS 157.226 is amended to read as follows:

(1) Effective with the 1991-92 school year, any child who has been identified as disabled in accordance with the Individuals with Disabilities Education Act, Public Law 101-476, or as exceptional by KRS 157.200(1)(a) to (m) and corresponding administrative regulations, and who is three (3) or four (4) years of age, or who may become five (5) years of age after October 1 of the current year, shall be eligible for a free and appropriate preschool education and related services.

(2) The General Assembly shall provide funds to be used for preschool education programs and related services for children with disabilities. Appropriations shall be separate from all other state funds appropriated to the Department of Education and shall be administered in accordance with applicable state statutes and administrative regulations and the Individuals with Disabilities Education Act, Public Law 101-476.

(3) Eligible local school districts shall receive funds based on the number of appropriately identified preschool children with disabilities being served on December 1 of the prior year. Program funding shall be adjusted proportionately when enrollment data in any district for the first two (2) months of the current school year is more than five percent (5%) above or below the number of children being served in the previous year. A supplemental enrollment count shall be taken after December 1 to allow partial funding for children with disabilities who become three (3) years of age after December 1 and consequently begin to receive services after that date. Local school districts may develop cooperative arrangements with other school districts or organizations in accordance with KRS 157.280.

(4) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall adopt administrative regulations related to the administration and supervision of programs, eligibility criteria, personnel requirements, and the allocation and use of funds.

Section 65. KRS 157.260 is amended to read as follows:

Each school district shall ascertain annually all children within the district who are disabled and shall report to the Department of Education on forms provided by the Department of Education and according to administrative regulations promulgated by the

State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 66. KRS 157.280 is amended to read as follows:

(1) If the number of children of school age in one (1) classification of exceptionality in a district is not sufficient to justify a special education program for that exceptionality in that district, or if a school district does not provide a special education program for that exceptionality, the board shall provide a program by contract with another county or independent district or private organization that maintains a special education program approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education for that exceptionality. When a district or private organization undertakes, under operation of a tuition contract or of law, to provide in its classes for these pupils residing in another district, the district of residence of these pupils shall share the total cost of the special education program in proportion to the number of pupils or in accordance with contract agreement between the two (2) districts or district and private organization.

(2) The school board of the school district in which any child resides shall pay for his transportation to and from the program in the other school district or to the private organization. However, if the school board of the other district or the private organization providing the program also provides transportation, the cost of transportation shall be included in the total cost.

(3) If a child of school age is admitted for resident instruction at the Kentucky School for the Deaf or the Kentucky School for the Blind, under regulation of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education and under provisions of KRS 167.015 to 167.170, the district in which the child resides shall provide transportation to and from the school on a regularly scheduled basis, at weekly intervals while the child is enrolled, either by individual district or in cooperation with other school districts on a regional basis, as approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education upon recommendation of the chief state school officer. Students who live more than two hundred (200) miles from either school shall not be required to go home more than twice each month. The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall promulgate administrative regulations to set forth the transportation schedule and the weekend activities for students who remain at school.

(4) If a child of school age is admitted as a day school pupil for instruction at the Kentucky School for the Deaf or the Kentucky School for the Blind, under regulation of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education and under provisions of KRS 167.015 to 167.150, the district in which the child resides may provide transportation to and from the school on a daily basis, either by individual district or in cooperation with other school districts on a regional basis, as approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education upon recommendation of the chief state school officer. School districts providing this transportation shall be reimbursed from the transportation fund of the foundation program at the same rate per trip as that which is calculated under subsection (3) of this section.

Section 67. KRS 157.317 is amended to read as follows:

(1) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education through administrative regulations shall develop and implement a statewide Early Childhood Education Program which shall include basic principles of child development, early childhood education, and all other related concepts which deal with generally accepted early childhood programs, including the delivery of health and social services to children as needed.

(2) (a) The Kentucky Early Childhood Advisory Council is created to advise the chief state school officer on the implementation of early childhood education programs. The Department of Education shall provide staff and administrative support for the council.

(b) The Kentucky Early Childhood Advisory Council shall consist of one (1) member of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education appointed by the chairman and sixteen (16) members appointed by the Governor. The sixteen (16) appointed members shall include one (1) representative from each of the following agencies or groups: preschool teachers, public school teachers, elementary school principals, parents, child care providers, community education, the Interagency Task Force on Family Resource Centers and Youth Services Centers, the Head Start Association, the Head Start director, the Head Start Program, the Infant/Toddler Coordinating Council, the Department for Health Services, the Department for Social Services, the Department for Social Insurance, the colleges of education, and the colleges of home economics.

(c) Members shall serve a four (4) year term, except initial appointments shall be set so that four (4) members shall serve one (1) year, four (4) members shall serve two (2) years, four (4) members shall serve three (3) years, and four (4) members shall serve four (4) years.

Section 68. KRS 157.3175 is amended to read as follows:

(1) Beginning with the 1990-91 school year, it shall be the responsibility of each local school district to assure that a developmentally appropriate half-day preschool education program is provided for each child who is four (4) years of age by October 1 of each year and at risk of educational failure. Any school district which can show a lack of facilities to comply with this section may apply for an exemption to delay implementation until 1991-92. All other four (4) year old children shall be served to the extent placements are available. The State Board ***of*** ~~[for Elementary and Secondary]~~ Education, upon the recommendation of the chief state school officer, shall adopt administrative regulations establishing the guidelines for the program. Administrative regulations shall establish eligibility criteria, program guidelines, and standards for personnel.

(2) "Developmentally appropriate preschool program" means a program which focuses on the physical, intellectual, social, and emotional development of young children. The preschool program shall help children with their interpersonal and socialization skills.

(3) Funds appropriated by the General Assembly for the preschool education programs shall be granted to local school districts according to a grant allotment system approved by the State Board *of* ~~[for Elementary and Secondary]~~ Education. Children who are at risk shall be identified based on the Federal School Lunch Program eligibility criteria for free lunch. Appropriations shall be separate from all other funds appropriated to the Department of Education.

(4) The chief state school officer shall receive and review proposals from local school districts for grants to operate or oversee the operation of developmentally appropriate preschool education programs. Districts may submit proposals for implementing new services, enhancing existing preschool education services, or contracting for services. In designing a local early childhood education program, each district shall work with existing preschool programs to avoid duplication of programs and services, to avoid supplanting federal funds, and to maximize Head Start funds in order to serve as many four (4) year old children as possible.

(5) Each program proposal shall include, at a minimum:

(a) A description of the process conducted by the district to assure that the parents or guardians of all eligible participants have been made aware of the program and of their right to participate;

(b) A description of the planned educational programming and related services;

(c) The estimated number of children participating in the program;

(d) Strategies for involving children with disabilities;

(e) Estimated ratio of staff to children with the maximum being one (1) adult for each ten (10) children;

(f) The estimated percentage of children participating in the program who are at risk of educational failure;

(g) Information on the training and qualifications of program staff and documentation that the staff meet required standards;

(h) A budget and per-child expenditure estimate;

(i) A plan to facilitate active parental involvement in the preschool program, including provisions for complementary parent education when appropriate;

(j) Facilities and equipment which are appropriate for young children;

(k) The days of the week and hours of a day during which the program shall operate;

(l) A plan for coordinating the program with existing medical and social services, including a child development and health screening component;

(m) Assurances that participants shall receive breakfast or lunch;

(n) Program sites which meet state and local licensure requirements;

(o) A plan for coordinating program philosophy and activities with the local district's primary school program;

(p) An evaluation component; and

(q) Certification from the Head Start director that the Head Start program is fully utilized pursuant to subsection (4) of this section.

(6) Programs shall reflect an equitable geographic distribution representative of all areas of the Commonwealth.

Section 69. KRS 157.318 is amended to read as follows:

(1) There is hereby established a network of regional training centers for preschool and early childhood education as specified in the 1987 state preschool grant application for Public Law 99-457. The purpose of the regional training centers shall be to provide peer to peer training, consultation, technical assistance, and materials to personnel from local school districts and other agencies operating programs for handicapped and at-risk preschool children.

(2) The regional training centers shall receive federal funds from Public Law 99-457, Education of the Handicapped Act, Part B, and may receive state appropriations, gifts, and grants. No additional centers shall be established unless the existing centers receive at least the same level of funding as in the 1988 fiscal year.

(3) The State Board *of* ~~[for Elementary and Secondary]~~ Education shall promulgate such regulations as may be needed in the administration of the regional training centers. In administering this section, the chief state school officer shall consult with the regional training centers and the districts and agencies served by this program.

Section 70. KRS 157.320 is amended to read as follows:

As used in KRS 157.310 to 157.440, unless the context otherwise requires:

(1) "Average daily attendance" means the aggregate days attended by pupils in a public school, divided by the actual number of days the school is in session;

(2) "Base funding level" means a guaranteed amount of revenue per pupil to be provided for each school district, to be used

for regular operating and capital expenditures;

(3) "Board" means the board of education of any county or independent school district;

(4) "District" means any school district as defined by law;

(5) "Elementary school" means a school consisting of the primary school program through grade eight (8) as defined in KRS 158.030, or any appropriate combination of grades within this range, as determined by the plan of organization for schools authorized by the district board;

(6) "Support Education Excellence in Kentucky" means the level of educational services and facilities which is to be provided in each district from the public school fund;

(7) "Kindergarten full-time equivalent pupil in average daily attendance" means each kindergarten pupil counted no more than one-half (1/2) day in the aggregate days attended by kindergarten pupils in a public school divided by the actual number of days school is in session. Kindergarten is the entry level of the primary program and shall be provided at a minimum for one-half (1/2) day, five (5) days a week for a full school year for each kindergarten pupil;

(8) "Public school fund" means the fund created by KRS 157.330 for use in financing education in public elementary and secondary schools;

(9) "Administrative regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education" means those regulations which the State Board ***of*** ~~[for Elementary and Secondary]~~ Education may adopt upon the recommendation and with the advice of the chief state school officer. The chief state school officer shall recommend administrative regulations necessary for carrying out the purposes of KRS 157.310 to 157.440;

(10) "Experience" means performance of the duties of a teacher, other than as a substitute or nursery school teacher, for a minimum of one hundred and forty (140) days during a school year in a public or nonpublic elementary or secondary school or college or university that is approved by the public accrediting authority in the state in which the teaching duties were performed. A teacher who performs teaching duties for at least one-half (1/2) of a normal school day on one hundred and forty (140) days of a school year shall be credited with one (1) year of experience. A teacher who performs teaching duties for less than one-half (1/2) of a normal school day on one hundred and forty (140) days of each of two (2) school years shall be credited with one (1) year of experience. No more than one (1) year of experience shall be credited for the performance of teaching duties during a single school year.

(11) "Salary schedule summary" means the summary of all salaries paid teachers by the board from the single salary schedule. Teachers shall be grouped by training and experience and by source of funds;

(12) "Secondary school" means a school consisting of grades seven (7) through twelve (12), or any appropriate combination of grades within this range as determined by the plan of organization for schools authorized by the district board. When grades seven (7) through nine (9) or ten (10) are organized separately as a junior high school, or grades ten (10) through twelve (12) are organized separately as a senior high school and are conducted in separate school plant facilities, each shall be considered a separate secondary school for the purposes of KRS 157.310 to 157.440;

(13) "Single salary schedule" means a schedule adopted by a local board from which all teachers are paid for one hundred eighty-five (185) days and is based on training, experience, and such other factors as the State Board ***of*** ~~[for Elementary and Secondary]~~ Education may approve and which does not discriminate between salaries paid elementary and secondary teachers. If the budget bill contains a minimum statewide salary schedule, no teacher shall be paid less than the amount specified in the biennial budget salary schedule for the individual teacher's educational qualifications and experience;

(14) "Teacher" means any regular or special teacher, principal, supervisor, superintendent, assistant superintendent, librarian, director of pupil personnel, or other member of the teaching or professional staff engaged in the service of the public elementary and secondary school for whom certification is required as a condition of employment;

(15) "Percentage of attendance" means the aggregate days attended by pupils in a public school for the school year divided by the aggregate days' membership of pupils in a public school for the school year.

(16) "Middle school" means a school consisting of grades five (5) through eight (8) or any appropriate combination of grades as determined by the plan of organization for schools authorized by the district board.

Section 71. KRS 157.350 is amended to read as follows:

Each district which meets the following requirements shall be eligible to share in the distribution of funds from the fund to support education excellence in Kentucky:

(1) Employs and compensates all teachers for not less than one hundred eighty-five (185) days. The State Board ***of*** ~~[for Elementary and Secondary]~~ Education, upon recommendation of the chief state school officer, shall prescribe procedures by which this requirement may be reduced during any year for any district which employs teachers for less than one hundred and eighty-five (185) days, in which case the eligibility of a district for participation in the public school fund shall be in proportion to the length of time teachers actually are employed;

(2) Operates all schools for a term as provided in KRS 158.070 and administrative regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. If the school term is less than one hundred eighty-five (185) days for any reason not approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education on recommendation of the chief state

school officer, the eligibility of a district for participation in the public school fund shall be in proportion to the length of term the schools actually operate;

(3) Compensates all teachers on the basis of a single salary schedule and in conformity with the provisions of KRS 157.310 to 157.440;

(4) Includes no nonresident pupils in its average daily attendance, except by written agreement with the district of the pupils' legal residence. If an agreement cannot be reached, either board may appeal to the chief state school officer for settlement of the agreement. The chief state school officer shall have thirty (30) days to establish the terms of agreement. Either board may appeal the chief state school officer's decision to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall have sixty (60) days to approve or amend the agreement of the chief state school officer. In consideration of these appeals, the chief state school officer and the State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall give preference to the best interest of the individual student. This subsection does not apply to those pupils enrolled in an approved class conducted in a hospital;

(5) Any secondary school which maintains a basketball team for boys for other than intramural purposes, shall maintain the same program for girls;

(6) Any school district which fails to comply with subsection (5) shall be prohibited from participating in varsity competition in any sport for one (1) year. Determination of failure to comply shall be made by the Department of Education after a hearing requested by any person within the school district. A district under this subsection shall, at such hearing, have an opportunity to show inability to comply.

Section 72. KRS 157.360 is amended to read as follows:

(1) In determining the cost of the program to support education excellence in Kentucky, the statewide guaranteed base funding level, as defined in KRS 157.320, shall be computed by dividing the amount appropriated for this purpose by the prior year's statewide average daily attendance.

(2) Each district shall receive an amount equal to the base funding level for each pupil in average daily attendance in the district in the previous year. Each district's base funding level shall be adjusted by the following factors:

(a) The number of at-risk students in the district. At-risk students shall be identified as those approved for the free lunch program under state and federal guidelines. The number of at-risk students shall be multiplied by a factor to be established by the General Assembly;

(b) The number and types of exceptional children in the district as defined by KRS 157.200. No later than October 1, 1993, specific weights for each category of exceptionality shall be developed by the Department of Education and shall be used in the calculation of the add-on factor for exceptional children. Prior to the development of the necessary weights, the General Assembly shall determine the costs associated with the education of exceptional children based on the count of pupils with different exceptionalities, an appropriate pupil-teacher ratio, and total per-pupil costs; and

(c) Transportation costs. The per pupil cost of transportation shall be calculated as provided by KRS 157.370. No later than October 1, 1991, the Office of Education Accountability's Division of School Finance shall examine the components of the current system for allocating transportation funds, and recommend any needed changes to the General Assembly, the Governor, and the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. Districts which contract to furnish transportation to students attending nonpublic schools may adopt any payment formula which assures that no public school funds are used for the transportation of nonpublic students.

(3) The program to support education excellence in Kentucky shall be fully implemented by the 1994-95 school year. No district shall receive an annual increase in state funds of less than eight percent (8%) for 1990-91 and five percent (5%) in 1991-92 or more than twenty-five percent (25%) in either year.

(4) (a) Except for those schools which have implemented school-based decision making, the chief state school officer shall enforce maximum class sizes for every academic course requirement in all grades except in vocal and instrumental music, and physical education classes. Except in classes combining pupils from two (2) or more grade levels, the maximum number of pupils enrolled in a class shall be as follows:

1. Twenty-four (24) in primary grades (kindergarten through third grade);
2. Twenty-eight (28) in grade four (4);
3. Twenty-nine (29) in grades five (5) and six (6);
4. Thirty-one (31) in grades seven (7) to twelve (12);

(b) Except for those schools which have implemented school-based decision making, class size loads for middle and secondary school classroom teachers shall not exceed the equivalent of one hundred fifty (150) pupil hours per day.

(c) The chief state school officer, upon approval of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, shall adopt administrative regulations for enforcing this provision. These administrative regulations shall include procedures for a superintendent to request an exemption from the State Board ***of*** ~~[for Elementary and Secondary]~~

Education when unusual circumstances warrant an increased class size for an individual class. A request for an exemption shall include specific reasons for the increased class size with a plan for reducing the class size prior to the beginning of the next school year. A district shall not receive in any one (1) year exemptions for more classes than enroll twenty percent (20%) of the pupils in the primary grades and grades four (4) through eight (8).

(d) In all schools the chief state school officer shall enforce the special education maximum class sizes set by administrative regulations adopted by the State Board *of* ~~[for Elementary and Secondary]~~ Education. A superintendent may request an exemption pursuant to paragraph (c) of this subsection. A local school council may request a waiver pursuant to KRS 156.160(2). An exemption or waiver shall not be granted if the increased class size will impede any exceptional child from achieving his individual education program in the least restrictive environment.

(5) In grades four (4) through six (6) with combined grades, the maximum class size shall be the average daily attendance upon which funding is appropriated for the lowest assigned grade in the class. There shall be no exceptions to the maximum class size for combined classes. In combined classes other than the primary grades, no ungraded students shall be placed in a combined class with graded students. In addition, there shall be no more than two (2) consecutive grade levels combined in any one (1) class in grades four (4) through six (6). However, this shall not apply to schools which have implemented school-based decision making.

(6) If a local school district, through its admission and release committee, determines that an appropriate program in the least restrictive environment for a particular handicapped child includes either part-time or full-time enrollment with a private school or agency within the state or a public or private agency in another state, the school district shall count as average daily attendance in a public school the time that the child is in attendance at the school or agency, contingent upon approval by the chief state school officer.

(7) Pupils attending a center for child learning and study established under an agreement pursuant to KRS 65.210 to 65.300 shall, for the purpose of calculating average daily attendance, be considered as in attendance in the school district in which the child legally resides and which is party to the agreement. For purposes of subsection (1) of this section, teachers who are actually employees of the joint or cooperative action shall be considered as employees of each school district which is a party to the agreement.

(8) Program funding shall be increased when the average daily attendance in any district for the first two (2) months of the current school year is greater than the average daily attendance of the district for the first two (2) months of the previous school year. The program funds allotted the district shall be increased by the percent of increase. The average daily attendance in kindergarten is the kindergarten full-time equivalent pupils in average daily attendance.

(9) If the average daily attendance for the current school year in any district decreases by ten percent (10%) or more than the average daily attendance for the previous school year, the average daily attendance for purposes of calculating program funding for the next school year shall be increased by an amount equal to two-thirds (2/3) of the decrease in average daily attendance. If the average daily attendance remains the same or decreases in the succeeding school year, the average daily attendance for purposes of calculating program funding for the following school year shall be increased by an amount equal to one-third (1/3) of the decrease for the first year of the decline.

(10) If the percentage of attendance of any school district shall have been reduced more than two percent (2%) during the previous school year, the program funding allotted the district for the current school year shall be increased by the difference in the percentage of attendance for the two (2) years immediately prior to the current school year less two percent (2%).

(11) (a) Instructional salaries for vocational agriculture classes shall be allotted for twelve (12) months per year. Vocational agriculture teachers shall be responsible for the following program of instruction during the time period beyond the regular school term established by the local board of education: supervision and instruction of students in agriculture experience programs; group and individual instruction of farmers and agribusinessmen; supervision of student members of agricultural organizations who are involved in leadership training or other activity required by state or federal law; or any program of vocational agriculture established by the Office of Vocational Education in the Department of Education. Salary allotments for vocational agriculture units shall be computed by proportionately increasing the salary schedule allocation based on the regular one hundred eighty-five (185) day school year for teachers with comparable qualifications and experience. During extended employment, no vocational agriculture teacher shall receive salary on a day that the teacher is scheduled to attend an institution of higher education class which could be credited toward meeting any certification requirement.

(b) Each teacher of agriculture employed twelve (12) months per year shall submit an annual plan for summer program to the local school superintendent for approval. The summer plan shall include a list of tasks to be performed, purposes for each task, and time to be spent on each task. Approval by the local school superintendent shall be in compliance with the guidelines developed by the State Department of Education. The supervision and accountability of teachers of vocational agriculture's summer programs shall be the responsibility of the local school superintendent. The local school superintendent shall submit to the chief state school officer a completed report of summer tasks for each vocational agriculture teacher employed for twelve (12) months. Twenty percent (20%) of the approved twelve (12) month vocational agriculture programs shall be audited annually by the State

Department of Education to determine that the summer plan has been properly executed.

(c) For the 1990-91 and the 1991-92 school years, an add-on appropriation shall be made to local school districts which are operating secondary vocational education programs. The amount provided in the budget shall be allocated on a per pupil basis and shall be used to meet the higher per student cost of operating vocational education programs.

(12) (a) In allotting program funds for home and hospital instruction, statewide guaranteed base funding excluding the capital outlay, shall be allotted for each child in average daily attendance in the current school year who has been properly identified according to State Board ***of*** ~~[for Elementary and Secondary]~~ Education administrative regulations. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported monthly on forms provided by the Department of Education; and

(b) Pursuant to administrative regulations of the Department of Education, local school districts shall be reimbursed for home and hospital instruction for pupils unable to attend regular school sessions because of short term health impairments. A reimbursement formula shall be established by administrative regulations to include such factors as a reasonable per hour, per child allotment for teacher instructional time, with a maximum number of funded hours per week, a reasonable allotment for teaching supplies and equipment, and a reasonable allotment for travel expenses to and from instructional assignments, but the formula shall not include an allotment for capital outlay. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported monthly on forms provided by the Department of Education.

(13) Except for those schools which have implemented school-based decision making and the school council has voted to waive this subsection, kindergarten aides shall be provided for each twenty-four (24) full-time equivalent kindergarten students enrolled.

Section 73. KRS 157.370 is amended to read as follows:

(1) In determining the cost of transportation for each district, the chief state school officer shall determine the average cost per pupil per day of transporting pupils in districts having a similar density of transported pupils per square mile of area served by not less than nine (9) different density groups.

(2) The annual cost of transportation shall include all current costs for each district plus annual depreciation of pupil transportation vehicles calculated in accordance with the administrative regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education for such districts that operate district-owned vehicles.

(3) The aggregate and average daily attendance of transported pupils shall include all public school pupils transported at public expense who live one (1) mile or more from school. Handicapped children may be included who live less than this distance from school. The aggregate and average daily attendance referred to in this subsection shall be the aggregate and average daily attendance of transported pupils the prior year adjusted for current year increases in accordance with State Board ***of*** ~~[for Elementary and Secondary]~~ Education administrative regulations.

(4) The square miles of area served by transportation shall be determined by subtracting from the total area in square miles of the district the area not served by transportation in accordance with administrative regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. However, if one (1) district authorizes another district to provide transportation services for a part of its area, this area shall be deducted from the area served by the authorizing district and added to the area served by the district actually providing the transportation.

(5) The density of transported pupils per square mile of area served for each district shall be determined by dividing the average daily attendance of transported pupils by the number of square miles of area served by transportation.

(6) The chief state school officer shall determine the average cost per pupil per day of transporting pupils in districts having a similar density by constructing a smoothed graph of cost for the density groups required by subsection (1). This graph shall be used to construct a scale showing the average costs of transportation for districts having a similar density of transported pupils. Costs shall be determined separately for county school districts and independent school districts. No independent school district will receive an average cost per pupil per day in excess of the minimum received by any county district or districts. These costs shall be the costs per pupil per day of transported pupils included in the public school fund and these costs shall be recalculated each biennium.

(7) The scale of transportation costs included in the fund to support education excellence in Kentucky for county and independent districts is determined in accordance with the provisions of KRS 157.310 to 157.440 for the biennium beginning July 1, 1990.

(8) The cost of transporting a district's pupils from the parent school to a state vocational-technical school or to a vocational educational center shall be calculated separately from the calculation required by subsections (1) through (7) of this section. The amount calculated shall be paid separately to each district from program funds budgeted for vocational pupil transportation, as a reimbursement based on the district's cost for providing this service. The amount of reimbursement shall be calculated in accordance with State Board ***of*** ~~[for Elementary and Secondary]~~ Education administrative regulations. In the event that the appropriation for vocational pupil transportation in the biennial budget is insufficient to meet the total calculated cost of this service for all districts, the amount paid to each district shall be ratably reduced. For the purpose of this subsection, the parent school shall be interpreted to mean that school in which the pupil is officially

enrolled in a district's public common school system.

(9) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall determine the type of handicapped pupil that qualifies for special type transportation to and from school. Those qualified pupils for which the district provides special type transportation shall have their aggregate days' attendance multiplied by five (5.0) and added to that part of the district's aggregate days' attendance that is multiplied by the district's adjusted cost per pupil per day in determining the district's pupil transportation program cost for allotment purposes.

Section 74. KRS 157.390 is amended to read as follows:

(1) (a) The chief state school officer, under administrative regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, shall classify teachers in rank as follows:

Rank I. Those holding regular certificates and who have a master's degree in a subject field approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education or equivalent preparation and who have earned thirty (30) semester hours of approved graduate work or its equivalent, and those teachers who, as of September 1, 1962, were included in Rank I, having earned twenty-four (24) semester hours of additional approved graduate work.

Rank II. Those holding regular certificates and who have a master's degree in a subject field approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education or equivalent preparation.

Rank III. Those holding regular certificates and who have an approved four (4) year college degree or the equivalent.

Rank IV. Those holding certificates and who have ninety-six (96) to one hundred twenty-eight (128) semester hours of approved college training or the equivalent.

Rank V. Those holding certificates and who have sixty-four (64) to ninety-five (95) semester hours of approved college training or the equivalent.

(b) In determining ranks, the chief state school officer, under administrative regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, shall classify teachers who hold valid certificates in the respective ranks according to approved college semester hours of credit. The chief state school officer, in defining preparation for certain types of vocational teachers as equivalent to college training, shall give consideration to apprenticeship training and industrial experience.

(c) Nothing in this subsection shall allow the State Board ***of*** ~~[for Elementary and Secondary]~~ Education by regulation to reclassify downward any teachers currently in Ranks I or II.

(2) The chief state school officer, under administrative regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, shall classify teachers in each rank by their years of experience for purposes of the state teacher salary schedule as follows:

1. Zero (0) to three (3) years;
2. Four (4) to nine (9) years;
3. Ten (10) to fourteen (14) years;
4. Fifteen (15) to nineteen (19) years; and
5. Twenty (20) or more years.

(3) (a) The rank and experience of the teacher shall be determined on September 15.

(b) The amount to be included in each school year in the base funding level of a district for teachers' salaries shall be based on the categories of experience in subsection (2) of this section.

(4) The amount to be included in the base funding level for capital outlay shall be determined by multiplying the average daily attendance by the amounts set forth in the biennial budget.

(5) The amount to be included in the public school fund of each district for transportation shall be determined in accordance with the provisions of KRS 157.370.

(6) The total amount of money distributable to each district from the public school fund shall be the sum of the allotments in subsections (3), (4), and (5) of this section, less the amount of local tax revenues generated for school purposes, up to a maximum equivalent local rate of thirty cents ($0.30) as defined by KRS 157.615(6).

(7) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall create a Kentucky professional compensation plan. The plan shall be designed to compensate all teachers at adequate and competitive salary levels throughout their teaching careers. The plan shall establish progressive salary levels with advancement opportunities based upon the professional skills of the teacher and include education, rank, years of teaching service, related duties, specialized training, nonteaching experience, length of work year, performance, and any other professionally-recognized factors which the board considers relevant. The plan shall be developed during the 1992-94 biennium. Development work shall be conducted by Department of Education staff with support from recognized compensation experts, and staff from the

Legislative Research Commission, the Office of Education Accountability, and the Governor's Office of Policy and Management. Upon approval by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, the new plan, and its fiscal impact shall be submitted to the General Assembly.

Section 75. KRS 157.410 is amended to read as follows:

For each school year the Finance and Administration Cabinet, on the certification of the chief state school officer, shall draw warrants on the State Treasurer for the amount of the public school fund due each district. Checks shall be issued by the State Treasurer and transmitted to the Department of Education for distribution to the proper officials of the school districts when the districts have fully complied with the school laws and administrative regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. The chief state school officer shall determine on or before August 15 of each year the tentative allotment of school funds to which each district is entitled under the provisions of KRS 157.310 to 157.440. On July 1, August 1, and September 1, of each fiscal year, one-twelfth (1/12) of the prior year's allotment minus the capital outlay shall be paid each school district. On the first of each month thereafter until the final calculation is completed, one-twelfth (1/12) of each district's share of the tentative calculation for instructional salaries, current expenses, and transportation of the public school fund shall be distributed. On or before May 1 of each year the chief state school officer shall determine the exact amount of the public common school fund to which each district is entitled and the remainder of the amount due each district for the year shall be distributed in equal installments beginning the first month after completion of final calculation and for each successive month thereafter. Capital outlay shall be made in two (2) payments. The first, on or before October 1, shall be one-half (1/2) of the amount calculated on the tentative allocation for capital outlay. The balance due shall be paid on or before May 1.

Section 76. KRS 157.420 is amended to read as follows:

Public school funds made available to the credit of each district during any year shall be received, held, and expended by the district board, subject to the provisions of law and administrative regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. The following restrictions shall govern the expenditure of funds from the public school fund:

(1) The teachers' salaries allotment for each district from the public school fund and from local sources shall be used only for teachers holding properly authorized certificates. The salary paid any rank of teachers shall be at least equivalent to the amount set forth in the biennial budget schedule for each rank and experience for a term of one hundred eighty-five (185) days for full-time service during the regular school year or the allotment under KRS 157.390(3) shall be reduced by an amount equal to the amount by which the district failed to meet the salary requirements.

(2) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall not approve any working budget or salary schedule summary for local boards of education for any school year in which the total amount for one hundred eighty-five (185) days on the salary schedule summary for salaries paid from the base funding is not equal to:

  (a) The amount for one hundred eighty-five (185) days on the district's salary schedule summary for instructional salaries paid with state funds the preceding year; plus

  (b) The additional amount for instructional salaries to be received by the district under the biennial budget schedule for a one hundred eighty-five (185) day school term by assuming the same rank and experience of teachers in the current year as in the preceding year.

(3) A district that compensates its teachers or employees for unused sick leave at the time of retirement, pursuant to KRS 161.155, may create an escrow account to maintain the amount of funds necessary to pay teachers or employees who qualify for receipt of the benefit. The fund is limited to not more than fifty percent (50%) of the maximum liability for the current year. Interest generated by the account shall be calculated as part of the total amount. The funds shall not be used for any purpose other than compensation for unused sick leave at the time of retirement and shall not be considered as part of the general fund balance in determining available local revenue for purposes of KRS 157.620.

(4) The per pupil capital outlay allotment for each district from the public school fund and from local sources shall be kept in a separate account and may be used by the district only for capital outlay projects approved by the chief state school officer in accordance with requirements of law, and based on a survey made in accordance with administrative regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. These funds shall be used for the following capital outlay purposes:

  (a) For direct payment of construction costs;

  (b) For debt service on voted and funding bonds;

  (c) For payment or lease-rental agreements under which the board eventually will acquire ownership of a school plant;

  (d) For the retirement of any deficit resulting from over-expenditure for capital construction, if such deficit resulted from an emergency declared by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education under KRS 160.550; and

  (e) As a reserve fund for the above-named purposes, to be carried forward in ensuing budgets.

(5) If any district has a special levy for capital outlay or debt service that is equal to the capital outlay allotment or a proportionate fraction thereof, and spends the proceeds of that levy for the above-named purposes, the chief state school officer under administrative regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, may authorize

the district to use all or a proportionate fraction of its capital outlay allotment for current expenses. However, a district which uses capital outlay funds for current expenses shall not be eligible to participate in the School Facilities Construction Commission funds.

(6) If a survey shows that a school district has no capital outlay needs as shown in paragraphs (a), (b), (c), and (d) of subsection (4) of this section, upon approval of the chief state school officer, these funds may be used for school plant maintenance, repair, insurance on buildings, replacement of equipment, purchase of school buses, and the purchase of modern technological equipment, including telecommunications hardware, televisions, computers, and other technological hardware to be utilized for educational purposes only.

(7) In surveying the schools, the Department of Education shall designate each school facility as a permanent, functional, or transitional center.

(a) "Permanent center" means a center which meets the program standards approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, is located so that students are not subjected to an excessive amount of time being transported to the site, and has established an attendance area which will maintain enrollment at capacity but will also avoid overcrowding.

(b) "Functional center" means a center which does not meet all the criteria established for a permanent facility, but is adequate to meet accreditation program standards to insure no substantial academic or building deficiency. The facility plan shall include additions and renovations necessary to meet current accreditation standards for which federal, state, and local funds may be used.

(c) "Transitional center" means a center which the local board of education has determined shall no longer be designated permanent or functional. The center shall be destined to be closed and shall not be eligible for new construction, additions, or major renovation. However, the board of education shall maintain any operating transitional center to provide a safe and healthy environment for students.

Section 77. KRS 157.510 is amended to read as follows:

As used in KRS 157.510 to 157.540, unless the context requires otherwise:

(1) "Board" means the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(2) "Current costs and expenses" means all expenditures except capital outlay, debt service, and that portion of salaries for professional staff in excess of that calculated from the allotment schedule set forth in the biennial budget for teachers' salaries.

(3) "Year-round school program" means any plan of operation, approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education upon recommendation of the chief state school officer, which requires the use of school facilities and resources throughout the school year.

Section 78. KRS 157.520 is amended to read as follows:

(1) It is the intention of the General Assembly in KRS 157.510 to 157.540 to permit the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, upon recommendation of the chief state school officer, to authorize a local board of education to operate public elementary and secondary schools on a basis other than the standard school day, month, term, or year for purposes of experimentation. The objective of this legislation is to encourage experimentation that may result in improved quality of education or more efficient use of educational resources in the state.

(2) The board, upon recommendation of the chief state school officer, shall adopt administrative regulations relating to the requirements to be met by school districts for authorization to operate experimental programs on a basis other than the standard school day, month, term, or year.

(3) The board, upon recommendation of the chief state school officer, shall select no more than three (3) school districts from those applying for authorization to operate experimental programs on a basis other than those requirements provided by KRS 158.060 and 158.070(2).

(4) The board, upon recommendation of the chief state school officer, shall select at least three school districts, if three (3) school districts meeting the requirements of the board apply, for experimental operation of year-round school programs.

Section 79. KRS 157.606 is amended to read as follows:

(1) To facilitate opportunities for statewide participation by public school children in the Commonwealth in educational experiences available through the Kentucky Center for the Arts, the Department of Education shall administer the Ride to the Center for the Arts Program. Moneys from the ride to the center for the arts fund shall be used to provide matching funds to local school districts for the cost of transportation of students in grades six (6), seven (7), eight (8), and nine (9) for the purpose of visiting the Kentucky Center for the Arts.

(2) Grants shall be in the amount equal to one-half (1/2) the total transportation cost of the visit, as submitted and certified to by the local district to the chief state school officer or his designee.

(3) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall promulgate administrative regulations as may be needed in the administration of the program and disbursement of moneys from the fund.

Section 80. KRS 157.615 is amended to read as follows:

As used in KRS 157.611 to 157.640, unless the context requires otherwise:

(1) "Available local revenue" means the sum of the school building fund account balance; the bonding potential of the capital outlay fund; the capital outlay fund account balance; and the general fund balance minus ten percent (10%) of the annual general fund above-the-line budget. These accounts shall be as defined in the manual for Kentucky school financial accounting systems;

(2) "Board of education" means the governing body of a county school district or an independent school district;

(3) "Bonds" or "bonds of the commission" means bonds issued by the commission, or issued by a city or county in accordance with KRS Chapter 162, payable as to principal and interest from rentals received from a board of education or from the department pursuant to a lease or from contributions from the commission, and constitute municipal bonds exempt from taxation under the Constitution of the Commonwealth;

(4) "Department" means the State Department of Education;

(5) "District technology plan" means the plan developed by the local district and the Department of Education and approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education upon the recommendation of the Council for Education Technology;

(6) "Equivalent tax rate" means the rate which results when the income from all taxes levied by the district for school purposes is divided by the total assessed value of property plus the assessment for motor vehicles certified by the Revenue Cabinet as provided by KRS 160.470. The amount of income from any voted building tax shall be included in computing the equivalent tax rate;

(7) "Kentucky Education Technology System" means the statewide system set forth in the technology master plan issued by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education with the recommendation of the Council for Education Technology and approved by the Legislative Research Commission;

(8) "Lease" or "lease instrument" means a written instrument for the leasing of one (1) or more school projects executed by the commission as lessor and a board of education as lessee, or executed by the commission as lessor and the department as lessee, as the case may be;

(9) "Lease/purchase agreement" means a lease between the school district or the department and a vendor that includes an option to purchase the technology equipment or software at the end of the lease period;

(10) "Percentage discount" means the degree to which the commission will participate in meeting the bond and interest redemption schedule required to amortize bonds issued by the commission on behalf of a local school district;

(11) "Project" means a defined item of need to construct new facilities or to provide major renovation of existing facilities which is identified on the priority schedule of the approved school facilities plan;

(12) "School facilities plan" means the plan developed pursuant to the survey specified by KRS 157.420 and by administrative regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education;

(13) "Technology master plan" means the long-range plan for the implementation of the Kentucky Education Technology System as developed by the Council for Education Technology and approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education and the Legislative Research Commission;

(14) "Unmet facilities need" means the total cost of new construction and major renovation needs as shown by the approved school facilities plan less any available local revenue;

(15) "Unmet technology need" means the total cost of technology need as shown by the approved technology plan of the local district; and

(16) "Eligible district" means any local school district having an unmet facilities need, as defined in this section, in excess of one hundred thousand dollars ($100,000) or a district qualifying for education technology funding.

Section 81. KRS 157.620 is amended to read as follows:

(1) To participate in the school construction funding program, the district must have unmet needs as defined by KRS 157.615 and must meet the following eligibility criteria:

   (a) Commit at least an equivalent tax rate of five cents ($0.05) to debt service, new facilities, or major renovations of existing school facilities. The five cents ($0.05) shall be in addition to the thirty cents ($0.30) required by KRS 160.470(12). If the current levy of a district exceeds the required thirty cents ($0.30) and the five cents ($0.05), no additional tax shall be required. However, not less than five cents ($0.05) shall be committed under this subsection. The five cents ($0.05) shall be equalized at one hundred fifty percent (150%) of the statewide average per pupil assessment when committed to debt service. A district that levies the five cents ($0.05) and has not accepted an official offer of assistance from the School Facilities Construction Commission, made pursuant to KRS 157.611, may use receipts from the levy for other purposes as determined by the district board of education.

   (b) On July 29, 1985, and on June 30 of each year thereafter, the district board of education shall transfer all available local revenue, as defined by KRS 157.615, to a restricted account for school building construction, to be utilized in accordance with the priorities determined by the approved school facilities plan.

(2) Interest earned on funds deposited in the restricted accounts required by this section shall be deposited in the restricted account and shall become a part of the restricted funds.

(3) Funds restricted by the requirements of this section may be used by the district for projects or a portion thereof as listed in priority order on the approved school facilities plan prior to receiving state funds. Any local school district which is not an eligible district may be permitted, upon written application to the Department of Education,. to transfer funds restricted by KRS 157.611 to 157.640 for other school purposes.

(4) Not later than October 15 of the year immediately preceding the regular session of the General Assembly, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall submit a statement to the School Facilities Construction Commission certifying the following in each district:

  (a) The amount of school facility construction needs in each district;

  (b) The amount of available local revenue in each district; and

  (c) That the district has or has not met the eligibility criteria established by subsection (1) of this section.

(5) Construction needs shall be those needs specified in the school facilities plan approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education as of June 30 of the year preceding the biennium in which funding is approved. All school facilities plans not approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education since January 1, 1981, shall be revised by December 31, 1985. The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall conduct public hearings on all amendments to approved plans.

(6) If a local board of education determines that for any reason the district's approved facility plan is grossly inconsistent with the administrative regulations governing the development of the plan, the local board may certify, by official action, the reason for such inconsistency and may request that the Department of Education resurvey the building needs of the district. After review of the data, the chief state school officer may require a resurvey and the approval of a new facility plan certified prior to an official offer from the School Facilities Construction Commission, and on or before January 15 of any subsequent year. If the chief state school officer elects to recommend the new facility plan to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, the board shall notify the School Facilities Construction Commission of any change required in the statement of need for the district.

Section 82. KRS 157.622 is amended to read as follows:

The School Facilities Construction Commission shall be governed by the following procedures in providing assistance to school districts for construction purposes:

(1) Upon receipt of the certified statements from the State Board ***of*** ~~[for Elementary and Secondary]~~ Education as required by KRS 157.620, the commission shall compute the unmet needs of all eligible districts as defined by KRS 157.615;

(2) Assistance to each eligible district shall be determined by computing the ratio of the available state funding to total unmet need statewide. Based on the computed ratio, an equivalent percentage of each eligible district's unmet need will be funded;

(3) Each eligible district which has otherwise complied with the provisions of KRS 157.615 and 157.620 shall be offered sufficient funding to finance construction of the portion of its unmet need computed by applying the ratio determined in subsection (2) of this section to the total unmet need of the district. The funds shall be applied to the projects listed on the facility plan certified to the School Facilities Construction Commission prior to the appropriation of funds, and the funds shall be applied to projects in the priority order listed on the plan. Exceptions to the priority order of projects may be approved by the School Facilities Construction Commission when it is documented by the local board of education and approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education upon the recommendation of the chief state school officer that the school district's priority order of needs has changed. The exceptions shall not alter the amount of the offer of assistance;

(4) Any school district which met all criteria for first round funding with the School Facilities Construction Commission and which received an offer of assistance from the School Facilities Construction Commission, but which had sold bonds in the sixty (60) days prior to receiving the offer under the assumption that an offer would be made, shall be eligible to receive the assistance for which the district qualified.

(5) The commission shall establish regulations whereby an eligible district which fails in any budget period to receive an allocation of state funds that is sufficient to fund the district's priority project or portions thereof may accumulate credit, subject to the availability of funds, for its unused state allocation for a period not to exceed four (4) years. Accumulation and retention of credit is contingent upon the transfer of available local revenue to the restricted construction account by June 30 of each year; and

(6) All unused state allocations accumulated according to the provisions of subsection (3) of this section shall be reallocated by the commission. The reallocation shall follow the process and intent as set forth in this section with eligible districts being those districts which contribute unused state allocations to the reallocation account. Any district which has an unused state allocation after funding its first priority project in a biennium is not eligible for consideration for additional funds from the reallocation account. Any funding received and utilized from the reallocation account by a district shall equally reduce the credit as set forth in this section.

Section 83. KRS 157.655 is amended to read as follows:

(1) To participate in the education technology funding program, a local public school district shall have an unmet technology need described in its local district technology plan and approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education pursuant to its technology master plan, and shall match equally the amount of funds offered by the School Facilities Construction Commission for this purpose each biennium, except as provided in subsection (2) of this section. Technology approved for the Kentucky Education Technology System and included in the local district technology plan, which was acquired prior to April 3, 1992, and for which the district has an outstanding financial obligation, shall qualify for commission funding. This provision shall not apply to any purchases or contracts made between April 3, 1992, and the first offers of assistance recommended by the Council for Education Technology to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(2) For fiscal year 1992-93, funding shall be allotted to districts without an approved plan upon the recommendation of the Council for Education Technology to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(3) If a local board of education determines that for any reason the district's approved technology plan is grossly inconsistent with the administrative regulations governing the development of the plan, the local board may certify, by official action, the reason for the inconsistency and may request that the Department of Education reevaluate the technology plan of the district. After review of the data, the chief state school officer may require a reevaluation and the approval of a new technology plan certified prior to an official offer from the School Facilities Construction Commission. If the chief state school officer elects to recommend the new technology plan to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, the board shall notify the School Facilities Construction Commission of any change required in the offer of assistance for the district.

Section 84. KRS 157.665 is amended to read as follows:

(1) To carry out the purpose of providing educational technology for the public system of education pursuant to KRS Chapter 156, the Kentucky education technology trust fund is hereby established in the Finance and Administration Cabinet. Funds appropriated by the General Assembly in each biennial budget for the purchase or lease of education technology for the public system of education shall be credited to the fund and invested until needed. All interest earned on money in the fund shall be retained in the fund for reinvestment.

(2) All funds appropriated for these purposes by the 1990 and 1992 Regular Sessions of the General Assembly and thereafter, and any interest generated by these funds, shall be transferred to the account on April 3, 1992. All money credited to the fund, including interest, shall be used only for education technology purposes as defined by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education's technology master plan and shall not lapse, but shall be carried forward in the next biennial budget. The purposes expressed in this section shall be deemed to be the purposes for which any budgetary appropriation for educational technology shall have been made.

(3) Funds shall be transferred to the local school districts upon certification of the School Facilities Construction Commission that the district has met the criteria for assistance. All other expenditures shall require the approval of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 85. KRS 158.030 is amended to read as follows:

(1) "Common school" means an elementary or secondary school of the state supported in whole or in part by public taxation. No school shall be deemed a "common school" or receive support from public taxation unless the school is taught by a certified teacher for a minimum school term as defined by KRS 158.070 and every child residing in the district who satisfies the age requirements of this section has had the privilege of attending it. Provided, however, that any child who is six (6) years of age, or who may become six (6) years of age by October 1, shall attend public school or qualify for an exemption as provided by KRS 159.030. Any child who is five (5) years of age, or who may become five (5) years of age by October 1, may enter a primary school program, as defined in subsection (2) of this section.

(2) "Primary school program" means that part of the elementary school program in which children are enrolled from the time they begin school until they are ready to enter the fourth grade. Notwithstanding any statute to the contrary, successful completion of the primary school program shall be a prerequisite for a child's entrance into fourth grade. The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall establish, by regulation, methods of verifying successful completion of the primary school program pursuant to the goals of education as described in KRS 158.6451.

Section 86. KRS 158.060 is amended to read as follows:

(1) Twenty (20) school days, or days in which teachers are actually employed in the schoolroom, shall constitute a school month in the common schools. The legal holidays designated by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education to be observed may include the first Tuesday after the first Monday in November of each year and shall be counted as school days. Each full-time teacher shall be provided with a duty-free lunch period each day during the regularly scheduled student lunch period. The duty-free lunch period shall be not less than the length of the lunch period specified in the school calendar approved by the chief state school officer. A full-time teacher may be assigned to lunch room duty during the regularly scheduled student lunch period only for an amount of time equal to the noninstructional time in excess of fifty-five (55) minutes included in the teacher's daily schedule. The calculation of noninstructional time shall not include the teacher's duty-free lunch period, the time teachers are required to be at school prior to the start of

the student's six (6) hour instructional day, or the time teachers are required to remain at school after the students are dismissed. Except for handicapped children and children attending the primary school program who may attend a program of less than six (6) hours per day under policy adopted by the local school district board of education and approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, a minimum of six (6) hours of actual school work shall constitute a school day. Kindergarten programs may be operated for less than six (6) hours without state board approval. The State Board ***of*** ~~[for Elementary and Secondary]~~ Education, upon recommendation of the chief state school officer, shall develop and approve regulations governing make up by school districts of whole days missed due to emergencies, or partial days missed as a result of shortening regularly scheduled school days due to emergencies.

(2) Teachers shall be provided additional time for nonteaching activities. The nonteaching time shall be used to provide teachers opportunities for professional development activities as provided in KRS 156.095, instructional planning, school based shared decision making as provided in KRS 160.345, curriculum development, and outreach activities involving their students' families and the community.

Section 87. KRS 158.070 is amended to read as follows:

(1) The minimum school term shall be one hundred eighty-five (185) days, including at least one hundred seventy-five (175) instructional days. A board of education may extend its term beyond the minimum term.

(2) Any local board of education operating its schools on a year-round school program basis shall conform with regulations promulgated and adopted by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education upon the recommendation of the chief state school officer, which regulations must be in conformity with the following criteria:

(a) The year-round school program shall be operated on a fiscal year beginning July 1 and ending June 30;

(b) A pupil's required attendance in school shall be for at least the minimum instructional term; and

(c) No teacher shall be required to teach more than the minimum term during the school year.

(3) Each local board of education shall use four (4) days of the minimum school term for professional development and planning activities for the professional staff without the presence of pupils pursuant to the requirements of KRS 156.095 and 158.720. The local board of each school district may use up to a maximum of four (4) days of the minimum school term for holidays, provided, however, any holiday which occurs on Saturday may be observed on the preceding Friday. Each local board may use two (2) days for planning activities without the presence of pupils. Each local board may use the number of days deemed necessary for:

(a) National or state disaster or mourning when proclaimed by the President of the United States or the Governor of the Commonwealth of Kentucky;

(b) Local disaster which would endanger the health or safety of children; and

(c) Mourning when so designated by the local board of education and approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education upon recommendation of the chief state school officer.

(4) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education, upon recommendation of the chief state school officer, shall adopt regulations governing the use of school days, including days missed from the regular school day as a result of local disaster, as defined in subsection (3)(b) of this section, and regulations setting forth the guidelines and procedures to be observed for the approval of the days utilized for the opening and closing of school and the days utilized for professional development and planning activities for the professional staff.

(5) In setting the school calendar, school shall be closed for two (2) consecutive days for the purpose of permitting professional school employees to attend statewide professional meetings. These two (2) days for statewide professional meetings shall be scheduled to begin with the first Thursday after Easter, or upon request of the statewide professional education association having the largest paid membership, the chief state school officer may designate alternate dates. The chief state school officer shall designate one (1) additional day during the school year when schools shall be closed to permit professional school employees to participate in regional or district professional meetings. These three (3) days so designated for attendance at professional meetings shall not be counted as a part of the minimum school term.

(6) Students applying for excused absence for attendance at the Kentucky State Fair shall be granted one (1) day of excused absence.

(7) Schools shall provide continuing education for those students who are determined to need additional time to achieve the outcomes defined in KRS 158.6451, and schools shall not be limited to the minimum school term in providing this education. Continuing education time may include extended days, extended weeks, or extended years. A local board of education may adopt a policy requiring its students to participate in continuing education. The local policy shall set out the conditions under which attendance will be required and any exceptions which are provided. The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall promulgate administrative regulations establishing criteria for the allotment of grants to local school districts for the 1990-1991 and 1991-1992 school years for continuing education. These grants shall be allotted to school districts to provide instructional programs for pupils who are identified as needing additional time to achieve the outcomes defined in KRS 158.6451. The chief state school officer shall recommend to the Division of School Finance of the Office of Education Accountability by June 30, 1991, a method for funding continuing education for these students through the state-supported funding program.

(8) Notwithstanding any other statute, each school term shall include at least the minimum number of instructional days required by this section. However, for the school years 1992-93 and 1993-94, local school districts may use up to five (5) instructional days or up to thirty (30) hours during instructional days for additional professional development for teachers if the following conditions are met:

(a) The local board determines the number of additional days or hours to be used for professional development and designates them in the school calendar; and

(b) A plan for the use of the additional days or hours is developed by each school and approved by the district superintendent. The plan shall consist of training selected from a list approved by the Kentucky Department of Education.

Section 88. KRS 158.110 is amended to read as follows:

(1) Boards of education may provide transportation from their general funds or otherwise for any pupil of any grade to the nearest school to the pupil's residence within the district if the pupil does not live within a reasonable walking distance to such nearest school of appropriate grade level. The local board may provide transportation by means of a board-operated transportation system, transit authorities organized and operating pursuant to KRS Chapter 96A, local governmental mass transit systems, and individual contracted buses and vehicles.

(2) When space is not available at the nearest school, boards of education may provide transportation from their general funds or otherwise for any pupil of any grade who does not live within a reasonable walking distance to the nearest school of appropriate grade level where space is available. Transportation may be provided by means pursuant to subsection (1) of this section.

(3) Public elementary and secondary schools shall not change their present grade level structure without written permission from the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(4) The boards of education shall adopt such rules and regulations as will insure the comfort, health, and safety of the children who are transported, consistent with the rules and regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education dealing with the transportation of pupils.

Section 89. KRS 158.120 is amended to read as follows:

(1) Any board of education may charge a reasonable tuition fee per month for each child attending its schools whose parent, guardian, or other legal custodian is not a bona fide resident of the district. Any controversy as to the fee shall be submitted to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education for final settlement. The fee shall be paid by the board of education of the school district in which the pupil resides, except in cases where the board makes provision for the child's education within his district. If a board of education is required to pay a pupil's tuition fee, the pupil shall be admitted to a school only upon proper certificate of the board of education of the district in which he resides.

(2) When it appears to the board of education of any school district that it is convenient for a pupil of any grade residing in that district to attend an approved public school in another district, the board of education may enter into a tuition contract with the public school authorities of the other school district for that purpose, but before a contract is entered into with public school authorities in another state the school shall have been approved by the state school authorities of that state through the grades in which the pupil belongs. When a district undertakes, under operation of a tuition contract or of law, to provide in its school for pupils residing in another district, the district of their residence shall share the total cost of the school, including transportation when furnished at public expense, in proportion to the number of pupils or in accordance with contract agreement between the two (2) boards.

Section 90. KRS 158.148 is amended to read as follows:

(1) In cooperation with the Kentucky Education Association, the Kentucky School Boards Association, the Kentucky Association of School Administrators, the Parent-Teachers Association, the Kentucky Chamber of Commerce, the Farm Bureau, members of the Interim Joint Committee on Education and other interested groups, the Department of Education shall develop statewide student discipline guidelines and recommendations designed to reduce the dropout rate in the state's public schools.

(2) The department shall obtain statewide data on major discipline problems and reasons why students drop out of school. In addition, strategies currently being used successfully in programs in Kentucky and in other states shall be incorporated into the statewide guidelines and the recommendations to reduce dropouts.

(3) Copies of the discipline guidelines shall be distributed to all school districts. The statewide guidelines shall contain broad principles to guide local districts in developing their own discipline code, which shall be filed with and approved by the State Department of Education and State Board ***of*** ~~[for Elementary and Secondary]~~ Education. The local code shall be distributed to all students and parents in the district.

(4) The Department of Education shall first provide technical assistance to those districts reporting the greatest number of dropouts. Reporting requirements shall be established by the Department of Education; however, reports shall be prepared in a manner that will provide data on successful strategies for dropout prevention.

(5) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall establish criteria for the development of dropout prevention programs and award grants for up to twenty (20) school districts in which:

(a) The percentage of students dropping out of school is among the highest twenty-five (25) districts in the state; and

(b) More than one hundred (100) students drop out of schools each year.

These grants shall be administered through contracts whereby school districts agree to provide dropout prevention services specified by the State Board ***of*** [~~for Elementary and Secondary~~] Education. In addition, the State Board ***of*** [~~for Elementary and Secondary~~] Education shall have the authority to award up to twenty (20) grants to school districts having high dropout rates but fewer than one hundred (100) dropouts per year. The State Board ***of*** [~~for Elementary and Secondary~~] Education shall develop grant funding criteria based upon available appropriations.

Section 91. KRS 158.6451 is amended to read as follows:

(1) Upon July 13, 1990, the Council on School Performance Standards established by Executive Order 89-151 shall be reconvened by the chairman to frame the following six (6) goals for the schools of the Commonwealth in measurable terms which define the outcomes expected of students:

(a) Schools shall expect a high level of achievement of all students.

(b) Schools shall develop their students' ability to:

1. Use basic communication and mathematics skills for purposes and situations they will encounter throughout their lives;
2. Apply core concepts and principles from mathematics, the sciences, the arts, the humanities, social studies, and practical living studies to situations they will encounter throughout their lives;
3. Become a self-sufficient individual;
4. Become responsible members of a family, work group, or community, including demonstrating effectiveness in community service;
5. Think and solve problems in school situations and in a variety of situations they will encounter in life; and
6. Connect and integrate experiences and new knowledge from all subject matter fields with what they have previously learned and build on past learning experiences to acquire new information through various media sources.

(c) Schools shall increase their students' rate of school attendance.

(d) Schools shall reduce their students' dropout and retention rates.

(e) Schools shall reduce physical and mental health barriers to learning.

(f) Schools shall be measured on the proportion of students who make a successful transition to work, post-secondary education, and the military.

(2) The Council on School Performance Standards shall employ necessary staff and shall be attached to the Department of Education for administrative purposes. Members of the council and its committees may receive reimbursement of actual expenses for attending meetings and may be reimbursed for other actual and necessary expenses incurred in the performance of their duties authorized by the council. The expenses shall be paid out of the appropriation for the council.

(3) The Council on School Performance Standards shall establish a number of committees with statewide representation of certified personnel to frame the goals in measurable terms which specify the expected outcomes. The council shall make periodic progress reports and a final report by December 1, 1991, to the Governor, the State Board ***of*** [~~for Elementary and Secondary~~] Education, and the Legislative Research Commission. After submitting its final report the council shall cease to exist. The State Board ***of*** [~~for Elementary and Secondary~~] Education shall adopt the goals of the council.

(4) By July 1, 1993, the State Board ***of*** [~~for Elementary and Secondary~~] Education shall disseminate to local school districts and schools a model curriculum framework which is directly tied to the goals, outcomes, and assessment strategies developed pursuant to this section and KRS 158.645 and 158.6453. The framework shall provide direction to local districts and schools as they develop their curriculum. The framework shall identify teaching and assessment strategies, instructional material resources, ideas on how to incorporate the resources of the community, a directory of model teaching sites, and alternative ways of using school time.

Section 92. KRS 158.6453 is amended to read as follows:

(1) The State Board ***of*** [~~for Elementary and Secondary~~] Education shall be responsible for creating and implementing a statewide, primarily performance-based assessment program to ensure school accountability for student achievement of the goals set forth in KRS 158.645. The program shall be implemented as early as the 1993-94 school year but no later than the 1995-96 school year. The board shall also be responsible for administering an interim testing program to assess student skills in reading, mathematics, writing, science, and social studies in grades four (4), eight (8), and twelve (12). The tests shall be designed to provide the state with national comparisons and shall be the same as, or similar to those used by the National Assessment of Educational Progress. The interim testing program shall begin during the 1991-92 school year and shall be administered to a sample of students representative of each school and the state as a whole. The test scores shall be used, along with other factors described in KRS 158.6451, to establish a baseline for determining school success during the 1993-94 school year.

(2) Upon July 13, 1990, the state board shall contract with three (3) or more authorities in the field of performance assessment to design the specifications for the interim and full-scale statewide assessment development effort. The bid specifications shall include requirements that the successful bidder:

  (a) Be a consultant to the Council on School Performance Standards as it develops the educational outcomes expected of students;

  (b) Direct the development of the interim and full-scale assessment program; and

  (c) Direct the development of the formula to be used to determine successful schools pursuant to KRS 158.6455.

The assessment authorities shall review the bids and make a recommendation to the board. The authorities shall have no pecuniary interest with the successful bidder.

(3) In addition to statewide testing for the purpose of determining school success, the board shall have the responsibility of assisting local school districts and schools in developing and using continuous assessment strategies needed to assure student progress.

(4) By October 1 of each year, local boards of education shall publish in the newspaper with the largest circulation in the county an annual performance report on district accomplishments and activities pertaining to performance goals including, but not limited to, retention rates and student performance, the districts' goals for the succeeding year, and other items as may be set forth in State Board ***of*** ~~[for Elementary and Secondary]~~ Education administrative regulations.

Section 93. KRS 158.6455 is amended to read as follows:

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

(1) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall promulgate administrative regulations to establish a system of determining successful schools and dispensing appropriate rewards. The system shall be based on the following:

  (a) A school shall be the unit of measure to determine success;

  (b) School success shall be determined by measuring a school's improvement over a two (2) year period;

  (c) A school shall be rewarded for an increased proportion of successful students, including those students who are at risk of school failure;

  (d) A threshold level for school improvement shall be established by the board to determine the amount of success needed for a school to receive a reward. The threshold definition shall establish the percentage of increase required in a school's percentage of successful students as compared to a school's present proportion of successful students, with consideration given to the fact that a school closest to having one hundred percent (100%) successful students will have a lower percentage increase required;

  (e) Rewards shall be given to the school on behalf of the full-time, part-time, and itinerant instructional staff of a school who generate the reward when the school achieves at least one percent (1%) gain over its threshold as defined in paragraph (d) of this subsection. Substitute teachers shall not be used in calculating the reward;

  (f) Rewards shall be calculated by applying the percentage set by the General Assembly in the biennial budget to the current annual salary of each certified staff person employed in the school on the last working day of the year of the reward. The reward for part-time and itinerant staff shall be calculated for the proportion of time spent in the school. In determining the percentage to be applied to a school for calculation of the rewards for the school's staff, consideration shall be given to the fact that schools already having a high percentage of successful students shall have a lower requirement for a percentage increase in its number of successful students. The staff person's identity in connection to his share of the reward shall be maintained when his share of the reward is deposited to the school's account;

  (g) The certified staff members shall by majority rule collectively decide on the ways the reward funds shall be spent. Each individual staff person shall use the amount he earned in accordance with the decisions made by the total staff. Rewards shall not be added to a staff person's base salary and shall not be defined as compensation for retirement purposes under KRS 161.220(10); and

  (h) The Department of Education shall send the school's reward to the local district office for transmittal to the school.

(2) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education, after adopting the goals of the Council on School Performance Standards and determining the definition of a successful student, shall adopt by administrative regulation the formula to be used to determine successful schools. The formula shall be a calculus of factors which reflect the school outcomes described in KRS 158.6451.

(3) A school that does not reach its threshold level as defined in paragraph (d) of subsection (1) of this section but maintains the previous proportion of successful students shall be required to develop a school improvement plan and shall be eligible to receive funds from the school improvement fund pursuant to KRS 158.805. A school that does not reach its threshold level but maintains the previous proportion of successful students after the second biennial review shall be

required to meet the provisions of subsection (4) of this section.

(4) A school in which the proportion of successful students declines by less than five percent (5%) shall be required to develop a school improvement plan, shall be eligible to receive funds from the school improvement fund, and shall have one (1) or more Kentucky distinguished educators assigned to the school to carry out the duties as described in KRS 158.782. If the school does not meet its original threshold after the next biennial review, the school shall be subject to the requirements of subsection (5) of this section.

(5) A school in which the proportion of successful students declines by five percent (5%) or more shall be declared by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education to be a "school in crisis." When a school is declared to be a "school in crisis," the following actions shall be required:

(a) The full-time and part-time certified staff of that school shall be placed on probation;

(b) The principal shall immediately notify the students' parents of the students' right to transfer to a successful school, with procedures for initiating the request;

(c) Within thirty (30) days after the declaration by the state board under this subsection or no later than thirty (30) days before the start of the next school year, whichever is later, any student in that school may request and shall be allowed to transfer to a successful school as determined under the provisions of subsection (2) of this section. The superintendent shall select the receiving successful school in the home district or make arrangements with a neighboring district. If two (2) districts cannot agree, the superintendent of the student's resident district shall request the State Board ***of*** ~~[for Elementary and Secondary]~~ Education to resolve the issue and make a decision on the placement of the student within thirty (30) days of the request. The board of the district in which the student resides shall be responsible for all tuition and transportation costs incurred as a result of a student transferring from a "school in crisis" to a successful school. If a decline in student enrollment causes overstaffing at the "school in crisis," personnel shall be reduced or transferred pursuant to KRS 161.760 and 161.800.

(d) One (1) or more Kentucky distinguished educators shall be assigned to the school by the commissioner of education to carry out the duties as described in KRS 158.782. Notwithstanding any other statute to the contrary, at the end of six (6) months, the Kentucky distinquished educator shall evaluate and make a recommendation to the superintendent regarding the retention, dismissal, or transfer of each full-time and part-time certified staff member. Recommendations for transfer shall conform to any employer-employee bargained contract which is in effect. Recommendations for dismissal shall be binding on the superintendent who shall notify the staff member pursuant to KRS 161.790. This evaluation process shall continue every six (6) months until the school is no longer a "school in crisis" as determined by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education; and

(e) The school shall be required to develop a school improvement plan and shall be eligible to receive funds from the school improvement fund.

(6) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall develop a system of rewards and sanctions for certified staff who are not assigned to a school in a local school district. The system shall be analogous to the system described in subsections (1) through (5) of this section. Rewards shall be given to non-school-based staff when the district's proportion of successful students increases above a threshold adopted by the state board and comparable to the threshold adopted for schools. Sanctions shall be imposed when the proportion of successful students in the district declines in the same proportion used to determine school sanctions under subsections (3), (4), and (5) of this section. A school district that does not meet its threshold shall be required to develop a district improvement plan defined in KRS 158.650.

(7) A school district in which the proportion of successful students declines by five percent (5%) or more shall be assigned one (1) or more Kentucky distinguished educators to assist the system, evaluate personnel, and notwithstanding any other statute to the contrary, make personnel recommendations every six (6) months on retention, dismissal, or transfer. Personnel recommendations shall be made to the superintendent. Recommendations on the superintendent's status shall be made to the local board of education. If the recommendation is to terminate the superintendent, the board shall terminate the contract pursuant to KRS 160.350. If a district has a declining proportion of successful students for two (2) consecutive biennial assessment periods, the district shall be declared an education development district pursuant to KRS 158.685 and the board members and the superintendent shall be removed under the provisions of KRS 156.132 and 156.136.

(8) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall adopt administrative regulations to establish a process whereby a school shall be allowed to appeal a performance judgment which it considers grossly unfair. The state board may adjust a performance judgment on appeal when evidence of highly unusual circumstances warrants the conclusion that the performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the biennial assessment period which are beyond the control of the school.

Section 94. KRS 158.650 is amended to read as follows:

As used in KRS 158.680 to 158.710, unless the context otherwise requires:

(1) "Department" means the Department of Education;

(2) "Competencies" means the possession of skills, knowledge, and understandings to the degree they can be demonstrated or measured;

(3) "Performance goals" means expected student and school district outcomes as approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education;

(4) "Interim performance goal" means the specified amount of improvement the district shall achieve toward meeting the performance goal agreed upon in the district improvement plan;

(5) "Process goals" means systematic and orderly procedures, including specific actions and time frames to be followed in achieving performance goals;

(6) "Standards" means acceptable levels of attainment school districts shall meet in student, program, service, and operational performance as established in administrative regulations adopted by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education;

(7) "Educationally deficient school district" means a school district which does not meet minimum standards in student, program, service, or operational performance;

(8) "Education development district" means an educationally deficient district which fails to meet all process goals or to achieve all interim performance goals according to the timelines established in the district improvement plan;

(9) "Annual performance report" means the report published annually by each local board of education that presents the district's performance with regard to performance goals as established by State Board ***of*** ~~[for Elementary and Secondary]~~ Education administrative regulations; and

(10) "District improvement plan" means the plan developed by a local school district in consultation with the Department of Education, that establishes the process goals and timelines for correcting identified deficiencies in the achievement of performance goals and the interim performance goals. The plan shall be approved by the local board of education and the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 95. KRS 158.680 is amended to read as follows:

There shall be appointed by the Governor a State Advisory Committee for Educational Improvement in accordance with the following:

(1) The State Advisory Committee for Educational Improvement shall be eighteen (18) members broadly representative of citizens, parents, teachers, and administrators. Their principal duties shall be to advise the Governor, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, and the department on the implementation of the provisions of KRS 158.650 to 158.710 and KRS 158.6453 and 158.6455.

(2) All members shall be voting members appointed by the Governor and shall serve terms of four (4) years, except that the original appointments will be made as follows:

  (a) Five (5) members for four (4) year terms;

  (b) Five (5) members for three (3) year terms;

  (c) Four (4) members for two (2) year terms; and

  (d) Four (4) members for a one (1) year term.

(3) The State Advisory Committee for Educational Improvement shall elect a chairman annually from its membership;

(4) The members shall be remunerated for actual and necessary expenses incurred while attending meetings of the State Advisory Committee for Educational Improvement or while serving in the capacity as representative of the State Advisory Committee for Educational Improvement.

(5) The State Advisory Committee for Educational Improvement shall meet at least three (3) times each year at times and places as it determines by resolution.

Section 96. KRS 158.685 is amended to read as follows:

(1) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall adopt administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall promulgate regulations establishing operational performance standards by January 1, 1991. These standards shall become effective on July 1, 1991.

(2) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall declare a school district to be educationally deficient when, in any school year, the district fails to meet minimum student, program, service, or operational performance standards.

(3) The chief state school officer shall provide consultation and assistance to any school district which has been declared educationally deficient by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. The school district shall be provided consultation and guidance relative to programs, services, finances, personnel, and any other areas where appropriate changes would be reasonably calculated to eliminate or alleviate the deficiency and in developing and implementing a district improvement plan pursuant to KRS 158.710. The changes may include improved personnel administration, more efficient management practices, and other administrative and academic actions to improve the local

district's performance. The Department of Education shall submit to the local board and superintendent a list of the services and technical assistance the department shall provide. The services listed may include activities and programs offered for the improvement of all districts. The list of services shall be attached to the district improvement plan when it is submitted to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education for approval.

(4) Failure by an educationally deficient school district to meet the process goals, interim performance goals, or timelines set in the district improvement plan shall constitute grounds for removal of the superintendent and local board members from office and this action shall be initiated by the chief state school officer pursuant to KRS 156.132 and 156.136. The district shall also be declared an education development district. The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall appoint the members of the district's board of education which shall have all the powers, duties, and responsibilities of an elected board, except as provided in this section. The appointed members shall serve a four (4) year term or until the district qualifies for an elected board and the duly elected members have taken office, whichever occurs first. When a new superintendent of schools is selected by the local board, the chief state school officer shall approve the selection before the appointment shall become official. The local board shall revise the district improvement plan with the assistance of the Department of Education. The Department of Education shall continue to provide the district consultation and assistance pursuant to subsection (3) of this section. Local board elections shall resume in the first even-numbered year following two (2) consecutive years of meeting the performance standards set by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. This section shall not create a statutory cause of action for educational malpractice by students, their parents or guardians.

Section 97. KRS 158.710 is amended to read as follows:

Each educationally deficient district and education development district shall assume the following responsibilities and functions in implementing the provisions of KRS 158.680 to 158.710:

(1) The district shall develop a plan to improve the education of all students enrolled in preschool and the primary program through grade twelve (12). In developing the plan and prior to approval by the local board of education, the district shall involve local citizens, parents, students, teachers, and administrators. The district, pursuant to KRS 158.685, shall involve Department of Education consultants in the development of the plan;

(2) Educationally deficient districts and education development districts pursuant to KRS 158.685 shall submit a plan each year, or more frequently if ordered by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, listing new process goals, the interim performance goals, and timelines until the deficiency has been eliminated;

(3) Local school personnel shall ascertain areas of strength and areas needing improvement in the school program as revealed by the test results and other student assessments and with the advice and counsel of the representatives mentioned in subsection (1) of this section, shall develop appropriate programs to address educational areas needing improvement for all students in preschool and the primary program through grade twelve (12);

(4) The district improvement plan developed and submitted to the department shall include the following:

  (a) Performance goals or interim performance goals;

  (b) Product goals;

  (c) A list of individuals, by occupation, or groups involved in developing the plan;

  (d) The areas of needed improvement as revealed by the district assessment results;

  (e) A list of priorities for program implementation;

  (f) The objectives and activities deemed appropriate and necessary for alleviating the observed educational areas of needed improvement;

  (g) A calendar of events and timeline, for implementation;

  (h) A brief report, each succeeding year, or more frequently if required by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, after submission of the initial plan, of the program status and progress made in areas of needed improvement.

(5) The district improvement plan shall be coordinated with the master staff development plan and the Department of Education shall provide technical assistance in the planning, implementation, and evaluation of this coordination.

(6) Effective June 30, 1996, KRS 158.650 to 158.710 shall become null and void.

Section 98. KRS 158.770 is amended to read as follows:

An advisory committee on writing shall be created by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education to make recommendations to the board regarding the establishment of an intensive writing component in the state program of studies for grades seven (7) through ten (10) and the establishment of innovative pilot writing programs in selected local school districts in grades seven (7) through ten (10).

(1) The advisory committee shall be composed of nine (9) members appointed by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. The majority of the membership shall be educators currently employed by local school districts or public universities.

(2) (a) On July 13, 1990, the terms of the current members of the advisory committee shall expire and the State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall appoint members as follows: three (3) members shall serve two (2) year terms, three (3) members shall serve three (3) year terms, and three (3) members shall serve four (4) year terms.

(b) As the terms described in subsection (a) of this section expire, members appointed thereafter shall serve four (4) year terms.

(3) All operating expenses of the committee shall be approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education and paid from funds budgeted to the writing programs. Members shall be reimbursed for actual expenses for attendance at committee meetings and for other actual expenses incurred in carrying out their official duties.

(4) The functions of the committee shall be as follows:

(a) Analyze the program of studies of grades seven (7) through ten (10) and make recommendations to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education on the options for including an intensive writing program;

(b) Make recommendations to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education on methods of integrating writing into the curriculum in grades seven (7) through ten (10);

(c) Make recommendations to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education relative to the development of teacher training programs and workshops designed to facilitate the effective teaching of writing;

(d) Develop and recommend to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education criteria for local district participation in the pilot program;

(e) Develop a monitoring and ongoing evaluation system; and

(f) Recommend to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education a grant allotment system to award funds to eligible districts.

Section 99. KRS 158.775 is amended to read as follows:

(1) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall select school districts to participate in pilot programs based upon the criteria recommended by the advisory committee on writing.

(2) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall authorize grants of funds to school districts selected for participation in the program based on the grant allotment system recommended by the advisory committee on writing.

(3) Teacher aides may be employed in selected districts to assist in the implementation of this program. Such aides shall meet the same qualifications required of kindergarten aides in KRS 161.044.

Section 100. KRS 158.780 is amended to read as follows:

(1) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall establish a program for voluntary management improvement, for involuntary supervision, and for assuming full control of a local school district.

(a) The voluntary improvement program shall assist local districts with the development of innovative management practices and help them adopt currently accepted practices.

(b) If the State Board ***of*** ~~[for Elementary and Secondary]~~ Education determines that a critical lack of efficiency or effectiveness in the governance or administration of a local school district exists, it shall assume sufficient supervision of the district to ensure that appropriate corrective action occurs.

(c) If the State Board ***of*** ~~[for Elementary and Secondary]~~ Education determines that the pattern of a lack of efficiency or effectiveness in the governance or administration of a school district warrants action, it shall declare the district a "state assisted district" or a "state managed district" and assume control of the district as set forth in this section and KRS 158.785.

(2) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall adopt necessary administrative regulations to carry out the provisions of this section and KRS 158.785, including an administrative regulation to more specifically establish and implement the standards for designation as a "state assisted district" and a "state managed district."

(3) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education may delegate to the chief state school officer the authority it deems necessary to carry out the provisions of this section and KRS 158.785.

Section 101. KRS 158.782 is amended to read as follows:

(1) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall promulgate administrative regulations to set forth the criteria for the Kentucky Distinguished Educators Program which shall be implemented by July 1, 1991. The designation of "Kentucky Distinguished Educator" shall be given to the state's most outstanding and highly skilled certified educators who deserve recognition and are willing to fulfill the following purposes of the program:

(a) Serving as teaching ambassadors to spread the message that teaching is an important and fulfilling profession;

(b) Assisting the Department of Education with research projects and staff development efforts;

(c) Accepting assignments in schools whose percentage of successful students declined as described in KRS 158.6455. The assignments shall require the educator to:

1. Work in a school full-time for a designated period of time to assist the school staff with implementing its

school improvement plan. The educator shall have the authority to make decisions previously made by the school staff;

2. Help to increase the effectiveness of the staff, parents, the civic and business community, and government and private agencies in improving the school's performance; and

3. Evaluate and make recommendations on the retention, dismissal, or transfer of certified staff in a "school in crisis."

4. Complete an intensive training program, provided by the Department of Education and approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, prior to being assigned to assist a school's staff with implementing its school improvement plan. The training program shall include, but shall not be limited to instruction in the methods of personnel evaluation, school organization, school curriculum, and assessment.

(2) The Kentucky Distinguished Educators Program criteria shall include:

(a) A selection process which shall allow for self nomination, provide a broad spectrum of instructional positions, and generate statewide representation.

(b) Beginning with the 1992-93 school year, special recognition shall be given to five (5) Kentucky distinguished educators each year in the form of a one (1) year sabbatical leave to work with instructional personnel across the state and to serve as teaching ambassadors to the state at large.

(c) Each recipient shall receive a monetary award of two hundred fifty dollars ($250) when selected and shall also be paid in accordance with his current salary for other program requirements which arise pursuant to subsection (1) of this section. The Department of Education shall be responsible for all expenses incurred as a result of the Kentucky Distinguished Educators Program, except those expenses associated with the funding of the position of the person who replaces the Kentucky distinguished educator when he is assigned to an unsuccessful school or district.

(d) Kentucky distinguished educators assigned to an unsuccessful school shall receive a salary supplement of fifty percent (50%) of his annual salary for each year of service in that capacity. The state board shall determine if reimbursement for vehicle mileage shall be allowed. If his assigned school achieves the threshold level in the next biennial review, he shall receive his portion of the reward due to the entire staff calculated on his base salary regardless of decisions made by the school staff pursuant to KRS 158.6455(1)(g).

(e) The Kentucky distinguished educator shall be granted professional leave pursuant to KRS 161.770 though the time may exceed two (2) years if determined by the state board to be necessary. The Kentucky distinguished educator shall not lose any employee benefits as a result of his special assignment.

(f) A Kentucky distinguished educator shall not be assigned to a school or to a district assignment in the district in which he is employed.

Section 102. KRS 158.785 is amended to read as follows:

(1) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall establish a program to improve specific aspects of the management of local school districts as described in KRS 158.780.

(2) The State Department of Education shall, pursuant to administrative regulations promulgated by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, collect and review data relative to the instructional and operational performance of local school districts. When a review of the data or of any other information, including site investigations of local management practices, indicates the presence of critically ineffective or inefficient management, the chief state school officer shall order a management audit of the governance and administration of the district. A local school board or superintendent may also request a management audit of the district.

(3) If a management audit, conducted for any of the reasons set forth in subsection (2) of this section, indicates that there is a pattern of a significant lack of efficiency and effectiveness in the governance or administration of a school district, the chief state school officer shall recommend the district to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education either as a "state assisted district" or a "state managed district."

(4) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall promulgate an administrative regulation establishing a procedure for considering the recommendation of the chief state school officer to declare a district a "state assisted district" or a "state managed district." This procedure shall provide for written notice of the grounds for the recommendation and an opportunity to be heard on the matter before the State Board.

(5) When the chief state school officer presents a recommendation to the State Board for designation as a "state assisted district" or a "state managed district," he shall establish the following:

(a) Existence of a pattern of a significant lack of efficiency and effectiveness in the governance or administration of the school district;

(b) The pattern of a significant lack of efficiency and effectiveness in the governance or administration of the school district continues to exist; and

(c) State assistance or state management is necessary to correct the inefficiencies and ineffectiveness.

(6) When a district is designated a "state assisted district," the following actions shall be required of the chief state school officer:

(a) Management assistance shall be provided to the district to develop and implement a plan to correct deficiencies found in the management audit.

(b) The Department of Education shall monitor the development and implementation of the correctional plan to improve the governance or administration of the school district. If the chief state school officer determines that the plan is being inadequately developed or implemented, he shall make a recommendation to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education to declare the district a "state managed district."

(7) If the State Board designates a district a "state managed district," the following actions shall be required of the chief state school officer:

(a) All administrative, operational, financial, personnel, and instructional aspects of the management of the school district formerly exercised by the local school board and the superintendent shall be exercised by the chief state school officer or his designee.

(b) Any local school board member or the local superintendent may be removed from office by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education pursuant to KRS 156.132.

(c) Notwithstanding any statute to the contrary, after thirty (30) days after a district becomes a "state managed district" any appointment to an administrative position may be revoked by the chief state school officer and the individual employee may be reassigned to any duty for which that person is qualified. The chief state school officer shall provide to the reassigned employee written reasons for the reassignment. The individual shall not be dismissed from subsequent employment except as provided by KRS 156.132 and 161.790.

(d) The chief state school officer shall make the administrative appointments as necessary to exercise full and complete control of all aspects of the management of the district. The chief state school officer, through the appointments, may make any and all decisions previously made by the local school board and the local superintendent. The chief state school officer shall retain clear supervisory and monitoring powers over the operation and management of the district.

(8) A school district shall be designated as a "state managed district" until the State Board ***of*** ~~[for Elementary and Secondary]~~ Education determines that the pattern of ineffective and inefficient governance or administration and the specific deficiencies determined by the management audit have been corrected. Each year following the school year in which the designation of a "state managed district" was made, the chief state school officer shall report the status of the corrective action being taken to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. No local school district shall remain in the status of a "state managed district" longer than three (3) consecutive school years unless the State Board ***of*** ~~[for Elementary and Secondary]~~ Education extends the time after a complete review of a new management audit. Any judicial review of actions taken by the chief state school officer or the board under KRS 158.780 or 158.785 shall be limited to whether the action was arbitrary or involved an error of law.

Section 103. KRS 158.805 is amended to read as follows:

(1) There is hereby created the Commonwealth school improvement fund to assist local schools in pursuing new and innovative strategies to meet the educational needs of the school's students and raise the school's performance level. The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall utilize the Commonwealth school improvement fund to provide grants to schools for the following purposes:

(a) To support teachers and administrators in the development of sound and innovative approaches to improve instruction or management;

(b) To assist in replicating successful programs developed in other districts;

(c) To encourage cooperative instructional or management approaches to specific school educational problems; and

(d) To encourage teachers and administrators to conduct experimental programs to test concepts and applications being advanced as solutions to specific educational problems.

(2) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall develop criteria for awards of grants from the Commonwealth school improvement fund to schools in educationally deficient districts pursuant to KRS 158.685 through the 1993-94 school year. Beginning with the 1994-95 school year, grants shall go to schools which do not meet their threshold as defined in KRS 158.6455. The Governor shall appoint an advisory committee which shall include teachers, administrators, teacher educators, and representatives of the general public to assist in the planning and implementation of the Commonwealth school improvement fund. The members of the advisory committee shall serve without compensation, but shall be reimbursed for all reasonable expenses incurred in the discharge of official duties. The committee shall advise the board on application procedures, review of proposals, evaluation criteria, reporting requirements, and other matters relating to the fund as requested by the board.

(3) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall have the sole authority to approve grants from the fund. The advisory committee shall review proposals for grants and make recommendations to the board relating to the

merits of each proposal.

(4) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education may establish priorities for the use of the funds and, through the Department of Education, shall provide assistance to schools in preparing their grant proposals. The board shall require that no funds awarded under the Commonwealth school improvement fund are used to supplant funds from any other source. Requests for necessary equipment may be approved at the discretion of the state board, however the cost of equipment purchased by any grantee shall not exceed twenty percent (20%) of the total amount of money awarded for each proposal and shall be matched by local funds on a dollar for dollar basis.

(5) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall establish maximums for specific grant awards. All fund recipients shall provide the board with an accounting of all money received from the fund and shall report the results and conclusions of any funded projects to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. All fund recipients shall provide the board with adequate documentation of all projects to enable replication of successful projects in other areas of the state.

Section 104. KRS 159.030 is amended to read as follows:

(1) The board of education of the district in which the child resides shall exempt from the requirement of attendance upon a regular public day school every child of compulsory school age:

(a) Who is a graduate from an accredited or an approved four (4) year high school; or

(b) Who is enrolled and in regular attendance in a private, parochial, or church regular day school. It shall be the duty of each private, parochial, or church regular day school to notify the local board of education of those students in attendance at the school. If a school declines, for any reason, to notify the local board of education of those students in attendance, it shall so notify each student's parent or legal guardian in writing, and it shall then be the duty of the parent or legal guardian to give proper notice to the local board of education; or

(c) Who is less than seven (7) years old and is enrolled and in regular attendance in a private kindergarten-nursery school; or

(d) Whose physical or mental condition prevents or renders inadvisable attendance at school or application to study; or

(e) Who is enrolled and in regular attendance in private, parochial, or church school programs for exceptional children; or

(f) Who is enrolled and in regular attendance in a state-supported program for exceptional children;

(g) For purposes of this section, "church school" shall mean a school operated as a ministry of a local church, group of churches, denomination, or association of churches on a nonprofit basis.

(2) Before granting an exemption under subsection (1)(d) of this section the State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall require satisfactory evidence, in the form of a signed statement of a licensed physician, psychologist or psychiatrist, or public health officer, that the condition of the child prevents or renders inadvisable attendance at school or application to study. On the basis of such evidence the board may exempt the child from compulsory attendance. Any child who is excused from school attendance more than six (6) months shall have two (2) signed statements from a combination of the following professional persons: a licensed physician, psychologist, psychiatrist, and health officer. Exemptions of all children under the provisions of subsection (1)(d) of this section shall be reviewed annually with the evidence required being updated.

(3) For any child who is excluded under the provisions of subsection (1)(d) of this section, home, hospital, institutional, or other regularly scheduled and suitable instruction meeting standards, rules and regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall be provided.

Section 105. KRS 159.040 is amended to read as follows:

Attendance at private and parochial schools shall be kept by the authorities of such schools in a register provided by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, and such school authorities shall make attendance and scholarship reports in the same manner as is required by law or by regulation of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education of public school officials. Such schools shall at all times be open to inspection by directors of pupil personnel and officials of the Department of Education.

Section 106. KRS 159.070 is amended to read as follows:

Each school district shall constitute a separate attendance district unless two (2) or more contiguous school districts, with the approval of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, unite to form one (1) attendance district. Controversies arising in attendance districts relating to attendance matters shall be submitted to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education for settlement. In case an agreement suitable to all parties cannot be reached, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education may dissolve a united district. In case of dissolution, each school district involved may unite with other contiguous school districts in forming a united attendance district or may act as a separate attendance district. Within the appropriate school district attendance area, parents or legal guardians shall be permitted to enroll their children in the public school nearest their home.

Section 107. KRS 159.080 is amended to read as follows:

(1) Each superintendent of a local school district shall appoint a director of pupil personnel and assistants as are deemed necessary. Salaries of directors and assistants shall be fixed by the board of education.

(2) Directors of pupil personnel and assistants shall have the general qualifications of teachers and, in addition, shall hold a valid certificate issued in accordance with the rules and regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. Certificates valid on January 1, 1956, for attendance officer shall hereafter be valid for the positions of director of pupil personnel. Certificates shall be reissued or renewed in accordance with the terms of the state board regulations applying at the date of issue.

(3) Directors of pupil personnel and assistants shall be allowed their necessary and authorized expenses incurred in the performance of their duties. Each board shall bear the expense of its directors of pupil personnel and assistants incurred in its district.

(4) The office of the superintendent of schools shall be the office of the director of pupil personnel and suitable space shall be provided therein or adjacent thereto for him.

Section 108. KRS 159.130 is amended to read as follows:

The director of pupil personnel and his assistants shall be vested with the powers of peace officers, provided, however, that they shall not have the authority to serve warrants. They may investigate in their district any case of nonattendance at school of any child of compulsory school age or suspected of being of that age. They may take such action in accordance with law as the superintendent directs. They may under the direction of the superintendent of schools and the board of education or the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, institute proceedings against any person violating any provisions of the laws relating to compulsory attendance and the employment of children. They may enter all places where children are employed and do whatever is necessary to enforce the laws relating to compulsory attendance and employment of children of compulsory school age. No person shall refuse to permit or in any way interfere with the entrance therein of a director of pupil personnel or in any way interfere with any investigation therein.

Section 109. KRS 159.140 is amended to read as follows:

The director of pupil personnel shall:

(1) Devote his entire time to the duties of his office;

(2) Enforce the compulsory attendance and census laws in the attendance district he serves;

(3) Acquaint the school with the home conditions of the child, and the home with the work and advantages of the school;

(4) Ascertain the causes of irregular attendance and truancy, and seek the elimination of these causes;

(5) Secure the enrollment in school of all children who should be enrolled and keep all enrolled children in reasonably regular attendance;

(6) Visit the homes of children who are absent from school or who are reported to be in need of books, clothing, or parental care;

(7) Report to the superintendent of schools in the district in which the child resides the number and cost of books and school supplies needed by any child whose parent, guardian, or custodian does not have sufficient income to furnish the child with the necessary books and school supplies;

(8) Keep the records and make the reports that are required by law, by regulation of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, and by the superintendent and board of education.

Section 110. KRS 159.170 is amended to read as follows:

Whenever any child of compulsory school age withdraws from school, the teacher of the child shall ascertain the reason. The fact of the withdrawal and the reason for it shall be immediately transmitted by the teacher to the superintendent of schools of the district in which the school is located. If the child has withdrawn because of change of residence, the next residence shall be ascertained and included in the report. The superintendent shall thereupon forward a card showing the essential facts regarding the child and stating the place of his new residence to the superintendent of schools of the district to which the child has moved. The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall prescribe the forms to be used in the operation of this section.

Section 111. KRS 160.020 is amended to read as follows:

All school districts embracing cities of the first five (5) classes together with the territory within their limits, including any territory added for school purposes outside of the city limits, and all independent graded common school districts having a school census enumeration of two hundred (200) or more children, constitute independent school districts, except those which have merged with a county school district since June 14, 1934. No independent district other than a city of the first five (5) classes shall continue to operate when its school census enumeration of children falls below two hundred (200) pupils unless it appears to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education that the district can maintain a more efficient program of school service by operating as an independent district.

Section 112. KRS 160.041 is amended to read as follows:

(1) When a board of education of an independent school district desires to have its district become a part of the county school district, it shall by motion so record its desire in the minutes of the board. The board, or its executive officer, shall convey this request to the county board of education. At its next regular meeting, or at a special meeting held prior thereto, the county board of education shall pass upon this request.

(2) If the county board of education refuses, or the two (2) boards of education cannot agree upon such a proposition of merger of the independent district with the county district, the question of merger shall be submitted to the qualified voters of the two (2) districts at the next regular election.

(a) If a majority of those voting on the question favor merger, the school boards of the two (2) school districts shall jointly develop a plan for adoption of the merger.

(b) If the two (2) school boards cannot agree to the terms of merger within sixty (60) days following the date of the regular election, the chief state school officer shall develop the terms of the adoption of merger.

(c) Notwithstanding subsection (2)(a) of this section, if the independent school district cannot meet its current operating expenses from projected revenue and if the two (2) school boards cannot agree to the terms of a merger, the proposition of merger shall be submitted to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education and the State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall determine whether the two (2) districts should be merged and if merged the terms thereto.

(d) Upon completion of the plan for adoption of the merger, whether prepared by the school boards or the superintendent, it shall become effective and the independent district shall become a part of the county school district as set out in the plan.

Section 113. KRS 160.045 is amended to read as follows:

(1) If seventy-five percent (75%) of either the registered voters or property owners in an area adjacent to either a county or independent school district petition the respective school boards for a transfer of said property to the school board district other than that in which it is located, or if either board initiates such action, the school boards may effect the transfer by agreement, duly spread upon the minutes of their respective boards.

(2) If the boards fail to agree within ninety (90) days from the filing of petitions for the transfer, either board may petition the chief state school officer for approval or disapproval of the transfer of the property involved. In his consideration for giving approval or disapproval, he shall be governed by any policies and rules and regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education which may be affected by the transfer of the property and shall give due consideration to the following: the ratio of the wealth of the territory involved in its relation to the total wealth of the district from which the territory will be annexed; the effect of the proposed territorial loss or gain on the educational programs of the respective districts; extent of and effect on the physical plant, facilities, and equipment available in each of the affected districts; the indebtedness and bonded or rental obligations of the respective districts; any contemplated indebtedness or obligation arising out of the proposed transfer; and other factors as may have a bearing upon the determination of the desirability of the proposed annexation from the vantage point of all interested persons.

(3) In those instances where the requested transfer will result in a surplus of physical plant, facilities, or equipment in the transferring school district, the chief state school officer shall determine an equitable plan for the transfer of any surplus to the annexing district as his plan may determine will be needed. His plan shall be based on the fair value of such property on a replacement basis, taking into consideration its age and condition. In any considerations and suggestions which he may propose for the settlement of the differences between the boards of education, he shall be bound by any agreements outstanding between the boards of education of the school districts on July 15, 1982.

(4) If the chief state school officer is unable to arrive at a satisfactory agreement with the two (2) boards of education concerning the transfer of the involved property within one hundred twenty (120) days from the time it is presented to him, either board may request that he bring the matter on for hearing before the State Board ***of*** ~~[for Elementary and Secondary]~~ Education at its next regularly scheduled meeting. In that event, he shall file with the State Board ***of*** ~~[for Elementary and Secondary]~~ Education all the facts which he has gathered, the recommendation he has made, and the basis for his recommendation, for their consideration. In those instances where, after giving consideration to the factors set forth in subsection (2) of this section, the chief state school officer determines that a transfer of only a portion of the territory in question is in the best interest of the respective districts, he may recommend to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education a modified plan of transfer of territory.

(5) Within at least ten (10) days before the holding of any hearing provided for in subsection (4) of this section, the chief state school officer shall serve written notice thereof by certified mail, return receipt requested, on the respective boards fixing the time and place at which the hearing shall be conducted. All hearings provided for herein shall be open to the public, and any interested person may appear and be heard in accordance with the rules and regulations as the State Board ***of*** ~~[for Elementary and Secondary]~~ Education may prescribe with reference thereto.

Section 114. KRS 160.048 is amended to read as follows:

(1) The General Assembly hereby finds that from time to time various school boards, in the exercise of their administrative discretion, have determined that their school districts would be most efficiently administered if one (1) or more of the

district's schools were constructed and operated on land located outside the school districts' boundaries. The General Assembly further finds that this has been desirable and in furtherance of an efficient system of common schools. As urbanization increases, and school districts throughout the Commonwealth become more densely populated, available school sites within such districts will proportionately diminish, and it will with increasing frequency be necessary to construct schools on land not within the district of the school board constructing such schools. When a school is so located, it is more efficient for the school district constructing the school, but it is less efficient for the statewide system of common schools and for the children residing in the immediate neighborhood of the new school, who reside in a different school district, and therefore must be transported to other, more distant schools. This situation results in an inefficient utilization of state and local school funds and school facilities, and is a result of the artifically drawn school district boundary lines. The General Assembly further finds that the discretionary method of transfer presently provided by KRS 160.045 is not adequate to assure an efficient operation of the common schools, and that it is desirable to provide for mandatory transfer of such areas. Pursuant to section 183 of the Kentucky Constitution, the General Assembly declares that such situations are special situations and require special treatment. It is the intent of the General Assembly to provide by this statute a special method whereby such areas may be transferred to the school district operating the school or schools.

(2) If seventy-five percent (75%) of either the registered voters or property owners in an area adjacent to a school district other than the district in which such area is located and in which area there is located a school owned and operated by such adjacent school district petition the school board of the school district which owns and operates such school and the school board of the school district in which such area is located for the transfer of such area from the school district in which it is located to the school district which owns and operates such school, then such area shall be so transferred.

(3) The effective date of such transfer shall be sixty (60) days after the date on which the petition is filed with the two (2) school boards; personal delivery of said petition to any member of the school board or to the superintendent of the school district shall constitute "filing" for purposes of this section. Provided, that if such effective date falls during a term of the school district in which such area is located, the two (2) school boards involved may, by agreement, defer the effective date of such transfer until the end of said term.

(4) The terms and conditions of such transfer shall be determined in the manner provided for the determination of the terms and conditions of transfer under KRS 160.045, except that the chief state school officer, the State Board ***of*** [~~for Elementary and Secondary~~] Education, and the respective reviewing courts shall have no power to disapprove such transfer.

(5) Upon such transfer, the recipient district shall assume a portion of the bonded indebtedness of the losing district, as provided in KRS 160.065; such bonds shall remain the obligation of the issuing agency, and shall not be affected in any way by such transfer, except that each year the recipient district shall pay to the losing district a sum of money sufficient to make the payments on the portion of such indebtedness assumed by the recipient district, and such annual payments shall continue until all of the bonded indebtedness outstanding at the time of the transfer is paid in full.

(6) The method of transfer provided in this section shall be an alternative method to that set forth in KRS 160.045, and this section shall have no effect whatsoever on KRS 160.045.

Section 115. KRS 160.105 is amended to read as follows:

The State Board ***of*** [~~for Elementary and Secondary~~] Education shall by regulation require each school district to provide for fire and extended insurance coverage on each building owned by the board which is not surplus to its needs as shown by the approved facilities plan. The requirement for such coverage shall not exceed replacement cost and shall allow for the features of co-insurance and deductibles.

Section 116. KRS 160.156 is amended to read as follows:

(1) The State Board ***of*** [~~for Elementary and Secondary~~] Education shall develop a state plan for community education which sets forth the goals and objectives of the program and establishes a system of priorities for targeting available resources on the areas with the greatest need.

(2) The State Board ***of*** [~~for Elementary and Secondary~~] Education shall administer a grant program pursuant to KRS 160.155 and 160.157 to provide money to local school districts to:

(a) Support staff to plan and manage programs and services for community education; and

(b) Support programs that are targeted to the greatest educational needs in the community.

(3) Districts shall provide a twenty-five percent (25%) cash match in order to receive state community education funding.

Section 117. KRS 160.157 is amended to read as follows:

(1) Subject to the availability of funds, a public school district may receive funding for a community school program if it meets all of the following criteria:

(a) Submits an application for approval by the State Board ***of*** [~~for Elementary and Secondary~~] Education in the manner and form prescribed by the Department of Education;

(b) Submits a plan, approved by the local board, which outlines the proposed community education program, including procedures for obtaining the involvement and cooperation of other agencies and groups in identifying and recommending programs for meeting the needs of citizens;

(c) Establishes an advisory council, appointed by the board of education, to assist in conducting community needs assessments and recommending program priorities;

(d) Employs at least one (1) full-time community education director;

(2) Two (2) or more school districts may combine for purposes of qualifying as a community school. Any qualified school district or combination of school districts with a total population of five thousand (5,000) or more persons is eligible to receive state funding equal to seventy-five percent (75%) of the state average of the salaries paid to local instructional supervisors. Certification requirements for the position shall be developed by the Department of Education.

(3) Funded positions shall be awarded to qualified districts in the ratio of district population to state population.

(4) Each community school receiving state funds for a community education program must submit an annual report to the State Department of Education. The report shall include an evaluation of the program and a financial statement. Failure to submit the report shall result in the loss of the community school designation.

Section 118. KRS 160.180 is amended to read as follows:

(1) As used in this section, "relative" means father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.

(2) No person shall be eligible to membership on a board of education:

(a) Unless he has attained the age of twenty-four (24) years; and

(b) Unless he has been a citizen of Kentucky for at least three (3) years preceding his election and is a voter of the district for which he is elected; and

(c) Unless he has completed at least the twelfth grade or has been issued a GED certificate and he is elected after July 13, 1990; and

(d) An affidavit signed under penalty of perjury certifying completion of the twelfth grade or the equivalent as determined by passage of the twelfth grade equivalency examination held under regulations adopted by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education has been filed with the nominating petition required by KRS 118.315; or

(e) Who holds a state office requiring the constitutional oath or is a member of the General Assembly; or

(f) Who holds or discharges the duties of any civil or political office, deputyship, or agency under the city or county of his residence; or

(g) Who, at the time of his election, is directly or indirectly interested in the sale to the board of books, stationery, or any other property, materials, supplies, equipment, or services for which school funds are expended; or

(h) Who has been removed from membership on a board of education for cause; or

(i) Who has a relative as defined in subsection (1) of this section employed by the school district and is elected after July 13, 1990. However, this shall not apply to a board member holding office on July 13, 1990, whose relative was not initially hired by the district during the tenure of the board member.

(3) If, after the election of any member of the board, he becomes interested in any contract with or claims against the board, of the kind mentioned in paragraph (g) of subsection (2) of this section, or becomes a candidate for nomination or election to any office or agency the holding and the discharging of the duties of which would have rendered him ineligible before election, or if he moves his residence from the district for which he was chosen, or if he attempts to influence the hiring of any school employee, except the superintendent of schools or school board attorney, or if he does anything that would render him ineligible for re-election, he shall be subject to removal from office pursuant to KRS 415.050 and 415.060.

(4) A board member shall be eligible for re-election unless he becomes disqualified.

(5) The annual in-service training requirements for all school board members shall be as follows:

(a) Twelve (12) hours for school board members with zero to three (3) years of experience;

(b) Eight (8) hours for school board members with four (4) to seven (7) years of experience; and

(c) Four (4) hours for school board members with eight (8) or more years of experience.

The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall identify the criteria for fulfilling this requirement.

Section 119. KRS 160.210 is amended to read as follows:

(1) (a) In independent school districts, the members of the school board shall be elected from the district at large. In county school districts, members shall be elected from divisions.

(b) If no candidate files a petition of nomination for a local board of education opening pursuant to KRS 118.315 and 118.316, the chief state school officer shall fill the new term of office by appointing a member to the local board who meets the residency requirement and the qualifications for office provided in KRS 160.180. The local board of education may make nominations and any person may nominate himself or another for the office.

(2) The board of education of each county school district shall, not later than July 1, 1940, divide its district into five (5) divisions containing integral voting precincts and as equal in population insofar as is practicable. In first dividing the county district into divisions the board shall, if more than one (1) of its members reside in one (1) division, determine by lot which member from that division shall represent that division, and which members shall represent the divisions in which no member resides. The members so determined to represent divisions in which no member resides shall be considered the members from those divisions until their terms expire, and thereafter the members from those divisions shall be nominated and elected as provided in KRS 160.200 and 160.220 to 160.250.

(3) Any changes made in division boundary lines shall be to make divisions as equal in population and containing integral voting precincts insofar as is practical. No change may be made in division boundary lines less than five (5) years after the last change in any division lines, except in case of merger of districts or a change in territory due to annexation.

(4) (a) Notwithstanding the provisions of subsection (3) of this section, if one hundred (100) residents of a county school district division petition the State Board ***of*** ~~[for Elementary and Secondary]~~ Education stating that the school district divisions are not divided as nearly equal in population as can reasonably be expected, the chief state school officer shall cause an investigation to determine the validity of the petition, the investigation to be completed within thirty (30) days after receipt of the petition.

(b) If the investigation reveals the school district to be unequally divided according to population, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, upon the recommendation of the chief state school officer, shall order the local board of education to make changes in school district divisions as are necessary to equalize population within the five (5) school divisions.

(c) If any board fails to comply with the order of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education within thirty (30) days or prior to August 1 in any year in which any members of the board are to be elected, members shall be elected from the district at large until the order of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education has been complied with.

(d) No change shall be made in the boundary of any division under the provisions of this subsection after August 1 in the year in which a member of the school board is to be elected from any division.

(5) Notwithstanding the provisions of subsection (2) of this section, in counties containing a city of the first class wherein a merger pursuant to KRS 160.041 shall have been accomplished, there shall be seven (7) divisions as equal in population as is practicable, with members elected from divisions. To be eligible to be elected from a division, a candidate must reside in that division. The divisions, based upon 1970 United States Census Bureau Reports on total population by census tracts for Jefferson County, Kentucky shall be as follows: Division One shall include census tracts 1-28; Division Two shall include census tracts 29-35, 47-53, 57-74, 80-84, 93, 129, 130; Division Three shall include census tracts 75-79, 85-88, 98-106, 107.01, 108; Division Four shall include census tracts 121.01, 123-128; Division Five shall include census tracts 36-46, 56, 90, 120, 121.02, 122; Division Six shall include census tracts 54, 55, 91, 92, 94, 95, 110.02, 113, 114, 117.01, 117.02, 118, 119; Division Seven shall include census tracts 89, 96, 97, 107.02, 109, 110.01, 111, 112, 115, 116, 117.03, 131, 132. The terms of the members to be elected, KRS 160.044 notwithstanding, shall be four (4) years and the election for the initial four (4) year terms shall be as follows: The election of the members from Divisions Two, Four and Seven shall be held at the next regular November election following the effective date of the merger pursuant to KRS 160.041, and the election of the members from Divisions One, Three, Five and Six shall be held at the regular November election two (2) years thereafter.

(6) In counties containing cities of the first class, responsibility for the establishment or the changing of school board division boundaries shall be with the local board of education, subject to the review and approval of the county board of elections. Where division and census tract boundaries do not coincide with existing election precinct boundaries, school board divisions shall be redrawn to comply with precinct boundaries. In no instance shall precinct boundaries be redrawn nor shall a precinct be divided to accommodate the drawing of school board division lines. Precinct boundaries nearest existing school board division boundaries shall become the new division boundary. All changes under this statute shall be completed on or before January 1, 1979, and on or before January 1 in any succeeding year in which a member of the school board is to be elected from any division. A record of all changes in division lines shall be kept in the offices of the county board of education and the county board of elections. The board of education shall publish all changes pursuant to KRS Chapter 424. A copy of the newspaper in which the notice is published shall be filed with the chief state school officer within ten (10) days following its publication.

Section 120. KRS 160.290 is amended to read as follows:

(1) Each board of education shall have general control and management of the public schools in its district and may establish schools and provide for courses and other services as it deems necessary for the promotion of education and the general health and welfare of pupils, consistent with the administrative regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. Each board shall have control and management of all school funds and all public school property of its district and may use its funds and property to promote public education. Each board shall exercise generally all powers prescribed by law in the administration of its public school system, appoint the superintendent of schools, and fix the compensation of employees.

(2) Each board shall make and adopt, and may amend or repeal, rules, regulations, and bylaws for its meetings and

proceedings for the management of the schools and school property of the district, for the transaction of its business, and for the qualification and duties of employees and the conduct of pupils. The rules, regulations, and bylaws made by a board of education shall be consistent with the general school laws of the state and shall be binding on the board of education and parties dealing with it until amended or repealed by an affirmative vote of a majority of the members of the board. The rules, regulations, and bylaws shall be spread on the minutes of the board and be open to the public.

(3) Local boards of education electing to enter into agreements pursuant to the Interlocal Cooperation Act, KRS 65.210 to 65.300, with other local boards of education to establish consortia to provide services in accordance with the Kentucky Education Reform Act of 1990, 1990 Ky. Acts Ch. 476, may transfer real or personal property to the consortia without receiving fair market value compensation. The joint or cooperative action may employ employees transferred from employment of a local board of education, and the employees shall retain their eligibility for the Kentucky Teachers' Retirement System. The chief state school officer, under administrative regulations of the State Board ***of*** [~~for Elementary and Secondary~~] Education, may allot funding to an interlocal cooperative board created by two (2) or more local school districts pursuant to KRS 65.210 to 65.300 to provide educational services for the mutual advantage of the students in the representative districts. All statutes and administrative regulations that apply to the use of these funds in local school districts shall also apply to cooperative boards.

Section 121. KRS 160.293 is amended to read as follows:

Any statute to the contrary notwithstanding, upon the recommendation of the chief state school officer, the State Board ***of*** [~~for Elementary and Secondary~~] Education may adopt administrative regulations authorizing a local board of education to enter into an agreement with a public agency for the purpose of developing and maintaining on school property recreational facilities for school and community purposes in accordance with the following standards:

(1) The property must be used in such a manner and at such times so that there will be no interference with school activities.

(2) The control and management of this property shall be in accordance with administrative regulations adopted hereunder by the State Board ***of*** [~~for Elementary and Secondary~~] Education.

(3) All agreements must have the prior approval of the chief state school officer and the Attorney General.

(4) Any agreement executed herein shall not be considered an indebtedness within the meaning of Sections 157 and 158 of the State Constitution of Kentucky.

Section 122. KRS 160.330 is amended to read as follows:

(1) Each board of education may furnish necessary school supplies free of charge to indigent children in its school district or to such other children as it deems advisable, under such rules and regulations as it may adopt, except that free textbooks must be provided to indigent children as provided in KRS 157.110.

(2) Local school districts shall establish, pursuant to State Board ***of*** [~~for Elementary and Secondary~~] Education administrative regulations, a process by which to waive fees for pupils who qualify for free and reduced priced lunches, including a process by which such students shall be informed of the fee waiver provisions.

Section 123. KRS 160.340 is amended to read as follows:

(1) Each board of education shall, on the forms prepared by the chief state school officer and approved by the State Board ***of*** [~~for Elementary and Secondary~~] Education, prepare and submit to the State Board ***of*** [~~for Elementary and Secondary~~] Education reports on all phases of its school service. Each board may prepare and publish for the information of the public a report on the progress of its schools.

(2) Each board of education shall file in the board's office its policies relating to the following matters:

(a) Transportation of pupils;

(b) Discipline and conduct of pupils;

(c) Limitations or restrictions on use of school facilities;

(d) Conduct of meetings of the board of education, including policies on the calling of executive sessions;

(e) Personnel policies that apply to certified employees, including fringe benefits, salary schedules, nonclassroom duties, in-service training, teacher-student ratio, hiring, assignment, transfer, dismissal, suspension, reinstatement, promotion, and demotion;

(f) Evaluation of certified employees;

(g) Selection of textbooks and instructional materials;

(h) Expenditure and accounting for school funds, including all special funds; and

(i) Policies dealing with school-based decision making.

(3) It is intended that these policies shall cover matters within the authority and discretion of the district board of education and not matters otherwise required by law or regulation. Such policies shall be filed in the board's office by August 15, 1974, shall be kept up to date by filing annual amendments thereto each August 15 and shall be public records.

Section 124. KRS 160.345 is amended to read as follows:

(1) The term "teacher" for the purpose of this section means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.

(2) By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy shall also address and comply with the following:

(a) Each participating school shall form a school council which shall be composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. The parent representatives on the council shall not be employees of the district or employees' relatives, nor shall they be a local board member or his spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees. By July 1, 1993, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall submit recommendations to the Legislative Research Commission relating to policies and procedures to insure minority representation on school councils.

(b) The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent representatives shall be selected for one (1) year terms. The parent members shall be elected by the parent members of the parent teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. The principal or head teacher shall be the chair of the school council.

(c) The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.

(d) All certified staff at a school may be participants in the school-based decision making. The staff may divide into committees according to their areas of interest, such as, but not limited to, grouped grade levels, subject areas, and special programs. Each committee shall elect by a majority of the committee a chair, who shall serve for a term of one (1) year. The committee shall submit its recommendations to the school council for consideration.

(e) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.

(f) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.

(g) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.

(h) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council.

(i) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.

(j) The school council shall adopt a policy to be implemented by the principal in the following additional areas:

1. Determination of curriculum, including needs assessment and curriculum development;
2. Assignment of all instructional and noninstructional staff time;
3. Assignment of students to classes and programs within the school;
4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
5. Determination of use of school space during the school day;

6. Planning and resolution of issues regarding instructional practices;

7. Selection and implementation of discipline and classroom management techniques, including responsibilities of the student, parent, teacher, counselor, and principal;

8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision; and

9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal.

(3) The policy adopted by the local board to implement school-based decision making shall also address the following:

(a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;

(b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;

(c) School improvement plans, including the form and function of strategic planning and its relationship to district planning;

(d) Professional development plans developed pursuant to KRS 156.095 and 156.0951;

(e) Parent, citizen, and community participation including the relationship of the council with other groups;

(f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;

(g) Requirements for waiver of district policies;

(h) Requirements for record keeping by the school council; and

(i) A process for appealing a decision made by a school council.

(4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

(5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon a favorable vote of a majority of the faculty at the school, a school performing above its threshold level requirement as determined by the Department of Education pursuant to KRS 158.6455 may apply to the State Board ***of*** [~~for Elementary and Secondary~~] Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

(6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making.

(7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the State Board ***of*** [~~for Elementary and Secondary~~] Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.

(8) The State Board ***of*** [~~for Elementary and Secondary~~] Education, upon recommendation of the chief state school officer, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council.

(9) (a) No board member, superintendent of schools, or district employee shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (j) of subsection (2) of this section.

(b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(c) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall establish by administrative regulation a hearing process for complaints referred by the Office of Education Accountability.

(d) If the State Board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

Section 125. KRS 160.370 is amended to read as follows:

The superintendent shall be the executive agent of the board that appoints him and shall meet with the board, except when his own tenure, salary, or the administration of his office is under consideration. As executive officer of the board, the superintendent shall see that the laws relating to the schools, the bylaws, rules, and regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, and the regulations and policies of the district board of education are carried into effect. He may administer the oath required by the board of education to any teacher or other person. He shall be the professional adviser of the board in all matters. He shall prepare, under the direction of the board, all rules, regulations, bylaws, and statements of policy for approval and adoption by the board. He shall have general supervision, subject to the control of the board of education, of the general conduct of the schools, the course of instruction, the discipline of pupils, and the management of business affairs. He shall be responsible for the hiring and dismissal of all personnel in the district.

Section 126. KRS 160.380 is amended to read as follows:

(1) As used in this section:

(a) "Relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.

(b) "Vacancy" shall mean any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.

(2) (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year.

(b) When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.

(c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.

(d) When a vacancy occurs in a local district, the superintendent shall conduct a search to locate minority teachers to be considered for the position.

(e) Effective July 1, 1991, no relative of a superintendent of schools shall be an employee of the school district. However, this shall not apply to a relative who is an employee of the school district prior to July 13, 1990, and who is certified for the position he holds, as long as the superintendent is holding office on July 1, 1991, and it shall not apply to a superintendent's spouse who has at least twenty (20) years of service in school systems. A superintendent's spouse who is employed under this provision shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise teacher aides and student teachers. However, the superintendent shall not promote his relative who continues employment under an exception of this subsection.

(f) No superintendent shall employ a relative of a school board member of the district, unless on July 13, 1990, the board member's relative is an employee of the district, the board member is holding office, and the relative was not initially hired by the district during the tenure of the board member. A relative employed in 1989-90 and initially hired during the tenure of a board member serving on July 13, 1990, may continue to be employed during the remainder of the board member's term. However, the superintendent shall not promote any relative of a school board member who continues employment under the exception of this subsection.

(g) No principal's relative shall be employed in the principal's school, except a relative who is not the principal's spouse and who was employed in the principal's school during the 1989-90 school year. No spouse of a principal shall be employed in the principal's school, except a principal's spouse who was employed in the principal's school during the 1989-90 school year for whom there is no position for which the spouse is certified to fill in another school operated in the district. The provisions of KRS 161.760 shall not apply to any transfer made in order to comply with the provisions of this paragraph.

(3) No superintendent shall employ in a position which involves supervisory or disciplinary power over a minor, any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor. Each superintendent shall request all conviction information for any applicant for initial employment from the Justice Cabinet prior to employing the applicant.

(4) (a) If a school term has begun and a position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the required records. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.

(b) Employment shall be contingent on the receipt of records documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165.

(c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the district of a record documenting a criminal act as defined above and no further procedures shall be required.

(5) Each application or renewal form, provided by the employer to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(6) Any request for records under subsection (3) of this section shall be on a form approved by the Justice Cabinet, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.

(7) The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988. Initial employment shall include first time applicants and applicants who were former employees of the district but have not been employed by the district for six (6) months.

Section 127. KRS 160.390 is amended to read as follows:

(1) The superintendent shall devote himself exclusively to his duties. He shall exercise general supervision of the schools of his district, examine their condition and progress, and keep himself informed of the progress in other districts. He shall prepare or have prepared all budgets, salary schedules, and reports required of his board by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. He shall advise himself of the need of extension of the school system of the district, shall receive and examine reports from teachers and other school officers, and shall make reports from time to time as required by the rules of his board or as directed by the board. He shall be responsible to the board for the general condition of the schools. He shall be responsible for all personnel actions including hiring, assignments, transfer, dismissal, suspension, reinstatement, promotion, and demotion and reporting the actions to the local board.

(2) All personnel actions by the superintendent as described in subsection (1) shall be recorded in the minutes of the local board of education at the next meeting after the action is taken and shall not be effective prior to receipt of written notice of the personnel action by the affected employee from the superintendent.

Section 128. KRS 160.460 is amended to read as follows:

(1) All school taxes shall be levied by the board of education of each school district. The tax-levying authority shall levy an ad valorem tax within the limits prescribed in KRS 160.470, which will obtain for the school district the amount of money needed as shown in the district's general school budget submitted under the provisions of KRS 160.470.

(2) The tax-levying authority shall make an annual school levy not later than July 1. The school levy shall not be made until the general school budget has been received and approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. The failure of the authority to make the levy by the date prescribed shall not invalidate any levy made thereafter.

(3) All school taxes shall be levied on all property subject to local taxation in the jurisdiction of the tax-levying authority. If the school levy is to be made upon the city assessment, which is hereby authorized for independent school districts embraced by cities of the first four (4) classes, the clerk of the city shall furnish to the school district or districts which the city embraces, the assessed valuation of property subject to local taxation in the school district, as determined by its tax assessor. If the school levy is to be made upon the county assessment the county clerk shall furnish to the proper school district or districts the assessed valuation of property subject to local taxation in the district or districts, as certified by the Kentucky Revenue Cabinet. No later than July 1, 1994, all real property located in the state and subject to local taxation shall be assessed at one hundred percent (100%) of fair cash value.

Section 129. KRS 160.470 is amended to read as follows:

(1) Each district board of education shall prepare a general school budget in formats prescribed and furnished by the State Board *of* ~~[for Elementary and Secondary]~~ Education, showing the amount of money needed for current expenses, debt service, capital outlay, and other necessary expenses of the schools during the succeeding fiscal year, the estimated total amount that will be received from the common school fund and other sources, the assessed valuation of property subject to local taxation in the school district furnished as provided in subsection (3) of KRS 160.460, an estimate made by the Revenue Cabinet of public service company assessments and assessments of other property in the school district not furnished under the provisions of subsection (3) of KRS 160.460, and the amount that will be needed to be raised by local taxation, including the rate of levy necessary to raise such an amount.

(2) (a) Notwithstanding any statutory provisions to the contrary, no district board of education shall levy a general tax rate, voted general tax rate, or voted building tax rate for 1979-80 which will produce more revenue, exclusive of revenue from net assessment growth as defined in KRS 132.010, than would be produced by application of the maximum general tax rate, voted general tax rate, or voted building tax rate, respectively, that could have been levied in 1978-79, to the 1978-79 assessment, except as provided in subsection (12) of this section and KRS 157.440. In succeeding years, no district board of education shall levy a general tax rate, a voted general tax rate, or a voted building tax rate which will produce more revenue, exclusive of revenue from net assessment growth as defined in KRS 132.010, than would be produced by application of the general tax rate, maximum voted general tax rate, or maximum voted building tax rate, respectively, that could have been levied in the preceding year to the preceding year's assessment, except as provided in subsection (12) of this section and KRS 157.440.

(b) If an election is held as provided for in KRS 132.017 and the question should fail, such failure shall not reduce the ". . .general tax rate, maximum voted general tax rate, or maximum voted building tax rate, respectively, that could have been levied in the preceding year. . .," referred to in subsection (2)(a) of this section, for purposes of computing the general tax rate, voted general tax rate, or voted building tax rate for succeeding years.

In the event of a merger of school districts, the limitations contained in this section shall be based upon the combined revenue of the merging districts, as computed under the provisions of this section.

(3) No district board of education shall levy a general tax rate, voted general tax rate, or voted building tax rate within the limits imposed in subsection (2) of this section which respectively exceeds the compensating tax rate defined in KRS 132.010, except as provided in subsection (12) of this section and KRS 157.440, until the district board of education has complied with the provisions of subsection (10) of this section.

(4) The chief state school officer shall certify the following to each district board of education, by June 30 of each year:

(a) The general tax rate, voted general tax rate, or voted building tax rate that a district board of education could levy under the provisions of subsection (2) of this section, and the amount of revenue expected to be produced by each;

(b) The compensating tax rate as defined in KRS 132.010 for a district's general tax rate, voted general tax rate, or voted building tax rate, and the amount of revenue expected to be produced by each;

(c) The general tax rate, voted general tax rate, or voted building tax rate which will produce, respectively, no more revenue from real property, exclusive of revenue from new property, than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, and the amount of revenue expected to be produced by each.

(5) Upon completion of action on property assessment data, the Revenue Cabinet shall submit certified property assessment data as required in KRS 133.125 to the chief state school officer.

(6) Within thirty (30) days after the district board of education has received its assessment data, three (3) copies of the budget shall be forwarded to the State Board *of* ~~[for Elementary and Secondary]~~ Education for its approval or disapproval. The failure of the district board of education to furnish the budget within the time prescribed shall not invalidate any levy made thereafter.

(7) The budget shall be disapproved by the State Board *of* ~~[for Elementary and Secondary]~~ Education if it is financially unsound or fails to provide for:

(a) Payment of maturing principal and interest on any outstanding voted school improvement bonds of the school district, authorized and issued pursuant to KRS 162.080 and 162.090 with the written approval of the State Board *of* ~~[for Elementary and Secondary]~~ Education; or

(b) Payment of rentals in connection with any outstanding school building revenue bonds issued for the benefit of a school district by the appropriate city or county as authorized and provided under the provisions of KRS 162.120 to 162.300 and KRS 58.010 to 58.140, with the written approval of the State Board *of* ~~[for Elementary and Secondary]~~ Education; or

(c) Fails to comply with the law.

The State Board *of* ~~[for Elementary and Secondary]~~ Education shall state the reason for disapproval and the district board of education shall amend its budget, within the limitations of this section, to obviate the reasons for disapproval and resubmit the budget to the State Board *of* ~~[for Elementary and Secondary]~~ Education for final approval.

(8) If the budget as amended specifies a tax levy different from that levied under the disapproved budget, the tax-levying authority shall amend its levy so that the levy as amended shall comply with the provisions of subsection (1) of KRS 160.460. No general school budget shall become effective and no ad valorem levy shall be made until approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(9) (a) Each district board of education shall, on or before January 31 of each calendar year, formally and publicly examine detailed line item estimated revenues and proposed expenditures for the subsequent fiscal year. On or before May 15 of each calendar year, each district board of education shall adopt a tentative working budget which shall include a minimum reserve of two percent (2%) of the total budget.

(b) Each district board of education shall submit to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education no later than September 15, a close estimate or working budget which shall conform to the administrative regulations prescribed by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, and which shall be consistent in its major divisions with the general school budget previously prepared.

(10) (a) Except as provided in subsection (12) of this section and KRS 157.440, a district board of education proposing to levy a general tax rate, voted general tax rate, or voted building tax rate within the limits of subsection (2) of this section which exceed the compensating tax rate defined in KRS 132.010 shall hold a public hearing to hear comments from the public regarding the proposed tax rate. The hearing shall be held in the principal office of the taxing district or, in the event the taxing district has no office, or the office is not suitable for such a hearing, the hearing shall be held in a suitable facility as near as possible to the geographic center of the district.

(b) The district board of education shall advertise the hearing by causing the following to be published at least twice for two (2) consecutive weeks, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches:

1. The general tax rate, voted general tax rate, and voted building tax rate levied in the preceding year, and the revenue produced by those rates;
2. The general tax rate, voted general tax rate, and voted building tax rate proposed for the current year, and the revenue expected to be produced by those rates;
3. The compensating general, voted general, and voted building tax rates, and the revenue expected from them;
4. The revenue expected from new property and personal property;
5. The general areas to which revenue in excess of the revenue produced in the preceding year is to be allocated;
6. A time and place for the public hearing which shall be held not less than seven (7) days nor more than ten (10) days after the day that the second advertisement is published;
7. The purpose of the hearing; and
8. A statement to the effect that the General Assembly has required publication of the advertisement and the information contained herein.

(c) In lieu of the two (2) published notices, a single notice containing the required information may be sent by first-class mail to each person owning real property, addressed to the property owner at his residence or principal place of business as shown on the current year property tax roll.

(d) The hearing shall be open to the public. All persons desiring to be heard shall be given an opportunity to present oral testimony. The district board of education may set reasonable time limits for testimony.

(11) (a) That portion of a general tax rate, a voted general tax rate, or a voted building tax rate, except as provided in subsection (12) of this section and KRS 157.440, levied by an action of a district board of education which will produce, respectively, revenue from real property, exclusive of revenue from new property, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, shall be subject to a recall vote or reconsideration by the district board of education as provided for in KRS 132.017, and shall be advertised as provided for in paragraph (b) of this subsection.

(b) The district board of education shall, within seven (7) days following adoption of an ordinance, order, resolution, or motion to levy a general tax rate, voted general tax rate, or voted building tax rate, except as provided in subsection (12) of this section and KRS 157.440, which will produce revenue from real property, exclusive of revenue from new property as defined in KRS 132.010, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, cause the following to be published, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches:

1. The fact that the district board of education has adopted such a rate;
2. The fact that the part of the rate which will produce revenue from real property, exclusive of new property as defined in KRS 132.010, in excess of four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 is subject to recall; and

3. The name, address, and telephone number of the county clerk of the county or urban-county in which the school district is located, with a notation to the effect that that official can provide the necessary information about the petition required to initiate recall of the tax rate.

(12) (a) Notwithstanding any statutory provisions to the contrary, effective for school years beginning after June 30, 1990, the board of education of each school district shall levy a minimum equivalent tax rate of thirty cents ($0.30) for general school purposes. Equivalent tax rate is defined as the rate which results when the income collected during the prior year from all taxes levied by the district for school purposes is divided by the total assessed value of property plus the assessment for motor vehicles certified by the Revenue Cabinet. School districts collecting school taxes authorized by KRS 160.593 to 160.597, 160.601 to 160.633, or 160.635 to 160.648 for less than twelve (12) months during a school year shall have included in income collected under this section the pro rata tax collection for twelve (12) months.

(b) If a board fails to comply with subsection (12)(a) of this section, its members shall be subject to removal from office for willfull neglect of duty pursuant to KRS 156.132.

Section 130. KRS 160.476 is amended to read as follows:

(1) The board of education of any district may, in addition to other taxes for school purposes, levy not less than four cents ($0.04) nor more than twenty cents ($0.20) on each one hundred dollars ($100) valuation of property subject to local taxation, to provide a special fund for the purchase of sites for school buildings and physical education and athletic facilities, for the erection and complete equipping of school buildings and physical education and athletic facilities, and for the major alteration, enlargement and complete equipping of existing buildings and physical education and athletic facilities, provided, however, that such tax shall come within the maximum school tax levy provided by KRS 160.470. In addition to or in lieu of this special tax, any board of education may pay into this special fund at the close of any fiscal year the proceeds from the sale of land or property no longer needed for school purposes and all or any balances remaining in the general fund over and above the amount necessary for discharging obligations for the fiscal year in full.

(2) The special fund provided for herein shall be kept in a separate account designated as "school building fund." The fund shall be kept in a depository selected by the board of education, or invested in bonds of the United States, of this state, or county or municipality in this state, provided, however, that such investments shall be approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(3) All expenditures from such fund shall be made solely for the purposes enumerated herein and shall be made in accordance with the school laws of the state at such times as the board of education determines. The board of education shall cause to be made annually an audit of the building fund by a certified public accountant or by an accountant approved by the State Department of Education.

(4) Notwithstanding the provisions of any other subsection of this section to the contrary, for the 1966 tax year and for all subsequent years no district board of education shall levy a tax at a rate under the provisions of this section which exceeds the compensating tax rate as defined in KRS 132.010. The chief state school officer shall certify the compensating tax rate to the district board of education.

Section 131. KRS 160.477 is amended to read as follows:

(1) (a) Upon request of the board of education of any school district, the county clerk shall submit to the qualified voters of the district, the question as to whether a special school building tax rate of not less than five cents ($0.05) nor more than fifty cents ($0.50) as requested by the board shall be levied on each one hundred dollars ($100) of property subject to local taxation. This tax levy shall be in addition to the maximum school tax levy provided by subsection (2) of KRS 160.470. The income from the tax shall be used for the purchase or lease of school sites and buildings and physical education and athletic facilities, for the erection and complete equipping of new school buildings and physical education and athletic facilities, for the major alteration, enlargement and complete equipping of existing buildings, and physical education and athletic facilities, for the purpose of retiring, directly or through rental payments, school revenue bonds issued for such school improvements, for the purpose of providing maintenance and insurance for school facilities, and for the purpose of financing any program for the acquisition, improvement, or building of school improvements. The question shall be so framed that the voter may by his vote answer "for" or "against;"

(b) The election shall be held not less than fifteen (15) or more than thirty (30) days from the time the request of the board is filed with the county clerk, and reasonable notice of the election shall be given. The election shall be conducted and carried out in the school district in all respects as required by the general election laws, and shall be held by the same officers as required by the general election laws. The expense of the election shall be borne by the school district; and

(c) If a majority of those voting on the question favor the special school building tax levy, the tax-levying authority shall, when the next tax rate for the district is fixed, levy the special rate specified for the school building fund in addition to the levy provided by subsection (2) of KRS 160.470.

(2) There may be included, in the maximum levy provided for in subsection (2) of KRS 160.470, a special levy for building fund purposes as authorized by KRS 160.476, which shall be in addition to the levy authorized by vote as provided in

subsection (1) of this section.

(3) In addition to or in lieu of this special tax, any board of education may pay into this special fund at the close of any fiscal year the proceeds from the sale of land or property no longer needed for school purposes and allow any balances to remain in the general fund over and above the amount necessary for discharging obligations for the fiscal year in full.

(4) The special fund provided for in subsection (1) of this section shall be kept in a separate account designated as "special voted school building fund." The fund shall be kept in the depository selected by the district board of education, or invested in bonds of the United States, of this state, or of any county or municipality in this state; provided, however, that such investment shall be approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(5) All expenditures from such fund shall be made solely for the purposes enumerated in this section and shall be made in accordance with the school laws of the state at such times as the district board of education determines. The district board of education shall cause to be made annually an audit of the building fund by a certified public accountant or by an accountant approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(6) Notwithstanding the provisions of any other subsection of this section to the contrary, for the 1966 tax year and for all subsequent years no district board of education shall levy a tax at a rate under the provisions of this section which exceeds the compensating tax rate as defined in KRS 132.010, except as provided in subsection (7) of this section, and except that a rate which has been approved by the voters under this section but which was not levied by the district board of education in 1965 may be levied after it has been reduced to the compensating tax rate as defined in KRS 132.010, and except that in any school district where the rate levied in 1965 was less than the maximum rate which had been approved by the voters, the compensating tax rate shall be computed and may be levied as though the maximum approved rate had been levied in 1965 and the amount of revenue which would have been produced from such maximum levy had been derived therefrom.

(7) Notwithstanding the limitations contained in subsection (6) of this section, no tax rate shall be set lower than that necessary to provide such funds as are required to meet principal and interest payments on outstanding bonded indebtedness and payments of rentals in connection with any outstanding school revenue bonds issued under the provisions of KRS Chapters 58 and 162.

Section 132. KRS 160.510 is amended to read as follows:

The tax collector shall, on or before the tenth day of each month, pay to the depository of the district board of education the amount of school tax collected up to and including the last day of the preceding month, except that the county clerk shall deduct his collection fee before payment to the district board of education depository. The amount so paid together with the classes of property from which it was received shall be reported in writing to the treasurer of the board. The report shall be accompanied by a duplicate of the receipt for the money given to the tax collector by the depository. The tax collector shall make final settlement with the district board of education at the same time he makes final settlement with the local taxing authority to which he is responsible. Blanks for such purposes shall be furnished by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 133. KRS 160.530 is amended to read as follows:

The money collected by taxation under the provisions of KRS 160.460 to 160.520 and other school money shall be expended by the board of education in accordance with the recommendations contained in the budget submitted to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 134. KRS 160.550 is amended to read as follows:

(1) No superintendent shall recommend and no board member shall knowingly vote for an expenditure in excess of the income and revenue of any year, as shown by the budget adopted by the board and approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, except for a purpose for which bonds have been voted or in case of an emergency declared by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(2) Any school district having authorized an expenditure in violation of subsection (1) of this section may be so certified at any time by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. A district so certified shall thereafter, any contrary statutory provisions notwithstanding, make no expenditure of money, give no authorization involving the expenditure of money, and make no employment, purchase, or contract, unless the chief state school officer has approved in writing, as fiscally sound and necessary, the expenditure, authorization, employment, purchase, or contract. Any expenditure, authorization, employment, purchase, or contract made in violation of this subsection shall be void.

(3) Any school district subject to the provisions of subsection (2) of this section shall so remain until such time as the State Board ***of*** ~~[for Elementary and Secondary]~~ Education has approved, in conformity with KRS 160.470, a budget for the district for a succeeding fiscal year.

(4) In addition to the penalties set forth in KRS 160.990, any person who knowingly expends or authorizes the expenditure of school district funds or who knowingly authorizes or executes any employment, purchase, or contract, in violation of this section, shall be jointly and severably liable in person and upon any official bond he has given to such district to the extent of any payments on the void claim. For purposes of this section, "knowingly" shall mean a person acts with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of that nature or that the circumstance exists.

Section 135. KRS 160.560 is amended to read as follows:

(1) Each board of education shall elect a treasurer for the board. The board may elect its secretary to serve as treasurer. The board may remove the treasurer from office at any time for cause by a vote of a majority of the members of the board.

(2) The treasurer shall execute an official bond for the faithful performance of the duties of his office, to be approved by the local board and the State Board ***of*** [~~for Elementary and Secondary~~] Education. The bond shall be guaranteed by a surety company authorized to do business in this state, and shall be in an amount determined by the board of education in accordance with the rules and regulations of the State Board ***of*** [~~for Elementary and Secondary~~] Education. The premium on the bond shall be paid by the board of education. A copy of the bond shall be filed with the board of education and with the State Board ***of*** [~~for Elementary and Secondary~~] Education. All treasurer's bond forms shall be prepared by the chief state school officer and approved by the State Board ***of*** [~~for Elementary and Secondary~~] Education.

(3) The treasurer shall receive all moneys to which the board is entitled by the Constitution or by the statutes, except as otherwise provided by law, or which may in any way come into its possession, and deposit such funds in the properly designated depository. He shall withdraw such funds from the depository only upon proper order of the board. He shall keep a full and complete account of all funds in such manner and make such reports concerning them as is required by the board of education or by the State Board ***of*** [~~for Elementary and Secondary~~] Education. He shall preserve all records relating to the transactions and duties of the office and turn them over to his successor along with all public funds in his hands and all accounts and records after due and proper audit is made by a competent outside agent when he is required to do so by the board of education.

(4) The treasurer shall issue his check on the depository for payment of all legal claims which have been authorized for payment in accordance with policies previously adopted by the local board of education and approved by the State Board ***of*** [~~for Elementary and Secondary~~] Education.

Section 136. KRS 160.570 is amended to read as follows:

(1) Each board of education shall appoint a bank, trust company, or savings and loan association to serve as its depository, and if its annual receipts from all sources exceed one hundred thousand dollars ($100,000), it may designate three (3) depositories, except boards of education of school districts in counties containing cities of the first class may designate up to five (5) depositories. The depository may be designated for a period not to exceed two (2) years, and before entering upon its duties shall agree with the board as to the rate of interest to be paid on average daily or monthly balances.

(2) The depository selected shall, before entering upon its duties, execute bond for the faithful performance of its duties, to be approved by the local board of education and the State Board ***of*** [~~for Elementary and Secondary~~] Education. The bond shall be guaranteed by at least five (5) solvent personal sureties whose solvency must exceed the amount of the bond, or by a surety company authorized to do business in this state, or through the execution of a collateral bond consistent with the general banking laws of the state and the bonding laws applying to the safeguarding of state funds. The penal sum of the depository bond shall be determined by the board of education in accordance with the rules and regulations of the State Board ***of*** [~~for Elementary and Secondary~~] Education. A board of education may enter into an agreement with its depository whereby the premium on a bond guaranteed by a surety company may be paid either by the board or by the depository. If the board pays the premium, the depository shall allow the board not less than two percent (2%) interest on its average daily or average monthly balances. All depository bond forms shall be prepared by the chief state school officer and approved by the State Board ***of*** [~~for Elementary and Secondary~~] Education.

(3) The depository shall hold for the board all funds deposited by the treasurer of the board or its tax collector or duly authorized agent, subject to withdrawal by the board at any time, and shall pay all funds so deposited to such person and in such manner as the board directs. The depository shall keep full and complete accounts of all of the board's funds, and make reports to the board or its authorized agents upon request. The depository shall keep all records relating to the transactions and duties of the office and turn them over to the successor of its office along with all school funds in hand. The board of education may at any time require a due and proper audit of the depository's records of the funds of the board by a competent outside agent.

(4) A board of education may designate as its depository the authorized and bonded depository of the governing authority of the territory which the school district embraces. In such cases, the bond of the depository shall be made to cover specifically the safekeeping of the school board's funds, and all conditions set out in this section shall be carried out.

Section 137. KRS 160.599 is amended to read as follows:

(1) A special fund is hereby created which shall be known as "the emergency revolving school loan fund account," hereinafter referred to as account. This account, which shall be administered by the State Board ***of*** [~~for Elementary and Secondary~~] Education, is for the purpose of providing emergency loans to eligible public common school districts.

(2) In order to be eligible for a loan from the account, a school district shall meet all of the following conditions:

(a) A loss of physical facilities must have been suffered as a result of a fire or a natural disaster;

(b) Insurance on such facilities was insufficient to replace the loss;

(c) The district is bonded to practical capacity and has insufficient resources to meet its immediate capital outlay needs as determined by an investigation of the chief state school officer.

(3) As an alternative to the criteria in subsection (2) of this section, a school district shall be eligible for a loan from the account if the sheriff has failed to collect or disburse delinquent tax revenue, which is for the benefit of the school district, within the fiscal year that the school district is to utilize those receipts according to its budget.

(4) Under the criteria of subsection (2) of this section, no loan from the account shall be made for a period in excess of ten (10) years, and under the criteria of subsection (3) of this section, no loan from the account shall be made for a period in excess of three (3) years.The maximum amount of any one (1) loan from the account shall not exceed two hundred fifty thousand dollars ($250,000) and shall be determined by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education on recommendation of the chief state school officer.

(5) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall establish the terms and conditions for repaying the principal of such loan and interest shall not be charged on the loan. No loan shall cover a loss prior to January 1, 1972.

(6) School districts eligible under this section to borrow from the account shall file formal application for such loan on forms provided by the state department of education. Before any loan is made, the application must be approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education on the recommendation of the chief state school officer.

(7) All repayments of loans made under this section shall be paid into the emergency revolving school loan fund account, which shall be funded by an appropriation through the biennial budget. Balances remaining in the fund shall not revert to the general fund at the end of any fiscal year.

(8) On approval of the loan application by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education on the recommendation of the chief state school officer, the Finance and Administration Cabinet, on the certification of the chief state school officer, shall draw a warrant on the State Treasurer for the amount of the approved loan that is due the school district. The check shall be issued by the State Treasurer and transmitted to the Department of Education for distribution to the proper official of the school district when the district has complied with the rules and regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(9) Any loan to a local school district under the provisions of this section shall not be considered as an indebtedness of the school district within the meaning of Sections 157 and 158 of the Kentucky Constitution.

Section 138. KRS 160.640 is amended to read as follows:

Any person having custody of the proceeds of any school tax authorized by KRS 160.605 to 160.611, 160.613 to 160.617, and 160.621 to 160.633 shall be required to secure a corporate surety bond in an amount to be set by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. The cost of the surety bond shall be considered a part of the cost of the administration of the school taxes authorized under KRS 160.605 to 160.611, 160.613 to 160.617, and 160.621 to 160.633.

Section 139. KRS 160.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 160.250 shall be fined not more than two hundred dollars ($200).

(2) Any person who violates any of the provisions of KRS 160.300 shall be fined not less than ten (10) nor more than fifty dollars ($50).

(3) Any superintendent who violates any of the provisions of KRS 160.350 to 160.400 shall be fined not less than one hundred ($100) nor more than one thousand dollars ($1,000) for each offense, and the violation is grounds for revocation of his certificate.

(4) Any person who violates any of the provisions of KRS 160.550 shall be fined not less than fifty ($50) nor more than one hundred dollars ($100), and shall be subject to removal from office.

(5) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education may withhold funds allotted under KRS 157.350 from any local district which violates subsection (3) of KRS 160.380 in the amount of one thousand dollars ($1,000) per violation.

(6) In addition to penalties listed in this section, any local district which violates subsection (3) of KRS 160.380 shall be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

Section 140. KRS 161.028 is amended to read as follows:

(1) Beginning July 15, 1990, there shall be an Education Professional Standards Board, with the authority and responsibility to:

  (a) Establish standards and requirements for obtaining and maintaining a teaching certificate;

  (b) Set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel;

  (c) Issue, renew, suspend, and revoke teaching certificates;

  (d) Maintain data and submit reports to the Governor and the Legislative Research Commission concerning employment trends and performance of certificated personnel and the quality of professional preparation programs. The board shall study the problem of the declining pool of minority teachers in the Commonwealth and submit recommendations for increasing the number of minority teachers to the 1992 Regular Session of the General Assembly;

(e) Reduce and streamline the credential system to allow greater flexibility in staffing local schools while maintaining standards for teacher competence; and

(f) Develop a professional code of ethics.

(2) (a) The board shall be composed of fifteen (15) members. The chief state school officer and the executive director of the Council on Higher Education shall serve as ex officio voting members. The Governor shall make the following thirteen (13) appointments:

1. Eight (8) members who shall be teachers representative of elementary, middle or junior high, secondary, special education, and secondary vocational classrooms;
2. Two (2) members who shall be school administrators, one (1) of whom shall be a school principal;
3. One (1) member representative of local boards of education; and
4. Two (2) members representative of deans of colleges of education.

(b) For the initial appointments, the Governor shall designate four (4) members to serve a term of four (4) years; three (3) members to serve a term of three (3) years; three (3) members to serve a term of two (2) years; three (3) members to serve a term of one (1) year.

(c) A vacancy on the board shall be filled in the same manner as the original appointment within sixty (60) days after it occurs. A member shall continue to serve until his successor is named. Any member who, through change of employment status or residence, or for other reasons, no longer meets the criteria for the position to which he was appointed shall no longer be eligible to serve in that position.

(d) Members of the board shall serve without compensation, but shall be permitted to attend board meetings and perform other board business without loss of income or other benefits.

(e) A state agency or any political subdivision of the state, including a school district, required to hire a substitute for a member of the board who is absent from his employment while performing board business shall be reimbursed by the board for the actual amount of any costs incurred.

(f) At the first meeting held after July 1 of each year, a chairman shall be elected by and from the membership. A member shall be eligible to serve no more than three (3) one (1) year terms in succession as chairman. The executive secretary appointed by the chief state school officer from the Department of Education staff shall keep records of proceedings. Regular meetings shall be held at least semiannually on call of the chairman. The Department of Education shall provide staff and support for the board.

(g) To carry out the functions relating to its duties and responsibilities, the board is empowered to receive donations and grants of funds; to appoint consultants as needed; and to sponsor studies, conduct conferences, and publish information.

(3) The Education Professional Standards Board shall be the successor to the State Board *of* ~~[for Elementary and Secondary]~~ Education for purposes of performing the duties authorized in KRS 161.027, 161.028, 161.030, 161.042, 161.044, 161.046, 161.048, 161.049, 161.100, 161.115, 161.120, 161.124, and 161.126. Rules, administrative regulations and procedures relating to these duties shall not lapse and shall continue in effect until repealed or amended by the Education Professional Standards Board.

Section 141. KRS 161.042 is amended to read as follows:

(1) The State Board *of* ~~[for Elementary and Secondary]~~ Education shall provide through administrative regulation for the utilization of the common schools for the preparation of teacher education students from the colleges and universities.

(2) Within the provisions established by the State Board *of* ~~[for Elementary and Secondary]~~ Education, local boards of education are authorized to enter into cooperative agreements, including financial arrangements, with colleges and universities for the purpose of providing professional laboratory experiences and student teaching experiences for students preparing for the education profession.

(3) A supervising teacher shall have professional competencies as set out in administrative regulations promulgated by the Education Professional Standards Board. If obtainment of a degree above the baccalaureate level is required of supervising teachers, the Education Professional Standards Board shall waive the requirement for teachers who have at least twenty (20) years of teaching experience and who have worked as a supervising teacher during the past five (5) years.

(4) A student teacher who is jointly assigned under agreement by a teacher education institution and a local board of education shall have the same legal status and protection as a certificated teacher employed within the school district and shall be responsible to the administrative staff of the school district and the supervising teacher to whom he is assigned.

(5) Teacher education students, other than student teachers, may be permitted through cooperative agreements between the local school district and the teacher education institution, to engage in supplementary instructional activities with pupils under the direction and supervision of the professional administrative and teaching staff of the school district.

Section 142. KRS 161.044 is amended to read as follows:

(1) The State Board *of* ~~[for Elementary and Secondary]~~ Education shall establish administrative regulations governing the

qualifications of teachers' aides and adult volunteer personnel in the common schools. All teachers' aides working in kindergarten classes and all instructional teachers' aides initially employed after July 1, 1986, except those with current teacher certification, shall be subject to the following requirements:

(a) A high school diploma or a high school equivalency certificate;

(b) A passing score on an achievement test. The content of the test and the minimum score shall be determined by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education;

(c) Successful completion of an in-service training program established by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education; and

(d) An annual evaluation by the appropriate school administrator with input from the supervising teacher or teachers.

(2) "Noninstructional teacher's aide" means an adult who works under the direct supervision of the teaching staff in performing noninstructional functions such as clerical duties, lunch room duties, leading pupils in recreational activities, aiding the school librarian, preparing and organizing instructional material and equipment and monitoring children during a noninstructional period. Noninstructional teachers' aides employed on a full-time basis shall possess skills necessary to perform the duties outlined in this subsection as demonstrated by achieving a minimum score on a measurement instrument developed by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(3) Within the administrative regulations established by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, a local district may employ teachers' aides in supplementary instructional and noninstructional activities with pupils. While engaged in an assignment as authorized under the administrative regulations, and as directed by the professional administrative and teaching staff, these personnel shall have the same legal status and protection as a certified teacher in the performance of the same or similar duties.

(4) Local districts shall give preference to applicants for the position of teacher's aide who have regular or emergency teacher certification.

(5) Within the provisions established by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, local districts may utilize adult volunteer personnel in supplementary instructional and noninstructional activities with pupils under the direction and supervision of the professional administrative and teaching staff.

(6) Pursuant to KRS 156.095 all teachers who have teachers' aides under their direct supervision shall receive in-service training as specified by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education on the effective utilization and evaluation of teachers' aides.

Section 143. KRS 161.120 is amended to read as follows:

(1) (a) Any certificate issued under KRS 161.010 to 161.100, or any certificate or license issued under any previous law to superintendents, principals, teachers, supervisors, directors of pupil personnel, or other administrative, supervisory, or instructional employees may be revoked by the Education Professional Standards Board for immorality, misconduct in office, incompetency, violation of the school laws of the state or administrative regulations adopted by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, willful neglect of duty, or upon the determination that a certificate applicant presented or declared false information toward obtaining the issuance or renewal of any type of teacher certification.

(b) The board may revoke an individual's certificate if his certificate was revoked or voluntarily surrendered in another state on the same or similar grounds provided in this subsection. Such revocation by the board shall be in accordance with the procedures outlined in subsection (2).

(2) (a) The superintendent of each local school district shall report in writing to the Education Professional Standards Board the name, Social Security number, position name, and position code of any certified school employee in his district whose contract is terminated or not renewed, for cause; who resigns from, or otherwise leaves, a position under threat of contract termination, or nonrenewal, for cause; who is convicted in a criminal prosecution; or who is otherwise known to have engaged in such actions or conduct as might reasonably be expected to warrant consideration for certificate revocation. The duty to report shall exist without regard to any disciplinary action, or lack thereof, by the superintendent, and the required report shall be submitted within thirty (30) days of the event giving rise to the duty to report.

(b) The district superintendent shall inform the Education Professional Standards Board in writing of the full facts and circumstances leading to the contract termination or nonrenewal, resignation, or other absence, conviction, or otherwise reported actions or conduct of the certified employee, which are based on immorality, misconduct in office, incompetency, violation of school law or administrative regulation adopted by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, willful neglect of duty, or falsification of certification credentials, and shall forward copies of all relevant documents and records in his possession.

(c) The certified school employee shall be given a copy of any report provided to the Education Professional Standards Board by the district superintendent and shall have the right to file a written rebuttal which shall be attached to the district superintendent's report.

(3) (a) Upon taking action to initiate proceedings to revoke a certificate, the Education Professional Standards Board

shall provide the certified employee a written statement specifying in detail the charge against him and setting a time and date for a hearing. The hearing shall take place no less than twenty (20) days nor more than forty-five (45) days after the certified employee receives the statement of charges. A continuance of the hearing may be granted in accordance with administrative regulations promulgated by the board.

(b) The hearing may be public or private at the discretion of the certified employee. The certified employee may be represented by counsel. The presence of witnesses may be required upon subpoenas issued by the chief state school officer at the request of the chairman of the Education Professional Standards Board or the certified employee. Each witness shall be required to take an oath or affirmation prior to testimony.

(c) The hearing shall be conducted by the full board or a person appointed as hearing officer by the board.

(d) If the hearing is conducted by a hearing officer, the officer shall submit written findings and a recommended order to the board for its consideration and action upon completion of the hearing.

(4) In all cases where the Education Professional Standards Board is unable, after reasonable diligence, to notify a certified individual of a scheduled hearing on pending charges, the hearing shall be continued generally until the individual can be notified or presents himself for hearing. The charges shall not be dropped in the interim, and the fact of pending revocation charges shall be appropriately noted in the individual's certification file.

(5) Any individual whose certificate is revoked may apply for reissuance of his certificate when he believes he can demonstrate himself suitable for reissuance, unless the Education Professional Standards Board's order of revocation sets forth a specific minimum period of revocation.

Section 144. KRS 161.159 is amended to read as follows:

The State Board ***of*** ~~[for Elementary and Secondary]~~ Education, upon the recommendation of the chief state school officer, shall adopt rules and regulations to implement the state life insurance program provided for employees of the common schools subject to the following standards:

(1) The life insurance program shall cover both certified and noncertified common school personnel.

(2) The life insurance program shall be made available to all regular full-time personnel as defined by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education regulations.

Section 145. KRS 161.165 is amended to read as follows:

(1) The Education Professional Standards Board in cooperation with the State Board ***of*** ~~[for Elementary and Secondary]~~ Education and the Council on Higher Education shall develop a coordinated, strategic plan for increasing the number of minority teachers in the Commonwealth. The plan shall include, but not be limited to, recommendations on ways to:

(a) Identify methods for increasing the percentage of minority educators in proportion to the number of minority students;

(b) Establish programs to identify, recruit, and prepare as teachers minority persons who have already earned college degrees in other job fields;

(c) Create awareness among secondary school guidance counselors of the need for minority teachers.

(2) Upon completion of the plan, the Education Professional Standards Board shall promulgate administrative regulations to establish pilot programs that increase the percentage of minorities who enter and successfully complete a four (4) year teacher preparation program and provide support to minority students in meeting qualifying requirements for students entering a teacher preparation program at institutions of higher education.

(3) The Education Professional Standards Board shall submit a report to the Interim Joint Committee on Education no later than December 1, 1993, that evaluates the results of these efforts and includes accompanying recommendations to establish a continuing program for increasing the number of minorities in teacher education.

Section 146. KRS 161.210 is amended to read as follows:

(1) Each teacher or other person in the public schools shall make reports and inventories to the district superintendent at the time and in the manner prescribed by the district board of education and the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(2) No teacher shall willfully make a false monthly or term report of time taught or other item or shall willfully fail to make a required report.

Section 147. KRS 161.790 is amended to read as follows:

(1) The contract of a teacher shall remain in force during good behavior and efficient and competent service by the teacher and shall not be terminated except for any of the following causes:

(a) Insubordination, including but not limited to violation of the school laws of the state or administrative regulations adopted by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education or lawful rules and regulations established by the local board of education for the operation of schools, or refusal to recognize or obey the authority of the superintendent, principal, or any other supervisory personnel of the board in the performance of their duties;

(b) Immoral character or conduct unbecoming a teacher;

(c) Physical or mental disability;

(d) Inefficiency, incompetency, or neglect of duty, when a written statement identifying the problems or difficulties has been furnished the teacher or teachers involved.

(2) Charges under subsections (1)(a) and (1)(d) of this section shall be supported by a written record of teacher performance by the superintendent, principal, or other supervisory personnel of the district, except when the charges are brought as a result of a recommendation made by a Kentucky distinguished educator under KRS 158.6455.

(3) No contract shall be terminated except upon notification of the board by the superintendent. Prior to notification of the board, the superintendent shall furnish the teacher with a written statement specifying in detail the charge against the teacher. The teacher may within ten (10) days after receiving the charge notify the chief state school officer and the superintendent of his intention to answer the charge, and upon failure of the teacher to give notice within ten (10) days, the dismissal shall be final.

(4) Upon receiving the teacher's notice of his intention to answer the charge, the chief state school officer shall appoint a three (3) member tribunal, consisting of one (1) teacher, one (1) administrator, and one (1) lay person, none of whom reside in the district, to conduct an impartial hearing within the district. The chief state school officer shall name the chairman and set the date and time for the hearing. The hearing shall take place no less than twenty (20) days nor more than thirty (30) days after the teacher receives the statement of charges.

(5) The hearing may be public or private at the discretion of the teacher. Both parties may be represented by counsel and may require the presence of witnesses upon subpoenas issued by the chief state school officer. Each witness shall be required to take an oath or affirmation prior to testimony. The local board of education shall provide for a tape and stenographic report of the proceedings and furnish the teacher with a copy. The local board shall pay each member of the tribunal a per diem of one hundred dollars ($100) and travel expenses.

(6) Upon hearing both sides of the case, the tribunal may by a majority vote render its decision or may defer its action for not more than five (5) days.

(7) The superintendent may suspend the teacher pending final action to terminate the contract, if, in his judgment, the character of the charge warrants the action. If after the hearing the decision of the tribunal is against termination of the contract, the suspended teacher shall be paid his full salary for any period of suspension.

(8) The teacher shall have the right to make an appeal to the Circuit Court having jurisdiction in the county where the school district is located. The appeal shall be commenced by filing a petition against the local board of education and the superintendent. The petition shall state the grounds upon which the teacher relies for a reversal or modification of the order of termination of contract. Upon service or waiver of summons in the appeal, the tribunal, with the assistance of the chief state school officer, shall transmit to the clerk of the court for filing a transcript of the original notice of charges and a transcript of all evidence considered at the hearing before the tribunal. The local board of education shall be responsible for the costs of the transcript. The court shall hear the appeal upon the record as certified by the tribunal and shall dispose of the appeal in summary manner. Either the teacher or the superintendent and local board of education may appeal the action of the court to the Court of Appeals. If the appeal is not made within thirty (30) days following the final decision of the tribunal, the decision shall be final.

(9) As an alternative to termination of a teacher's contract, the superintendent upon notifying the board and providing written notification to the teacher of the charge may impose other sanctions, including, suspension without pay, public reprimand, or private reprimand. The procedures set out in subsection (3) of this section shall apply, except to a private reprimand. The teacher may appeal the action of the superintendent, except a private reprimand, in the same manner as established in subsections (4) through (8) of this section. Upon completion of a suspension period, the teacher may be reinstated.

Section 148. KRS 162.060 is amended to read as follows:

The chief state school officer shall be furnished a copy of all plans and specifications for new public school buildings contemplated by boards of education and for all additions to or alterations of old buildings. He shall examine or cause to be examined all such plans and specifications and shall approve or disapprove them in accordance with the rules and regulations of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. Plan reviews for conformance with the Uniform State Building Code shall be conducted only by the Department of Housing, Buildings and Construction. No board of education may award a contract for the erection of a new building or contract for an addition to or alteration of an old building until the plan has been approved by the chief state school officer.

Section 149. KRS 162.170 is amended to read as follows:

For the purpose of defraying the cost of constructing or acquiring any school buildings and appurtenances thereto for common school purposes under the provisions of KRS 162.150, any city may borrow money and issue negotiable revenue bonds. No such bonds for common school purposes shall be issued until the conditions of KRS 162.160 have been complied with, and until authorized by an ordinance specifying the proposed undertaking, the amount of bonds to be issued, and the maximum rate of interest the bonds are to bear, which rate, as applicable to revenue bonds issued to finance buildings and appurtenant facilities for common school purposes, shall be established by regulation of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

The ordinance shall further provide that the buildings and appurtenant facilities are to be constructed or acquired under the provisions of KRS 162.150 to 162.280.

Section 150. KRS 162.180 is amended to read as follows:

All bonds issued under the provisions of KRS 162.170 for common school purposes may bear interest at a rate not exceeding the maximum rate per annum which has been established by regulation of the State Board ***of*** [~~for Elementary and Secondary~~] Education, payable semiannually, and shall be executed in such manner and be payable at such times, not exceeding thirty (30) years from the date thereof, and at such place as the governing body of the city determines. The bonds shall be sold in such manner and upon such terms as the governing body of the city deems for the best interest of the city.

Section 151. KRS 162.185 is amended to read as follows:

Nothing contained in KRS 162.170 or 162.180 is intended to or shall be construed to make interest rates applicable to revenue bonds issued by the governing bodies of state institutions of higher learning under KRS 162.340 to 162.380, inclusive, subject to regulation, establishment, limitation, or approval by the State Board ***of*** [~~for Elementary and Secondary~~] Education.

Section 152. KRS 164.005 is amended to read as follows:

(1) There is established the Governor's Higher Education Nominating Committee which shall consist of seven (7) members representing each of the Supreme Court districts who shall be appointed by the Governor with the consent of the House of Representatives and the Senate. If the General Assembly is not in session at the time of appointment, the consent of the General Assembly shall be obtained during the time the General Assembly next convenes.

(2) (a) In order to be eligible to serve on the Governor's Higher Education Nominating Committee, a member at the time of appointment shall have no conflict of interest pursuant to KRS 45A.340. In addition, no member shall have a relative employed by a public institution of higher education or the Council on Higher Education during his tenure on the committee. No more than two (2) persons holding an undergraduate degree from the same institution of higher education shall be members of the committee.

(b) The Governor shall make the appointments so as to reflect no less than proportional representation of the minority racial composition of the Commonwealth.

(c) In selecting the members of the committee, the Governor shall solicit recommendations from each of the following:

1. Advisory Conference of Presidents;
2. Council on Higher Education Student Advisory Committee;
3. Associations representing faculty from universities and community colleges;
4. Associations representing university and community college alumni;
5. Higher education advocacy groups;
6. The State Board ***of*** [~~for Elementary and Secondary~~] Education; and
7. Associations representing business and civic interests.

(3) (a) Members of the committee representing Supreme Court districts shall serve six (6) year terms and until a successor is appointed, except the initial appointments shall be as follows:

1. Two (2) members shall serve a two (2) year term;
2. Two (2) members shall serve a four (4) year term; and
3. Three (3) members shall serve a six (6) year term.

(b) The terms of the original appointees shall expire on April 14 in the year designated for the term, and the terms of each member appointed thereafter shall begin on April 15. Appointments shall be submitted to the 1992 Senate and House of Representatives for confirmation as soon as practicable following February 20, 1992. Subsequent appointments shall be submitted to the Senate and to the House of Representatives for confirmation by February 1 in each year that a regular session of the General Assembly convenes. Each appointment shall be consented to by both chambers in order for the person to be confirmed. At the first regular meeting of the committee each fiscal year, a chairperson shall be selected by the membership.

(4) The members of the committee may be reimbursed for actual and necessary expenditures incurred in the performance of their duties. The expenses of the committee shall be paid out of the appropriation for the Governor's office.

(5) (a) The committee shall be responsible for submitting three (3) nominations from which the Governor shall select each gubernatorial appointment to a university governing board made pursuant to KRS 164.131, 164.321, and 164.821 and to the Council on Higher Education pursuant to KRS 164.011, except the student member. The committee shall not make recommendations for alumni, faculty, and staff appointments made pursuant to KRS 164.131 and 164.821 and the student appointments made pursuant to KRS 164.131, 164.321, and 164.821. If more than one (1) equivalent gubernatorial appointment is being made to a governing board or the Council on Higher Education at the same time, the committee shall submit a number of nominees equal to three (3) times the number of vacancies. The Governor shall select the appointees from among the nominees.

(b) Nominations shall be made thirty (30) days prior to the expiration of a term or as soon as practicable following an unforeseen board vacancy. The Governor shall make the appointment within sixty (60) days following receipt of the nominations. If the Governor does not make the appointment within sixty (60) days, the committee shall select one (1) of the nominees to serve.

(6) In making its nominations, the committee shall consider the needs of the respective institutions, locate potential appointees, review candidates' qualifications and references, conduct interviews, and carry out other search and screening activities as necessary.

(7) The Governor's office staff shall provide support services for the committee.

Section 153. KRS 164.0282 is amended to read as follows:

The Council on Higher Education shall:

(1) Employ a director and sufficient staff to administer the professional education preparation programs;

(2) Formulate guidelines and policies governing program activities and fund expenditures;

(3) Allocate funds to appropriate agencies, organizations, and institutions for the purpose of conducting activities approved in accordance with guidelines and policies;

(4) Recognize regional groups made up of professionals, educators, and consumers, which shall serve in an advisory capacity to the council in accordance with guidelines and policies;

(5) Recognize a group made up of professionals, educators and consumers which shall serve in an advisory capacity to the council on all program matters;

(6) Develop and maintain a mechanism for evaluating the impact of the program activities on admissions to, and graduation from, professional schools, and on professional manpower distribution;

(7) Conduct specific program activities which are beyond the capability of a single institution, agency, or organization, or when it is determined that it would be inappropriate for such institutions, agencies, or organizations to conduct the activity;

(8) Establish liaison with and provide assistance to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education and the State Board for Occupational Education in developing counseling and other related programs to encourage students from shortage areas to prepare for professional careers;

(9) Coordinate the development of a financial support system to enable potential professional students in underserved areas which will enhance their ability to apply for, be admitted to, and graduate from professional education programs;

(10) Report at least annually to the appropriate committees and interim committees of the General Assembly on the operation of the program.

Section 154. KRS 167.015 is amended to read as follows:

The Kentucky School for the Blind at Louisville, Kentucky, and the Kentucky School for the Deaf at Danville, Kentucky, shall be managed and controlled by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. The board shall have possession and the responsibility and authority for preservation, repair, and control of the buildings and grounds belonging to the state and dedicated to the schools. The board may, except as provided in KRS 45A.045, sell any property held for the use and benefit of the schools, and purchase other property deemed by the board to be suitably and conveniently located, and erect buildings necessary for carrying out the purposes of the schools. The board may adopt rules and regulations to carry into effect its powers with respect to the schools, and may require from the superintendent of the schools any reports and information it desires as to the condition of the schools.

Section 155. KRS 167.017 is amended to read as follows:

(1) The superintendent of the Kentucky School for the Deaf shall be appointed by the chief state school officer. The appointment shall be made upon recommendation of a search committee which shall be appointed by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education whenever appointment of a superintendent becomes necessary.

(2) The search committee for the superintendent of the Kentucky School for the Deaf shall consist of the representative of the State Department of Education selected by the chief state school officer, one (1) representative of the Kentucky Association of the Deaf, Inc., one (1) representative of the Kentucky School for the Deaf Alumni Association, Inc., one (1) representative of the Kentucky School for the Deaf faculty, one (1) parent of a student at the Kentucky School for the Deaf, and one (1) representative of the Kentucky School for the Deaf advisory board. The search committee's recommendation must be approved by a majority of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education members.

(3) The superintendent of the Kentucky School for the Deaf may be removed from office by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education only by a majority vote of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 156. KRS 167.035 is amended to read as follows:

(1) There may be established a Kentucky School for the Blind Advisory Board composed of five (5) members appointed by

the State Board ***of*** [~~for Elementary and Secondary~~] Education upon recommendation by the chief state school officer for terms of four (4) years and until their successors are appointed. The board shall elect from its membership a chairman. Members of the board shall serve without compensation but shall be reimbursed for necessary expenses incurred in performance of their duties.

(2) The board shall act in an advisory capacity to assist the superintendent in conducting the activities of the school.

Section 157. KRS 167.037 is amended to read as follows:

(1) There shall be established a Kentucky School for the Deaf Advisory Board, composed of seven (7) members appointed by the State Board ***of*** [~~for Elementary and Secondary~~] Education upon recommendation of the chief state school officer. At the first regular meeting in each fiscal year, the board shall elect a chairman and vice chairman. A member may serve no more than two (2) consecutive years as chairman. Members shall be appointed for regular terms of four (4) years. Members of the board shall serve without compensation but shall be reimbursed for necessary expenses incurred in performance of their duties.

(2) Advisory board members for the Kentucky School for the Deaf shall be selected from nominations submitted by the Kentucky Association of the Deaf Inc., the Parent-Teacher-Cottage Parent Association, the Kentucky School for the Deaf Alumni Association Inc., and the chief state school officer. Membership on the board shall be statewide and shall consist of two (2) parents of deaf children, one (1) professional in education of the deaf, one (1) former student of the Kentucky School for the Deaf, one (1) member of the Kentucky Association for the Deaf, and two (2) members at large.

(3) The board shall act in an advisory capacity to assist the school superintendent in conducting the activities of the school. The board shall also make recommendations to the chief state school officer concerning all areas relating to the effective operation of the school, including but not limited to:

(a) Goals and objectives,

(b) Budget requests,

(c) Student services,

(d) Public relations,

(e) Construction and maintenance, and

(f) Program evaluation.

Section 158. KRS 167.150 is amended to read as follows:

The State Board ***of*** [~~for Elementary and Secondary~~] Education upon recommendation of the chief state school officer may prescribe admission policies, curriculum, and rules for the government and discipline of pupils who attend the Kentucky School for the Blind or the Kentucky School for the Deaf and fix and regulate tuition fees and terms of admission of pupils into the facilities from other states, but no charge shall be made for the admission of pupils from this state.

Section 159. KRS 167.170 is amended to read as follows:

The State Board ***of*** [~~for Elementary and Secondary~~] Education shall alone have the power to expel a pupil from the Kentucky School for the Blind or the Kentucky School for the Deaf.

Section 160. KRS 168.020 is amended to read as follows:

As used in KRS 168.010 to 168.100, the following words and terms have the following meanings, unless in any instance, the context shall clearly indicate another meaning, in which event the context shall be controlling:

(1) "Authority" means the Kentucky Authority for Educational Television;

(2) "Board" means the State Board ***of*** [~~for Elementary and Secondary~~] Education;

(3) "Department" means the State Department of Education;

(4) "Public schools" means the state-supported schools of the elementary and secondary levels, as defined in KRS 157.320;

(5) "Commission" means the State Property and Buildings Commission of Kentucky;

(6) "Council" means the Council on Higher Education in Kentucky;

(7) "University of Kentucky" means the University of Kentucky as one (1) entity, including its present and future extensions;

(8) "State colleges and universities" means and includes Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Northern Kentucky University, Western Kentucky University, and the University of Louisville; but does not include any present or future state-supported junior colleges, unless by statute the same are given representation on the council;

(9) "Educational television" means and includes the production of television programs, the filming or taping thereof, the purchase or lease of filmed or taped programs produced by others, and the transmission or relaying of them for utilization:

(a) Which may be used in aid of education in the public schools and state-supported institutions of higher education; and

(b) For limited and incidental use in furtherance of other proper public functions;

(10) "Television facilities" means and includes sites, buildings, structures, machinery, equipment, and installations, each with necessary or appropriate appurtenances, used or useful in the furtherance of educational television;

(11) "Related functions" or "related services" means and includes the use of facilities operated or leased by the authority, or which may be added or connected to such facilities as permitted by applicable statutes, and to prepare, transmit, or enable the exchange of nontelevision programs, services or functions for and among the public schools, state-supported institutions of higher education, and other state agencies:

(a) In aid of education; and

(b) For use in other proper public functions; provided, however, that such related functions or related services may include, but are not limited to, the following examples: computer-assisted instruction, data for teaching or administrative purposes, and educational noncommercial radio;

(12) "Related facilities" means and includes sites, buildings, structures, machinery, equipment and installations, each with necessary or appropriate appurtenances, used or useful in the furtherance of related functions or services.

Section 161. KRS 171.215 is amended to read as follows:

(1) The Department for Libraries and Archives shall purchase textbooks from publishers whose books have been adopted by the state textbook commission for distribution without cost to pupils attending grade one (1) through grade twelve (12) of the state's nonpublic schools which have been accredited by the State Department of Education.

(2) The chief school administrator of each eligible school may file a requisition with the state librarian for the books needed for the next ensuing school term. Textbooks eligible for distribution by grade level or subject shall conform to the schedule in use by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education for distribution to the public schools.

(3) The state librarian shall develop rules and regulations governing the purchase, requisition, distribution, assignment to students, care, use and return of textbooks, and a plan for permanently labeling the textbooks as the property of the Department for Libraries and Archives. The rules and regulations shall provide for the allocation of textbooks in a manner reflecting, and not to exceed the expressly limited appropriation to fund the allocation. The rules and regulations shall be developed in consultation with the Department of Education and shall conform, within statutory limits, to the rules and regulations already established by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(4) All textbooks purchased under the provisions of this section are the property of the state. Each school administrator obtaining books through the Department for Libraries and Archives is custodian of the books in his school. He shall issue the books to the students according to the rules and regulations formulated by the state librarian.

(5) Funds appropriated by the General Assembly to the Department for Libraries and Archives for this purpose shall not be expended for any textbooks which present a particular religious philosophy and shall not be considered as or commingled with common school funds and shall be allocated each year to the nonpublic school students as provided by rule and regulation of the Department for Libraries and Archives to the extent allowed by the appropriation provided in Acts 1978, ch. 139, sec. 2.

Section 162. KRS 189.540 is amended to read as follows:

(1) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall adopt administrative regulations to govern the design and operation of all Kentucky school buses. The board shall, with the advice and aid of the Kentucky State Police and the Transportation Cabinet, enforce the administrative regulations governing the operation of all school buses whether owned by a school district or privately contracted. The regulations covering the operation shall by reference be made a part of any contract with a school district. Every school district and private contractor referred to under this subsection shall be subject to those regulations.

(2) Any employee of any school district who violates any of the administrative regulations in any contract executed on behalf of a school district shall be subject to removal from office. Any person operating a school bus under contract with a school district who fails to comply with any of the administrative regulations shall be guilty of breach of contract and the contract shall be canceled after proper notice and a hearing by the responsible officers of such school district.

(3) Any person who operates a school bus shall be required to possess a commercial driver's license issued pursuant to KRS 281A.170.

Section 163. KRS 319.015 is amended to read as follows:

Nothing in this chapter shall be construed to limit:

(1) The activities, services, and use of title on the part of a person in the employ of the federal government;

(2) Persons in the employ of accredited institutions of higher education from engaging in the teaching of psychology, the conduct of psychological research, the provision of consultation services to organizations or institutions, or the provision of expert testimony, but not including the delivery or supervision of direct psychological services to individuals or groups;

(3) Persons licensed, certified, or registered under any other provision of the Kentucky Revised Statutes from rendering services consistent with the laws regulating their professional practice and the ethics of their profession, if they do not represent themselves to be psychologists;

(4) The activities of a student, intern, or resident in psychology, pursuing a course of study approved by the department of psychology of an educational institution rated acceptable by the board for qualifying training and experience, provided such activities are recognized by transcript as a part of his supervised course of study;

(5) The recognized educational activities of teachers in accredited public and private schools, the authorized duties of guidance counselors who are certified by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, or the activities of persons using psychological techniques in business and industrial organizations for employment placement, promotion, or job adjustment of their own officers and employees;

(6) Persons who are credentialed as school psychologists by the Kentucky Department of Education from using the title "school psychologist" and practicing psychology as defined in KRS 319.010, if their practice is restricted to regular employment within a setting under the purview of the Kentucky Department of Education. These individuals shall be employees of the educational institution and not independent contractors providing psychological services to educational institutions;

(7) A duly ordained minister, priest, rabbi, Christian Science practitioner, or other clergyman from carrying out his responsibilities while functioning in his ministerial capacity within a recognized religious organization serving the spiritual needs of its constituency, if he does not hold himself out as a psychologist; or

(8) Any nonresident temporarily employed in this state from rendering psychological services for not more than thirty (30) days every two (2) years, if he holds a valid current license or certificate as a psychologist in his home state or country and registers with the board prior to commencing practice in the Commonwealth.

Section 164. KRS 335.010 is amended to read as follows:

(1) It is the purpose and policy of the Commonwealth of Kentucky to protect the public from being misled by incompetent and unauthorized persons, and from unprofessional conduct on the part of qualified social workers by providing regulatory authority over persons who hold themselves out to the public as social workers.

(2) The purpose of KRS 335.010 to 335.160 and 335.990 is to promote high standards of professional performance for those engaged in the profession of social work by regulating the title, and by setting standards of qualification, training and experience for those who seek to engage in the practice of social work.

(3) Nothing contained in KRS 335.010 to 335.160 and 335.990 shall be applicable to employees of the State Department of Education or local boards of education who meet the certification requirements in the area of social work as established, or which may be established, by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. Nor shall anything in KRS 335.010 to 335.160 and 335.990 be construed to apply to, limit, or restrict the regulation of the title, setting of standards, qualifications, training or experience of those who seek to engage in the practice of social work and who have been, or will be, certified by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education for the position for which they have been employed.

(4) Nothing contained in KRS 335.010 to 335.160 and 335.990 shall require persons employed by the Commonwealth of Kentucky, the director or administrative head of a social service agency or division of a city, county or urban-county government or applicants for such employment to be licensed.

(5) Nothing contained in KRS 335.010 to 335.160 and 335.990 shall require persons employed by church-related or church-operated or affiliated agencies, childrens' homes, neighborhood centers, or other philanthropic and nonprofit field service offices to be licensed. The provisions of KRS 335.010 to 335.160 and 335.990 shall not be construed to apply to, limit or restrict the regulation of the title, setting of standards, qualifications, training and experience of those engaged as employees of such entities in the practice of social work or applied social counseling.

Section 165. KRS 367.660 is amended to read as follows:

The following solicitations are exempt from the provisions of KRS 367.650 to 367.670:

(1) Solicitations by an organization of contributions from its members and their families only, provided membership is not included in a solicitation to avoid the provisions of KRS 367.650 to 367.670, is not granted upon the basis of contributions alone, and is within the exception of KRS 367.650(2).

(2) Solicitations by a religious organization for funds for religious purposes such as maintenance of a house of worship, conduct of services and propagation of its faith and tenets as distinguished from other charitable and civic purposes employed by nonreligious organizations.

(3) Solicitations by a publicly owned or nonprofit privately endowed educational institution which is approved or licensed by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, the Council on Higher Education, or an equivalent public authority of the jurisdiction where the institution is located from the alumni, faculty members and student body of the institution and their families, and from corporations, for the continuance of an established educational program.

(4) Local solicitations by a student group or parent-teacher association for its campus or group connected activities with the approval of the administration of the educational institution.

Section 166. KRS 452.430 is amended to read as follows:

An action against the Board of Education, of this state, must be brought in the county that includes the seat of government.

Section 167. KRS 605.110 is amended to read as follows:

(1) Unless provided otherwise, when any child committed to the cabinet requires medical or surgical care or treatment, the cabinet may provide the same or arrange for the furnishing thereof by other public or private agencies, and may give consent to the medical or surgical treatment. For this purpose, the services and facilities of local health officers and departments shall be made available to the cabinet, and as far as practicable, any publicly-owned hospital shall provide hospitalization without charge for any such child who is a resident of the political subdivision by which the hospital is owned or operated. This section does not authorize nor shall permission be granted for abortion or sterilization.

(2) Any child placed in a foster home by an agency duly authorized in KRS Chapter 620 to place a child in a foster home shall receive a complete medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. Arrangements for a child placed in a foster home to receive such examinations shall be made within two (2) weeks of his placement in a foster home and not less than every twelve (12) months thereafter.

(3) Children maintained in any of the facilities and programs operated or contracted by the cabinet shall, so far as possible, receive a common school education.

(a) The Kentucky Educational Collaborative for State Agency Children shall be established to serve children in facilities and programs operated or contracted by the Cabinet for Human Resources Residential, Day Treatment, Clinical, and Group Home programs. All policies and procedures necessary to educate state agency children shall be approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. All duties, responsibilities, rights, and privileges specifically imposed on or granted to the local education administration units shall be imposed on or granted to the Cabinet for Human Resources and contracted agencies with regard to educating agency children. Classrooms for the Kentucky Educational Collaborative for State Agency Children shall be within or near the facilities and programs operated or contracted by the cabinet. The Kentucky Department of Education and the Cabinet for Human Resources, Department for Social Services, Division of Children's Residential Services shall develop a biennial plan regarding the educational needs and provisions of educational programs, with emphasis on the coordination of all treatment services and funds available to provide for the education of state agency children.

(b) An advisory board composed of ten (10) members appointed by the Governor shall provide recommendations in policy development. The advisory board shall consist of one (1) member each from the Cabinet for Human Resources, the Kentucky Developmental Disabilities Council, the Kentucky Department of Education, the Justice Cabinet, the Administrative Office of the Courts, the District Court Judges Association, the Workforce Development Cabinet, a parent, a youth advocate, and a member of the business community.

(c) Teachers and other staff shall be hired on contract through a local school district or if the local school district is not willing to participate, teachers shall be hired by the Kentucky Educational Cooperative for State Agency Children. All certified educational staff of the Kentucky Educational Cooperative for State Agency Children shall be members of the Kentucky Teachers' Retirement System.

(d) Beginning July 1, 1993, the Kentucky Education Collaborative for State Agency Children shall be financed through:

1. The amount generated by state agency children under the Support Education Excellence in Kentucky program as provided in KRS 157.360 for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs;

2. A per pupil distribution of professional development funds with the collaborative serving as a consortium for state agency children pursuant to KRS 156.0951;

3. A per pupil distribution of technology funds in accordance with the state education technology plan pursuant to KRS 156.670 and the formula for the distribution of funds to local school districts;

4. A per pupil distribution of textbook funds pursuant to KRS 157.100 and 157.190;

5. The funding for school services for state agency children authorized by KRS 158.135; and

6. Other grants and entitlements, including federal funds, identified in the implementation plan developed pursuant to paragraph (f) of this subsection for the education of Kentucky's children.

(e) The secretary of the Cabinet for Human Resources shall promulgate administrative regulations, pursuant to KRS Chapter 13A, with the assistance of the Kentucky Department of Education and upon recommendation of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education regarding the governance, curriculum, and other topics necessary to educate state agency children. The regulations shall include, but shall not be limited to, the Kentucky statutes regarding school-based decision making, student outcomes, accountability, assessment, rewards and sanctions, technology, staff development, salaries, and the development of coordinated individual treatment, education, and transition plans to ensure compliance with present education and treatment laws and regulations specific to the needs of children in the programs of the Cabinet for Human Resources.

(f) The secretary of the Cabinet for Human Resources and the commissioner of the state Department of Education shall initiate development of a plan for implementation of the Kentucky Educational Collaborative for State Agency Children no later than July 15, 1992; and shall ensure full implementation no later than July 1, 1993. The chief state school officer shall authorize the expenditure of an amount not to exceed one percent (1%) of the total appropriation in 1992-1993 for state agency children pursuant to KRS 158.135 for the development of the plan.

Section 168. KRS 7.410 is amended to read as follows:

(1) It is the intent of the General Assembly to provide an efficient system of common schools which shall be operated without waste, duplication, mismanagement, and political influence. The system of schools shall have the goal of providing all students with at least the seven (7) capacities referred to in KRS 158.645.

(2) (a) An Office of Education Accountability is hereby created and shall be under the direction of the Legislative Research Commission.

(b) The Office of Education Accountability shall be administered by a deputy director appointed by the Legislative Research Commission upon recommendation of the director of the Legislative Research Commission. The deputy director shall have the qualifications set by the Commission. The salary of the deputy director shall be set by the Commission. The Commission shall have exclusive jurisdiction over the employment of personnel necessary to carry out the provisions of this section. The deputy director shall be subject to the direction of and report to the director of the Legislative Research Commission.

(c) The Office of Education Accountability shall have the following duties and responsibilities:

1. Monitor the education system and implementation of the provisions of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, including actions taken by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, the Education Professional Standards Board, the chief state school officer, the Department of Education, local school districts, and vocational and higher education as affected by the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476.

2. Establish a Division of School Finance which shall conduct an ongoing review of the finance system. The review shall include an analysis of the level of equity achieved by the funding system and whether adequate funds are available to all school districts; a review of the weights of various education program components, which are to be developed by the Department of Education no later than October 1, 1991. The division shall develop recommendations for the base per pupil funding for the support education excellence in Kentucky program and a statewide salary schedule. It shall conduct studies of other finance issues identified as needing further study, including a review of the transportation formula required in KRS 157.360. The division shall submit an annual report of its activities, findings, and recommendations to the Governor, the Legislative Research Commission, and the State Board ***of*** ~~[for Elementary and Secondary]~~ Education no later than October 1 each year.

3. Verify the accuracy of reports of school, district, and state performance by conducting, contracting for, or requesting periodic program and fiscal audits as necessary. The Office of Education Accountability may request an audit from the State Committee for School District Audits as established in KRS 156.265.

4. Investigate allegations of wrongdoing of any person or agency, including, but not limited to, waste, duplication, mismanagement, political influence, and illegal activity at the state, regional, or school district level which have not been resolved or satisfactorily explained by the local superintendent, local board of education, the chief state school officer, or the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, and make recommendations for action to the Legislative Research Commission.

5. Conduct studies and analyze available data on the efficiency of the system of schools and whether progress is being made toward attaining the goal of providing students with the seven (7) capacities as required by KRS 158.645.

6. Make periodic reports to the Legislative Research Commission as directed by the Commission.

7. Prepare an annual report on the implementation of the provisions of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, including recommendations for improvement which shall be submitted to the Governor, the Legislative Research Commission, and the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(d) The Office of Education Accountability shall have access to all public records and information on oath as provided in KRS 7.110. The office shall also have access to otherwise confidential records, meetings, and hearings regarding local school district personnel matters. However, the office shall not disclose any information contained in or derived from the records, meetings, and hearings that would enable the discovery of the specific identification of any individual who is the focus or subject of the personnel matter.

(e) In compliance with KRS 48.800, 48.950, and 48.955, the Finance and Administration Cabinet and the Governor's Office for Policy and Management shall provide to the Office of Education Accountability access to all information and records, other than preliminary work papers, relating to allotment of funds, whether by usual allotment or by other means, to the Department of Education, local school districts, and to other recipients of funds for educational purposes.

(f) Any state agency receiving a complaint or information which if accurate may identify a violation of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, shall notify the office of the complaint or information.

(g) The Office of Education Accountability may contract for services as approved by the Legislative Research Commission pursuant to KRS 7.090(7).

(3) The provisions of KRS 61.878 or any other statute, including Acts of the 1992 Regular Session of the General Assembly to the contrary notwithstanding, the testimony of investigators, work products, and records of the Office of Education Accountability relating to duties and responsibilities under subsection (2) of this section shall be privileged and confidential during the course of an ongoing investigation or until authorized, released, or otherwise made public by the Office of Education Accountability and shall not be subject to discovery, disclosure, or production upon the order or subpoena of a court or other agency with subpoena power.

Section 169. KRS 11A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;

(2) "Commission" means the Executive Branch Ethics Commission;

(3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;

(4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;

(5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received;

(6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, the State Board for Adult and Technical Education, and any other management personnel with procurement authority;

(8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;

(9) "Public servant" means:

(a) The Governor;

(b) The Lieutenant Governor;

(c) The Secretary of State;

(d) The Attorney General;

(e) The Treasurer;

(f) The Commissioner of Agriculture;

(g) The Superintendent of Public Instruction;

(h) The Auditor of Public Accounts;

(i) Each Railroad Commissioner; and

(j) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

(10) "State agency" means every state office, department, division, board, commission, institution, public corporation, and authority within the executive branch;

(11) "Lobbyist" means any person employed as a legislative agent or legislative counsel to promote, oppose, or act with reference to any legislation which affects, or may affect, private pecuniary interests, as distinct from those of the whole people;

(12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts with reference to legislative action; and

(13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (i) of this section.

Section 170. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of such department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.

2. Lieutenant Governor.

3. Department of State.

(a) Secretary of State.

(b) Board of Elections.

(c) Registry of Election Finance.

4. Department of Law.

(a) Attorney General.

5. Department of the Treasury.

(a) Treasurer.

6. Department of Agriculture.

(a) Commissioner of Agriculture.

(b) Kentucky Council on Agriculture.

7. Superintendent of Public Instruction.

8. Auditor of Public Accounts.

9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:

(a) Department of State Police.

(b) Department of Criminal Justice Training.

(c) Office of Administration.

(d) Department of Corrections.

(e) Parole Board.

(f) Kentucky State Corrections Commission.

2. Education and Humanities Cabinet:

(a) Department of Education.

(1) State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

(2) Education Professional Standards Board.

(b) Department for Libraries and Archives.

(c) Kentucky Arts Council.

(d) Kentucky Educational Television.

(e) Kentucky Historical Society.

(f) Kentucky Teachers' Retirement System Board of Trustees.

3. Natural Resources and Environmental Protection Cabinet:

(a) Environmental Quality Commission.

(b) Kentucky Nature Preserves Commission.

(c) Department for Environmental Protection.

(d) Department for Natural Resources.
(e) Department for Surface Mining Reclamation and Enforcement.
(f) Department of Law.
(g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
(a) Department of Highways.
(b) Department of Vehicle Regulation.
(c) Department of Administrative Services.
(d) Department of Fiscal Management.
(e) Department of Rural and Municipal Aid.
(f) Office of Aeronautics.
(g) Office of General Counsel.
(h) Office of Public Relations.
(i) Office of Personnel Management.
(j) Office of Minority Affairs.
5. Cabinet for Economic Development:
(a) Department for Existing Business and Industry.
(b) Tobacco Research Board.
(c) Kentucky Development Finance Authority.
(d) Office of Business and Technology.
(e) Office of Industrial Development.
6. Public Protection and Regulation Cabinet:
(a) Public Service Commission.
(b) Department of Insurance.
(c) Department of Housing, Buildings and Construction.
(d) Department of Financial Institutions.
(e) Department of Mines and Minerals.
(f) Department of Public Advocacy.
(g) Department of Alcoholic Beverage Control.
(h) Kentucky Racing Commission.
(i) Board of Claims.
(j) Crime Victims Compensation Board.
(k) Kentucky Board of Tax Appeals.
(l) Backside Improvement Commission.
7. Cabinet for Human Resources:
(a) Department for Health Services.
(b) Department for Employment Services.
(c) Department for Social Insurance.
(d) Department for Social Services.
(e) Department for Medicaid Services.
(f) Department for Mental Health and Mental Retardation Services.
(g) Unemployment Insurance Commission.
(h) Commission for Handicapped Children.
(i) Public Assistance Appeals Board.
(j) Office of Administrative Services.
(k) Office of Communications.
(l) Office of General Counsel.
(m) Office of Inspector General.

(n) Office of Policy and Budget.
(o) Office of the Ombudsman.

8. Finance and Administration Cabinet:
   (a) Office of Legal and Legislative Services.
   (b) Office of Management and Fiscal Affairs.
   (c) Office of Historic Properties.
   (d) Office of Financial Management and Economic Analysis.
   (e) Office of Risk Management.
   (f) Department for Administration.
   (g) Department of Facilities Management.
   (h) Department of Information Systems.
   (i) State Property and Buildings Commission.
   (j) Kentucky Pollution Abatement Authority.
   (k) Kentucky Savings Bond Authority.
   (l) Deferred Compensation Systems.
   (m) Office of Equal Employment Opportunity Contract Compliance.
   (n) Capital Plaza Authority.
   (o) County Officials Compensation Board.
   (p) Financial Disclosure Review Commission.
   (q) Kentucky Employees Retirement Systems.
   (r) Commonwealth Credit Union.
   (s) State Investment Commission.
   (t) Kentucky Housing Corporation.
   (u) Governmental Services Center.
   (v) Kentucky Local Correctional Facilities Construction Authority.
   (w) Kentucky Turnpike Authority.
   (x) Historic Properties Advisory Commission.
9. Labor Cabinet:
   (a) Department of Workplace Standards.
   (b) Department of Workers' Claims.
   (c) Kentucky Labor-Management Advisory Council.
   (d) Occupational Safety and Health Standards Board.
   (e) Prevailing Wage Review Board.
   (f) Workers' Compensation Board.
   (g) Kentucky Employees Insurance Association.
   (h) Apprenticeship and Training Council.
   (i) State Labor Relations Board.
   (j) Kentucky Occupational Safety and Health Review Commission.
   (k) Office of Administrative Services.
   (l) Office of Labor Management Relations.
   (m) Office of General Counsel.
10. Revenue Cabinet:
   (a) Department of Property Taxation.
   (b) Department of Tax Compliance.
   (c) Department of Administrative Services.
11. Tourism Cabinet:
   (a) Department of Travel Development.
   (b) Department of Parks.

(c) Department of Fish and Wildlife Resources.
(d) Kentucky Horse Park Commission.
(e) State Fair Board.
(f) Office of Administrative Services.
(g) Office of Film Promotion.
(h) Office of General Counsel.

12. Cabinet for Workforce Development:
(a) Department for Adult and Technical Education.
(b) Department of Vocational Rehabilitation.
(c) Department for the Blind.
(d) State Board for Adult and Technical Education.
(e) Governor's Council on Vocational Education.
(f) Governor's Commission on Literacy.
(g) The State Board for Proprietary Education.
(h) The GED Foundation.
(i) The Kentucky Occupational Information Coordinating Committee.
(j) The Kentucky Job Training Coordinating Council.

III. Other departments headed by appointed officers:
1. Department of Military Affairs.
2. Department of Personnel.
3. Council on Higher Education.
4. Department of Local Government.
5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.

Section 171. KRS 18A.225 is amended to read as follows:

(1) (a) The term "health maintenance organization" for the purposes of this section means a health maintenance organization as defined in KRS 304.38-030 or as a nonprofit hospital, medical-surgical, dental, and health service corporation, which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical-surgical, dental, and health service corporation and which is qualified under the requirements of the United States Department of Health, Education and Welfare except as provided in subsection (2) of this section; and

(b) The term "state employee" for purposes of this section shall mean a person, including an elected public official, who is regularly employed by any department, board, agency, or branch of state government, and who is a contributing member to any one (1) of the retirement systems administered by the state, provided, however, that any federally-funded time-limited employee may receive insurance coverage. It shall also include a person who must fulfill the requirements established by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education for eligibility and a person who is a present or future recipient of a retirement allowance from any of the Kentucky Retirement Systems who either satisfies the requirements of KRS 61.559 or who is board authorized under KRS 61.702(1), including a beneficiary of a retired employee as defined in KRS 61.542 who is receiving a retirement allowance from any of the Kentucky Retirement Systems and includes members of the Legislators' Retirement Plan as provided in KRS 18A.2287.

(2) The secretary of the Finance and Administration Cabinet, upon the recommendation of the commissioner of personnel, may procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more health, hospitalization, medical, major medical, and dental insurance companies or from one (1) or more health maintenance organizations authorized to do business in this state, a policy or policies of group health, hospitalization, medical, and major medical insurance or health maintenance organization coverage encompassing all or any class or classes of state employees. All state employees for whom such insurance or health maintenance organization coverage is provided shall annually be given an option to elect either standard insurance coverage or coverage by a health maintenance organization; except that if a qualified health maintenance organization is not engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of such employees reside, the state employees may annually be given the option to elect either standard insurance coverage or coverage by a health maintenance organization which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit

hospital, medical-surgical, dental, and health service corporation and which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of such employees reside. The policy or policies shall be approved by the commissioner of insurance and may contain such provisions as he approves, whether or not otherwise permitted by the insurance laws. It is intended that either insurance or health maintenance organization coverage may be made available for state employees, except that the procuring of each is permissive.

(3) The secretary of the Finance and Administration Cabinet, upon the recommendation of the commissioner of personnel, may procure from one (1) or more dental insurance companies, one (1) or more health maintenance organizations, one (1) or more nonprofit hospital, medical-surgical, dental, and health service corporations organized under subtitle 32 of KRS Chapter 304, or one (1) or more prepaid dental plan organizations organized under subtitle 43 of KRS Chapter 304, a policy or policies of group dental insurance or prepaid dental plan coverage encompassing all or any class or classes of state employees. All state employees for whom such dental insurance or prepaid dental plan coverage is provided shall annually be given an option to elect either standard dental insurance coverage, health maintenance organization coverage, or coverage by a prepaid dental plan. The policy or policies shall be approved by the commissioner of insurance and may contain such provisions as he approves, whether or not otherwise permitted by the insurance laws. It is intended that either dental insurance or prepaid dental plan coverage may be made available for state employees, except that the procuring of each is permissive.

(4) The premiums may be paid by the policyholder:

(a) Wholly from funds contributed by the insured employee, by payroll deduction or otherwise;

(b) Wholly from funds contributed by the state or department, board, or agency; or

(c) Partly from each, except that any premium due for health maintenance organization coverage or prepaid dental plan coverage over the premium amount contributed by the state or department, board, or agency for any other insurance coverage shall be paid by the employee.

(5) If an employee moves his place of residence or employment out of the service area of a health maintenance organization or of a prepaid dental plan organization, under which he has elected coverage, into either the service area of another health maintenance organization or prepaid dental plan organization or into an area of the state not within a health maintenance organization service area or prepaid dental plan service area, such employee shall be given an option, at the time of the move or transfer, to elect coverage either by the health maintenance organization or prepaid dental plan organization into which service area he moves or is transferred or to elect standard insurance coverage offered by the employer.

(6) No payment of premium by the state or department, board, or agency shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by the state or department, board, or agency shall be considered a proper cost of administration.

(7) The policy or policies may contain such provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, continuation of insurance or coverage after retirement, and such other provisions as the commissioner of insurance may approve.

(8) The policy or policies shall contain the provision that employees or retired employees shall be allowed to change health insurance carriers during the reopening period without any limitation for pre-existing conditions if the employee has met the pre-existing condition limitation upon initial employment or reemployment with the group.

(9) The secretary of the Finance and Administration Cabinet is authorized to perform all acts necessary or advisable for the purpose of contracting for and maintaining insurance, prepaid dental plan organization coverage, and health maintenance organization coverage under the provisions of this section.

(10) Group rates under the insurance or health maintenance organization coverage acquired under this section shall be made available to the disabled child of a state employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

(11) The health insurance contract or contracts for state employees shall be entered into for a period of not less than two (2) years, except the contract awarded October 1, 1984, shall be awarded for the period between October 1, 1984, and June 30, 1986.

(12) The commissioner of personnel shall appoint twenty-four (24) persons to an Advisory Committee of State Health Insurance Subscribers to advise the commissioner or his designee regarding the state health insurance program for state employees. The commissioner shall appoint, from a list of names submitted by appointing authorities, members representing school districts from each of the seven Supreme Court districts, members representing state government from each of the seven Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, and three (3) members at large. The commissioner shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, and two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees. The advisory committee shall be appointed in November of each year and shall meet quarterly.

Section 172. KRS 41.240 is amended to read as follows:

(1) (a) Before any bank shall be named as a state depository to receive public funds, it shall pledge to the State Treasurer, as collateral, securities having a current quoted market value at least equal to the deposits, provided, however, that amounts insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation need not be collateralized. The president or cashier of each depository bank shall submit to the Treasurer and the State Investment Commission a statement subscribed and sworn to by him showing the current quoted market value of the securities pledged as of the time the securities are offered as collateral. The market valuation of all pledged collateral shall be reported to the State Treasurer and State Investment Commission upon receipt of deposit and within ten (10) days of the close of each quarter after the quarter beginning December 31. Such quotes shall be as of the end of the quarter or the preceding business day and shall be obtained from a reputable bond pricing service. The State Treasurer and Governor may from time to time call for additional collateral to adequately secure the deposits as current market values may require.

(b) No deposit of state collected demand and time funds shall collectively exceed at any time the depository's sum of capital, reserves, undivided profits and surplus or ten percent (10%) of the total deposits of any particular depository, whichever is less. Deposits will be valued at the end of each business day.

(2) (a) As an alternative to paragraph (1)(a) of this section, a Kentucky depository insured by the Federal Deposit Insurance Corporation may pledge to the State Treasurer as collateral securities having a current quoted market value equal to eighty percent (80%) of the value of the state deposit including demand and time accounts, if the depository is determined by the State Investment Commission to have very strong credit with little or no credit risk at any maturity level and the likelihood of short-term unexpected problems of significance is minimal or not of a serious or long-term nature. The value of the state deposit will be determined at the end of the business day of deposit and as of the end of business on the last day of each quarter that funds are so deposited.

(b) Market valuation of all pledged collateral shall be reported to the State Treasurer and the State Investment Commission upon receipt of the state deposit and within ten (10) days of the close of each quarter after the quarter beginning December 31.

(c) Depositories designated as qualified for reduced pledging shall be so recorded in the executive journal.

(d) The State Investment Commission shall determine eligibility for the reduced pledging option based on totally objective and quantifiable measures of financial intermediary performance. The information for such eligibility shall be obtained from publicly available documents. The State Investment Commission shall promulgate the particular criteria of eligibility by regulations issued pursuant to KRS Chapter 13A.

(3) Depositories which do not qualify or do not choose to qualify under subsection (1) or (2) of this section shall not receive state deposits in excess of amounts that are insured by an instrumentality of the United States.

(4) Only the following securities may be accepted by the State Treasurer as collateral under this section:

(a) Bonds, notes, or other obligations of or guaranteed by the United States, or those for which the credit of the United States is pledged for the payment of the principal and interest thereof, and any bonds, notes, debentures or any other obligations or securities issued or guaranteed by any federal governmental agency, presently or in the future established by an Act of Congress, as amended or supplemented from time to time;

(b) Obligations of the Commonwealth of Kentucky including revenue bonds issued by its statutory authorities, commissions or agencies;

(c) Revenue bonds issued by educational institutions of the Commonwealth of Kentucky as authorized by KRS 162.340 to 162.380;

(d) Obligations of any city of the first, second, and third classes of the Commonwealth of Kentucky, or any county, for the payment of principal and interest on which the full faith and credit of the issuing body is pledged;

(e) School improvement bonds issued in accordance with the authority granted under KRS 162.080 to 162.100; and

(f) School building revenue bonds issued in accordance with the authority granted under KRS 162.120 to 162.300, provided that the issuance of such bonds is approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education.

Section 173. KRS 58.150 is amended to read as follows:

(1) When the governing body of any county, city, or other municipal corporation, or agency thereof, shall make a determination that, in accordance with the provisions of any section of the statutes authorizing it to issue revenue bonds, assessment bonds, or mortgage bonds to finance any project, it will finance such a project by the issuance of such bonds, then in anticipation of such financing such governing body may provide for the interim financing of such project by the sale and issuance of revenue bond, assessment bond, or mortgage bond anticipation notes, as the case may be, bearing interest at a rate or rates not exceeding the maximum rate permitted for the issuance of the bonds so anticipated, and payable within a specified period of time only from the proceeds of such bonds, when issued, or from such revenues or income of the project as may be available prior to or at maturity of the notes; provided that the initial term of such notes shall not be in excess of five (5) years from the date thereof. The terms "revenue bond," "assessment bond," and

"mortgage bond" are used herein as defined in subsection (1) of KRS 58.170, except that a school district shall not be excluded from said definition if it is authorized by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, by general or special authorization, to proceed under the authority of this section or KRS 56.513 through the agency of the appropriate city or county.

(2) The notes authorized herein shall be sold in the same manner as the bonds in anticipation of which they are issued, except that when the principal amount of such notes does not exceed one million dollars ($1,000,000) the provisions of KRS 424.360 for advertisement of such notes in a publication having general circulation among bond buyers shall be inapplicable, and the other publications required by said section shall be deemed sufficient.

(3) Each bond anticipation note may include prepayment provisions which will allow the issuing authority to prepay the note after giving reasonable notice to the holder thereof; shall identify the bond issue from the proceeds of which the note or notes and any interest thereon are to be paid; and shall include a statement that the note is being issued in anticipation of the identified bond issue, and that neither the note, nor the interest thereon, shall constitute or evidence an indebtedness of the issuing authority. Each such note and the interest thereon, to the extent not previously paid from other sources, shall be paid from the proceeds of the identified bond issue, when such proceeds have been received and are available; provided, however, that payment from the revenues of the project, for the financing of which the said bonds will eventually be issued, shall be permitted, and provision shall be made for payment of that portion of the principal of any note issue which represents the principal of the proposed bonds scheduled to mature on or prior to the maturity of said notes.

(4) The notes authorized herein may be issued in a principal amount sufficient to include all interest due on said notes at or prior to maturity, if such notes shall be issued for a term of three (3) years or less, and said notes may be sold at a discount representing the interest due to the purchaser thereof during said term.

(5) When, prior to the maturity of any notes issued under the authority of this section or KRS 56.513, the governing body of the issuing authority shall make a determination that by reason of construction delays, changes in plans, uncertainties in the bond market, or other causes justifying delay in the final offering of the bond issue, said bond issue should not immediately be offered, renewal notes may be issued subject to the same limitations contained in this section or KRS 56.513 relative to the original issue of notes, and the proceeds of the sale of said renewal notes shall be applied to the payment of the principal of the notes originally issued, or any prior issue of renewal notes, or to the payment of interest due or to become due on the notes or renewal notes; provided, however, that the interest (including discount, if any) payable from the proceeds of notes or renewal notes shall not exceed an amount equal to three (3) years, interest from the date of the original notes at the rate per annum established for the original notes.

(6) Counties, cities, and other municipal corporations, or agencies thereof, in the discretion of the governing body in each case, may, as an alternative to this section and for interim financing purposes, solicit proposals, issue bond anticipation notes, and make commitment agreements in the same manner as provided for the State Property and Buildings Commission by KRS 56.513; provided, however, that in the case of notes issued on behalf of a school district, general or special approval of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education shall be required in substitution for the approval of the State Property and Buildings Commission; and provided further, that the approval of the State Property and Buildings Commission will not be required for any issue of a county, city, or other municipal corporation, or any agency thereof, and references to the commission shall be interpreted to be references to the governing body of the issuing authority.

(7) Nothing herein shall be deemed to invalidate any bond anticipation notes sold or issued under general statutes prior to the adoption of this section and KRS 56.513.

(8) Each bond anticipation note issued according to this section or KRS 56.513, and the receipt of interest thereon, shall be exempt from all taxation by the Commonwealth and all of its subdivisions, municipalities, and taxing authorities; and this may be stated as a representation in the text of each such bond anticipation note.

Section 174. KRS 63.080 is amended to read as follows:

(1) Except as provided in subsection (2) of this section and otherwise provided by law, any person appointed by the Governor, either with or without the advice and consent of the Senate, may be removed from office by the Governor for any cause the Governor deems sufficient, by an order of the Governor entered in the executive journal removing the officer.

(2) Members of the board of trustees of the University of Kentucky, the board of trustees of the University of Louisville, members of the board of regents respectively of Eastern Kentucky University, Western Kentucky University, Morehead State University, Kentucky State University, Northern Kentucky University, and Murray State University, and members of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education and the Council on Higher Education shall not be removed except for cause.

Section 175. KRS 66.480 is amended to read as follows:

(1) The governing body of a municipality, county, school district (provided that its general procedure for action is approved by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education), or other local governmental unit or political subdivision, may invest and reinvest money subject to its control and jurisdiction in:

(a) Obligations of the United States and of its agencies and instrumentalities, including such obligations subject to repurchase agreements, provided that delivery of these obligations subject to repurchase agreements is taken either directly or through an authorized custodian. Such investments may be accomplished through repurchase agreements reached with sources including, but not limited to, national or state banks chartered in Kentucky;

(b) Bonds or certificates of indebtedness of this state and of its agencies and instrumentalities;

(c) Any savings and loan association insured by an agency of the government of the United States up to the amount so insured;

(d) Interest-bearing deposits in national or state banks chartered in Kentucky and insured by an agency of the government of the United States up to the amount so insured, and in larger amounts, providing such bank shall pledge as security, obligations as permitted by KRS 41.240(4), having a current quoted market value at least equal to any uninsured deposits. No municipality, county, school district, other unit of local government, political subdivision, or county official shall make any investment which would jeopardize the tax-exempt status of any outstanding obligation of such unit of local government; and

(e) Shares of mutual funds, each of which shall have the following characteristics:

1. The mutual fund shall be an open-end diversified investment company registered under the Federal Investment Company Act of 1940, as amended;

2. The management company of the investment company shall have been in operation for at least five (5) years; and

3. At least ninety percent (90%) of the securities in the mutual fund shall be eligible investments pursuant to this section.

(2) Sheriffs, county clerks, and jailers, who for the purposes of this section shall be known as county officials, may, and at the direction of the fiscal court shall, invest and reinvest money subject to their control and jurisdiction, including tax dollars subject to the provisions of KRS 134.300, 134.320, and 160.510, in the investment instruments permitted by subsection (1) of this section.

(3) The provisions of this section are not intended to impair the power of a county official, municipality, county, school district, or other local governmental unit or political subdivision to hold funds in deposit accounts with banking institutions as otherwise authorized by law.

(4) The governing body or county official may delegate the investment authority provided by subsection (1) of this section to the treasurer or other financial officer charged with custody of the funds of the local government, and such officer shall thereafter assume full responsibility for all investment transactions until the delegation of authority terminates or is revoked.

(5) All county officials shall report the earnings of any investments at the time of their annual reports and settlements with the fiscal courts for excess income of their offices.

(6) The state local finance officer is authorized and directed to assist county officials and local governments (except school districts) in investing funds that are temporarily in excess of operating needs by:

(a) Explaining investment opportunities to such county officials and local governments through publication and other appropriate means; and

(b) Providing technical assistance in investment of idle funds to county officials and local governments that request such assistance.

(7) (a) The state local finance officer may create an investment pool for local governments (except school districts) and county officials; and counties and county officials and cities may associate to create an investment pool. If counties and county officials and cities create a pool, each group may select a manager to administer their pool and invest the assets. Each county and each county official and each city may invest in a pool created pursuant to this subsection. Investments shall be limited to those investment instruments permitted by subsection (1) of this section. The funds of each local government and county official shall be properly accounted for, and earnings and charges shall be assigned to each participant in a uniform manner according to the amount invested. Charges to any local government or county official shall not exceed one percent (1%) annually on the principal amount invested, and charges on investments of less than a year's duration shall be prorated. Any investment pool created pursuant to this subsection shall be audited each year by an independent certified public accountant, or by the Auditor of Public Accounts. A copy of the audit report shall be provided to each local government or county official participating in the pool. In the case of an audit by an independent certified public accountant, a copy of the audit report shall be provided to the Auditor of Public Accounts, and to the state local finance officer. The Auditor of Public Accounts may review the report of the independent certified public accountant. After preliminary review, should discrepancies be found, the Auditor of Public Accounts may make his own investigative report or audit to verify the findings of the independent certified public accountant's report.

(b) If the state local finance officer creates an investment pool, he shall establish an account in the Treasury for the pool. He shall also establish a separate trust and agency account for the purpose of covering management costs, and he shall deposit management charges in this account. The state local finance officer may issue regulations, pursuant to KRS Chapter 13A, governing the operation of the investment pool, including but not limited to provisions on minimum allowable investments and investment periods, and method and timing of investments, withdrawals, payment of earnings and assignment of charges.

(c) Before investing in an investment pool created pursuant to this subsection, a local government or county official shall allow any savings and loan association or bank in the county, as described in subsection (1)(c) and (d) of this section, to bid for the deposits, but the local government or county official shall not be required to seek bids more often than once in each six (6) month period.

(8) (a) With the approval of the State Board ***of*** ~~[for Elementary and Secondary]~~ Education, local boards of education, or such of them as may desire to do so, may associate to create an investment pool. Each local school board which associates itself with other local school boards for the purpose of creating the investment pool may invest its funds in the pool so created and so managed. Investments shall be limited to those investment instruments permitted by subsection (1) of this section. The funds of each local school board shall be properly accounted for, and earnings and charges shall be assigned to each participant in a uniform manner according to the amount invested. Charges to any local school board shall not exceed one percent (1%) annually on the principal amount invested, and charges on investments of less than a year's duration shall be prorated. Any investment pool created pursuant to this subsection shall be audited each year by an independent certified public accountant, or by the Auditor of Public Accounts. A copy of the audit report shall be provided to each local school board participating in the pool. In the case of an audit by an independent certified public accountant, a copy of the audit report shall be provided to the Auditor of Public Accounts, and to the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. The Auditor of Public Accounts may review the report of the independent certified public accountant. After preliminary review, should discrepancies be found, the Auditor of Public Accounts may make his own investigative report or audit to verify the findings of the independent certified public accountant's report.

(b) The State Board ***of*** ~~[for Elementary and Secondary]~~ Education may issue administrative regulations governing the operation of the investment pool including, but not limited to, provisions on minimum allowable investments and investment periods, and methods and timing of investments, withdrawals, payment of earnings, and assignment of charges.

Section 176. KRS 151B.025 is amended to read as follows:

(1) The Department for Adult and Technical Education is hereby created and shall be attached to the Cabinet for Workforce Development. The department shall consist of a commissioner and those administrative bodies and employees provided or appointed pursuant to law. The State Board for Adult and Technical Education shall be attached to the department for administrative purposes.

(2) The chief executive officer of the department shall be the commissioner of the Department for Adult and Technical Education. The appointment of the commissioner shall be made from a list of three (3) names submitted by the State Board for Adult and Technical Education to the secretary and the Governor. The commissioner shall be appointed by the secretary of the Cabinet for Workforce Development from the list with the approval of the Governor in accordance with KRS 12.050. The commissioner shall have general supervision and direction over all functions of the department and its employees, and shall be responsible for carrying out the programs and policies of the department. The commissioner shall be responsible for implementing policies adopted by the State Board for Adult and Technical Education. The commissioner may delegate authority to deputies who may then act on his behalf in performing the duties assigned herein.

(3) The department shall have the responsibility for all administrative functions of the state in relation to the management, control, and operation of nondegree programs in post-secondary and vocational-technical education, programs and services in adult education, and may exercise the general powers and functions relating to a Kentucky technical system of state vocational technical schools, state-operated area vocational education centers, state technical institutes, and technology centers. When appropriate, the department shall provide education training programs through contracts with private business and industries. These programs may be on a shared cost basis or on a total cost recovery basis.

(4) The department shall have the authority to enter into agreements or contracts with other government or education agencies, including local school districts, in order to carry out services under its jurisdiction.

(5) All responsibilities for programs, staff, and operations at state-operated area vocational education centers and state vocational technical schools, existing as of July 1, 1990, shall be transferred from the Kentucky Department of Education to the Department for Adult and Technical Education. The area vocational education centers shall be operated in compliance with program standards established by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. Principals, counselors, and teaching staff shall meet the qualifications and certification standards for all secondary vocational personnel as established by the State Board ***of*** ~~[for Elementary and Secondary]~~ Education. Program standards and qualification of staff in the post-secondary institutions shall be governed solely by the State Board for Adult and Technical Education. The cost of operating area vocational education centers shall be transferred annually from the secondary funds administered by the Kentucky Department of Education for that purpose.

(6) As of July 1, 1990, all appropriate transfers of functions, personnel, funds, equipment, facilities, and records shall be

made from the Department of Education to the Department for Adult and Technical Education. Appropriate personnel records shall be transferred from the Kentucky Department of Personnel. These transfers shall be made in order to implement the provisions of this section and action taken pursuant thereto.

(7) The Department for Adult and Technical Education, in the operation and management of its schools and the programs at those schools, shall meet all required federal and state standards relating to facilities and personnel qualification; provided, however, that no license or license fee shall be required for any school or program operated by the Department for Adult and Technical Education.

(8) The Department for Adult and Technical Education shall be the education agency solely designated for the purpose of developing and approving state plans required by state or federal laws and regulations as prerequisites to receiving federal funds for vocational-technical or technology education, and adult education. The department shall involve representatives from all eligible recipient categories in the development of such plans.

(9) The department shall be permitted to enter into memorandums of agreement with individuals on a year to year basis to fill positions in hard-to-find teaching and rehabilitation specialities. Such agreements and compensation shall be approved by the Board for Adult and Technical Education, but shall not be subject to the provisions of KRS Chapter 45. All such agreements shall be filed with the secretary of the Finance and Administration Cabinet.

(10) The commissioner shall, from time to time, prepare or cause to be prepared, and submit for approval and publication by the State Board for Adult and Technical Education, any bulletins, programs, outlines of courses, placards, and courses of study he deems useful in the promotion of the interests of adult, technical, and vocational education.

(11) The department shall prepare a biennial budget request and submit it for review by the State Board for Adult and Technical Education. The budget shall be forwarded to the secretary of the Cabinet for Workforce Development for review and modification.

Section 177. The following KRS section is repealed:

156.031 Existing State Board ***of*** ~~[for Elementary and Secondary]~~ Education to remain active until successor board appointed.

The Committee Amendment No. 1 to **SB 62** is as follows:

On page 5, lines 4 and 5, by deleting "***of***" on line 4, and the brackets and strikethroughs on both lines;

On page 7, line 11, by deleting the new language, brackets and strikethroughs;

On page 7, line 11, by placing a bracket "[" before "(1)" and on line 17, by placing a bracket "]" after "(2)" and striking through the language in between;

On page 7, line 21, after "university." by inserting "***Appointments shall be made without reference to occupation, political affiliation, or similar considerations. No member at the time of his appointment or during the term of his service shall be engaged as a professional educator.***"

On page 231, line 21, after "Board" by deleting the new language, brackets, and strikethroughs.

On page 231, after line 22, by adding the following:

"Section 178. It is the intent of the General Assembly in enacting this Act to change the name of the State Board for Elementary and Secondary Education to the State Board of Education. In the codification of any other Act of this 1994 Regular Session of the General Assembly, references to the "State Board for Elementary and Secondary Education" in newly-created statutes and in newly-added language to existing statutes shall be changed to the "State Board of Education."

The Committee on Tourism Development and Energy reported **HB 421** and **HB 500** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 421, AN ACT relating to abandoned utilities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

(1) If the commission determines, after notice and hearing, that any utility is abandoned, the commission may petition the Franklin Circuit Court for an order attaching the assets of the utility and placing it under the sole control and responsibility of a receiver.

(2) Any receiver appointed by the court shall file a bond unless the court finds it unnecessary. The receiver shall operate the utility to preserve its assets and to serve the best interests of its customers.

HB 500, AN ACT relating to natural gas pipeline safety.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "master meter system" means a pipeline system for distributing gas within a definable area, such as, but not limited to, a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer, who either purchases the gas directly through a meter or by other means, such as through rents.

(2) Notwithstanding any other provision of law, the commission shall have the authority to regulate the safety of natural gas facilities which are:

  (a) Owned or operated by any public utility, county, or city, and used to distribute natural gas at retail; or

  (b) Comprising a master meter system.

The commission may exercise this authority in conjunction with, and pursuant to, its authority to enforce the Natural Gas Pipeline Safety Act of 1968, and may promulgate administrative regulations consistent with that Act in accordance with provisions of KRS Chapter 13A as are necessary to promote pipeline safety in the Commonwealth.

The Committee on Economic Development reported **HB 420,** with Committee Substitute attached thereto, **HB 483,** with Committee Substitute attached thereto, and **HB 511,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 420, AN ACT relating to the development of the primary and secondary wood products industries.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. SUBCHAPTER 47 OF KRS CHAPTER 154 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in Sections 2 through 5 of this Act, unless the context clearly indicates otherwise:

(1) "Certified tree farmer" means a person whose tree farm is certified by the Kentucky Tree Farm Committee and approved by the Kentucky Department for Natural Resources, Division of Forestry ;

(2) "Council" means the Kentucky Forest Products Council;

(3) "Forest steward" means a person whose forest property is certified as a stewardship forest and approved by the Kentucky Department for Natural Resources, Division of Forestry; and

(4) "Procurement area" means an area specified by the applicant in radius of miles from the applicant's site of operations from which the applicant acquires raw wood products.

SECTION 2. A NEW SECTION OF SUBCHAPTER 47 OF KRS CHAPTER 145 IS CREATED TO READ AS FOLLOWS:

The General Assembly of the Commonwealth of Kentucky finds that the primary and secondary wood products industries make an important contribution to Kentucky's economy, and that Kentucky should continue to develop these industries in a manner consistent with sustaining the productivity of Kentucky's forest resources and protection of its watersheds.

SECTION 3. A NEW SECTION OF SUBCHAPTER 47 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) To encourage the continued development of Kentucky's primary and secondary wood products industries, the Kentucky Forest Products Council is established and attached to the Economic Development Cabinet for administrative purposes.

(2) The council shall work with members of the primary and secondary wood products industries and owners of forest resources to foster cooperation in the planning and implementation of forest resources technical assistance and education efforts, including, but not limited to silvicultural best management practices, a forest stewardship program, a master logger program, guidelines for water quality management, forest fire prevention and other technical assistance and education efforts focused on sustaining the development and productivity of the Commonwealth's forest resources.

(3) The council shall be composed of the following members:

  (a) The secretary of the Economic Development Cabinet or his designee, who shall serve ex officio:

  (b) The secretary of the Natural Resources and Environmental Protection Cabinet or his designee, who shall serve ex officio;

  (c) The director of the Division of Forestry or his designee;

  (d) The chairman of the University of Kentucky Department of Forestry or his designee;

  (e) The chairman of the Kentucky Soil and Water Conservation Commission or his designee;

  (f) A representative of the Kentucky Forest Industries Association appointed by the Governor;

(g) A representative of the primary wood products industry appointed by the Governor;

(h) A representative of the secondary wood products industry appointed by the Governor;

(i) A certified tree farmer or forest steward appointed by the Governor; and

(j) A representative of a public interest group which is active in natural resource conservation or environmental protection issues appointed by the Governor from three (3) nominees, one (1) from the Cumberland Chapter of the Sierra Club, one (1) from the Kentucky Resources Council, and one (1) from Kentuckians for the Commonwealth.

(4) The initial term of office of members appointed by the Governor shall be staggered so that the two (2) members shall serve for two (2) years each, two (2) members shall serve for three (3) years each, and one (1) member shall serve a four (4) year term. Subsequent appointments shall be for a term of four (4) years each. Vacancies shall be filled in the same manner as for the original appointment. Members appointed by the Governor may be reappointed by the Governor for succeeding terms.

(5) The council chairperson shall be appointed from the membership by the Governor for a term of two (2) years and may be reappointed by the Governor for succeeding terms.

(6) The Economic Development Cabinet and the Natural Resources and Environmental Protection Cabinet shall provide staff services to the council.

SECTION 4. A NEW SECTION OF SUBCHAPTER 47 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

The council shall cooperate with the Economic Development Cabinet and with wood products industries applying for economic revitalization and development project inducements for the following purposes:

(1) To analyze the impacts of an applicant's projects on forest productivity and watershed protection;

(2) To develop a comprehensive program that addresses those impacts in the proposed procurement area through the appropriate use of:

(a) Best management practices as established in Kentucky Forest Practices Guidelines published by the Kentucky Department for Natural Resources, Division of Forestry;

(b) Logger education, training and contracting programs;

(c) Forest stewardship and other assistance programs for landowners;

(d) Ground water protection plans; and

(e) Measures to ensure that the program developed for the procurement area becomes an integral part of the applicant's plan.

The Committee Substitute to **HB 420** is as follows:

HB 420, AN ACT relating to the development of the primary and secondary wood products industries.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. SUBCHAPTER 47 OF KRS CHAPTER 154 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in Sections 2 through 5 of this Act, unless the context clearly indicates otherwise:

(1) "Certified tree farmer" means a person whose tree farm is certified by the Kentucky Tree Farm Committee and approved by the Kentucky Department for Natural Resources, Division of Forestry ;

(2) "Council" means the Kentucky Forest Products Council;

(3) "Forest steward" means a person whose forest property is certified as a stewardship forest and approved by the Kentucky Department for Natural Resources, Division of Forestry; and

(4) "Procurement area" means an area specified by the applicant in radius of miles from the applicant's site of operations from which the applicant acquires raw wood products.

SECTION 2. A NEW SECTION OF SUBCHAPTER 47 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

The General Assembly of the Commonwealth of Kentucky finds that the primary and secondary wood products industries make an important contribution to Kentucky's economy, and that Kentucky should continue to develop these industries in a manner consistent with sustaining the productivity of Kentucky's forest resources and protection of its watersheds.

SECTION 3. A NEW SECTION OF SUBCHAPTER 47 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) To encourage the continued development of Kentucky's primary and secondary wood products industries, the

Kentucky Forest Products Council is established and attached to the Economic Development Cabinet for administrative purposes.

(2) The council shall work with members of the primary and secondary wood products industries and owners of forest resources to foster cooperation in the planning and implementation of forest resources technical assistance and education efforts, including, but not limited to silvicultural best management practices, a forest stewardship program, a master logger program, guidelines for water quality management, forest fire prevention and other technical assistance and education efforts focused on sustaining the development and productivity of the Commonwealth's forest resources.

(3) The council shall be composed of the following members:

- *(a) The secretary of the Economic Development Cabinet or his designee, who shall serve ex officio;*
- *(b) The secretary of the Natural Resources and Environmental Protection Cabinet or his designee, who shall serve ex officio;*
- *(c) The director of the Division of Forestry or his designee;*
- *(d) The chairman of the University of Kentucky Department of Forestry or his designee;*
- *(e) The chairman of the Kentucky Soil and Water Conservation Commission or his designee;*
- *(f) A representative of the Kentucky Forest Industries Association appointed by the Governor;*
- *(g) A representative of the primary wood products industry appointed by the Governor;*
- *(h) A representative of the secondary wood products industry appointed by the Governor;*
- *(i) A representative of the Kentucky Farm Bureau Federation appointed by the Governor;*
- *(j) A certified tree farmer or forest steward appointed by the Governor;*
- *(k) A representative of the Kentucky paper products industry appointed by the Governor; and*
- *(l) A representative of a public interest group which is active in natural resource conservation or environmental protection issues appointed by the Governor from three (3) nominees, one (1) from the Cumberland Chapter of the Sierra Club, one (1) from the Kentucky Resources Council, and one (1) from Kentuckians for the Commonwealth.*

(4) The initial term of office of members appointed by the Governor shall be staggered so that the two (2) members shall serve for two (2) years each, two (2) members shall serve for three (3) years each, and three (3) members shall serve a four (4) year term. Subsequent appointments shall be for a term of four (4) years each. Vacancies shall be filled in the same manner as for the original appointment. Members appointed by the Governor may be reappointed by the Governor for succeeding terms.

(5) The council chairperson shall be appointed from the membership by the Governor for a term of two (2) years and may be reappointed by the Governor for succeeding terms.

(6) The Economic Development Cabinet and the Natural Resources and Environmental Protection Cabinet shall provide staff services to the council.

SECTION 4. A NEW SECTION OF SUBCHAPTER 47 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

The council shall cooperate with the Economic Development Cabinet and with wood products industries applying for economic revitalization and development project inducements for the following purposes:

(1) To analyze the impacts of an applicant's projects on forest productivity and watershed protection;

(2) To develop a comprehensive program that addresses those impacts in the proposed procurement area through the appropriate use of:

- *(a) Best management practices as established in Kentucky Forest Practices Guidelines published by the Kentucky Department for Natural Resources, Division of Forestry;*
- *(b) Logger education, training and contracting programs;*
- *(c) Forest stewardship and other assistance programs for landowners; and*
- *(d) Ground water protection plans; and*

(3) To develop measures to ensure that the program developed for the procurement area becomes an integral part of the applicant's plan.

HB 483, AN ACT relating to development of business and agriculture and making appropriations therefor.

WHEREAS, the creation of the Kentucky Economic Development Partnership in 1992 signalled that agribusiness is an integral part of, and not separate from, economic development in Kentucky; and

WHEREAS, adding value to Kentucky-grown agriculture commodities before shipment out of state can greatly increase the total economic impact of the state's agriculture; and

WHEREAS, a prosperous agricultural economy is essential to healthy agribusiness and economic development; and

WHEREAS, agriculture has been and is a vital part of the social fabric of the state; and

WHEREAS, assisting the agricultural sector of Kentucky's economy to become globally competitive will require training, capital, technology, market development, and the creation of supporting networks; and

WHEREAS, the preservation of farmland is imperative to sustaining agriculture;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 154.01-010 is amended to read as follows:

As used in this chapter, unless the context indicates otherwise:

(1) ***"Agribusiness" or "agricultural business entity" means any person, partnership, corporation, or any entity engaged in a business that processes raw agricultural products, including timber, or provides value-added functions with regard to raw agricultural products, or supplies ingredients used for the production of basic agricultural crops and products;***

(2) "Approved business network" or "approved flexible industrial network" means a business network comprising three (3) or more business firms or industries within an industrial sector which has been identified in and targeted by the state's strategic economic development plan for special consideration and assistance by the agencies of the Commonwealth;

(3) "Authority" means the Kentucky Economic Development Finance Authority, consisting of a committee as set forth in KRS 154.20-010;

(4)[~~(2)~~] "Board" means the Kentucky Economic Development Partnership, an administrative body within the meaning of KRS 12.010, and the governing body of the Cabinet for Economic Development, as created and established in KRS 154.10-010;

(5) "Business network" or "flexible industrial network" means a formalized, collaborative mechanism organized by and operating among three (3) or more industrial entities, business enterprises, or private sector firms for the purposes of, but not limited to: pooling expertise; improving responses to changing technology or markets; lowering the risks to individual entities of accelerated modernization; encouraging new technology investments, new market development, and employee skills improvement; and developing a system of collective intelligence among participating entities;

(6)[~~(3)~~] "Cabinet" means the Cabinet for Economic Development as established under KRS 12.250, and governed by the Kentucky Economic Development Partnership;

(7)[~~(4)~~] "Commonwealth" means the Commonwealth of Kentucky;

(8)[~~(5)~~] "Cost of a project" means the cost of the acquisition, construction, reconstruction, conversion, or leasing of any industrial, commercial, health care, agricultural, or forestry enterprise, or any part thereof, to carry out the purposes and objectives of this chapter, including, but not limited to, acquisition of land or interest in land, buildings, structures, or other planned or existing planned improvements to land, including leasehold improvements, machinery, equipment, or furnishings; working capital; and administrative costs including, but not limited to, engineering, architectural, legal, and accounting fees which are necessary for the project;

(9)[~~(6)~~] "Local and regional economic development interest" means any local business or economic development interest, including, but not limited to, chambers of commerce, business development associations, industrial development organizations, area development districts, and public economic development entities;

(10)[~~(7)~~] "Industrial entity" means any corporation, partnership, person, or any other legal entity, domestic or foreign, which will itself or through its subsidiaries or affiliates, engage in an industrial improvement project in the Commonwealth;

(11)[~~(8)~~] "Industrial improvement project" means and includes the acquisition, construction, or implementation of new manufacturing, processing, or assembling facilities, equipment, methods or processes, or improvements to or repair of existing manufacturing, processing, or assembling facilities, equipment, methods, or processes, as well as improvements to the real estate upon which the facilities are located, and includes any capital improvement to any existing facility, including any restructuring, retooling, rebuilding, reequipping, or any other form of upgrading such existing facility and equipment and any other improvements to such real estate, existing facility, or manufacturing, processing, or assembling equipment, method, or process;

(12) "Key industry" means an industry or business within an industrial sector which has been identified in and targeted by the state's economic development strategic plan as having major importance to the sustained economic growth of the Commonwealth and in which member firms sell goods or services into markets for which national or

international competition exists, including, but not limited to, secondary forest products manufacturing, agribusiness, and high technology and biotechnology manufacturing and services;

(13)[~~(9)~~] "Municipality" means a county, city, village, township, development organization, an institution of higher education, a community or junior college, a subdivision or instrumentality of any of the foregoing, or any entity created by two (2) or more municipalities pursuant to the Interlocal Cooperation Act, KRS 65.210 to 65.300;

(14) "Network broker" means a person who is trained to assist private sector firms to form business networks and make other similar efforts to provide for joint manufacturing, marketing, technology development, information dissemination, and other activities;

(15)[~~(10)~~] "Non-appropriation-supported bond" means any long-term financial borrowing instrument for which regular debt service does not originate from an appropriation of the General Assembly;

(16)[~~(11)~~] "Non-appropriation-supported note" means any short-term financial borrowing instrument for which loan payments do not originate from an appropriation of the General Assembly;

(17)[~~(12)~~] "Person" means an individual, partnership, joint venture, profit or nonprofit corporation including a public or private college or university, or other association of persons organized for agricultural, commercial, health care, or industrial purposes; or a public utility or local industrial development corporation;

(18)[~~(13)~~] "Private sector" means any source other than the authority, a state or federal entity, or an agency thereof;

(19)[~~(14)~~] "Project" means an endeavor approved by the cabinet or authority and related to industrial, manufacturing, mining, mining reclamation for economic development, commercial, health care, or agricultural enterprise. Project shall include, but is not limited to, ***agribusiness,*** agricultural or forestry production, harvesting, storage, or processing facilities or equipment; equipment or facilities designed to produce energy from renewable resources; research parks; office facilities; engineering facilities; research and development laboratories; warehousing facilities; parts distribution facilities; depots or storage facilities; port facilities; railroad facilities, including trackage, right-of-way, and appurtenances; airports and airport renovation; water and air pollution control equipment or waste disposal facilities; tourist facilities; theme or recreational parks; health care and health related facilities; farms, ranches, forests, and other agricultural or forestry commodity producers; agricultural harvesting, storage, transportation, or processing facilities or equipment; grain elevators; shipping heads and livestock pens; livestock; wharves and dock facilities; water, electricity, hydroelectric, coal, petroleum, or natural gas provision facilities; dams and irrigation facilities; sewage, liquid, and solid waste collection, disposal treatment, and drainage services and facilities. Except for airport-related facilities, project shall not include that portion of an endeavor devoted to the sale of goods at retail or that portion of an endeavor devoted to housing which does not consist of the manufacture of housing;

(20)[~~(15)~~] "Reclamation development fund" means the fund administered by the Kentucky Economic Development Finance Authority to foster economic development on surface mining land;

(21)[~~(16)~~] "Reclamation development project" means only that reconditioning of land affected by surface mining, which will directly promote and benefit an economic undertaking which constitutes a project under subsection (14) of this section;

(22)[~~(17)~~] "Reclamation development plan" means a plan submitted to the Natural Resources and Environmental Protection Cabinet to show compliance with reclamation standards, and submitted to the Kentucky Economic Development Finance Authority to seek moneys from the reclamation development fund for a reclamation development project;

(23)[~~(18)~~] "Secretary" means the chief executive officer and secretary of the Cabinet for Economic Development;

(24)[~~(19)~~] "State" means the Commonwealth of Kentucky; and

(25)[~~(20)~~] "Tax revenues" means any revenues received by the Commonwealth directly or indirectly as a result of the industrial improvement project, including state corporate income taxes, state income taxes paid by employees who work in the project, state property taxes, state corporation license taxes, or state sales and use taxes.

Section 2. KRS 154.20-030 is amended to read as follows:

It shall be the purpose of the Kentucky Economic Development Finance Authority to develop and expand existing and alternative sources of energy and the conservation of energy, to assist business enterprise in obtaining additional sources of financing to aid this state in achieving the goal of long-term economic growth and full employment, to meet the growing competition for business enterprises, to preserve existing jobs, to create new jobs, to reduce the cost of business and production, to reduce the costs and liabilities by encouraging and financing efforts to reduce and avoid the generation of hazardous waste and toxic by-products, to foster export activity, to foster economic development on surface mining land, and to alleviate and prevent unemployment through the retention, promotion, and development of agriculture and agricultural facilities, ***agribusiness,*** forestry and forestry facilities, commerce and commercial facilities, health care and health related facilities, export markets and export activities, industry and industrial buildings and facilities, tourism and tourist facilities, including the sites therefor, and agricultural, forestry, commercial, and industrial machinery and equipment, water and air pollution control equipment, and solid waste disposal facilities with respect thereto or for use by individuals for private sector employment. Such purposes shall be public purposes for which public money may be spent.

Section 3. KRS 154.20-310 is amended to read as follows:

As used in KRS 154.20-300 to 154.20-390 unless the context requires otherwise:

(1) "Commonwealth Venture Fund" means the venture capital entity established and managed pursuant to KRS 154.20-320.

(2) "Qualified investment" means an investment in the Commonwealth venture fund purchased in cash by a Kentucky taxpayer.

(3) "State tax liability" means a taxpayer's total state tax liability that is incurred under:

  (a) KRS 136.070 - Corporation license tax;

  (b) KRS 136.270 - Bank and trust company share tax;

  (c) KRS 136.300 - Savings and loan tax;

  (d) KRS 136.320 - Domestic life insurance property tax; and

  (e) KRS Chapter 141 - Income tax.

(4) "Taxpayer" means any person, corporation, partnership or other entity that has any state tax liability.

(5) "Small business" means a Kentucky based company, including start-up and pre-start-up businesses, employing less than five hundred (500) people, with capitalization limits as follows:

  (a) Less than one million dollars ($1,000,000) for a nonmanufacturing firm; or

  (b) Less than three million dollars ($3,000,000) for a manufacturing firm.

  Employment and capitalization limits of this subsection shall apply only at the point of any initial investment by the fund.

(6) "Capitalization" means owners' equity, common stock, preferred stock, and retained earnings.

(7) ~~["Agribusiness" means any person, partnership, corporation, or any entity engaged in an agricultural endeavor, including forestry, horticulture, and aquaculture, or an agriculturally related business.~~

~~(8)~~] "Fiscal rate of return" means a measurable future revenue stream to the Kentucky Revenue Cabinet in exchange for the foregone current revenues because of the targeted venture capital tax credit of seven million dollars ($7,000,000) as specified in KRS 154.20-350.

Section 4. KRS 154.22-010 is amended to read as follows:

The following words and terms as used in KRS 154.22-010 to 154.22-070, unless the context clearly indicates a different meaning, shall have the following meanings:

(1) "Approved company" means any eligible company seeking to locate an economic development project in a qualified county, which eligible company is approved by the authority pursuant to KRS 154.22-010 to 154.22-070.

(2) "Approved costs" means:

  (a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;

  (b) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;

  (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project which is not paid by the contractor or contractors or otherwise provided for;

  (d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;

  (e) All costs which shall be required to be paid under the terms of any contract or contracts for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and

  (f) All other costs of a nature comparable to those described above.

(3) "Assessment" means the job development assessment fee authorized by KRS 154.22-010 to 154.22-070.

(4) "Authority" means the Kentucky Economic Development Finance Authority as created in KRS 154.20-010.

(5) "Bonds" means the revenue bonds, notes, or other debt obligations of the authority authorized to be issued by the authority, eligible companies, or other state agency.

(6) "Commonwealth" means the Commonwealth of Kentucky.

(7) "Economic development project" means and includes the acquisition of any real estate in a qualified county by either the authority or the approved company, and the construction, installation, equipping, and rehabilitation of improvements, including fixtures and equipment, and facilities necessary or desirable for improvement of the real estate, including surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage, storm water retention, installation of utilities such

as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities on the real estate, for use and occupancy by the approved company or its affiliates for manufacturing purposes ***or for agribusiness purposes***.

(8) "Eligible company" means any corporation, partnership, sole proprietorship, or business trust engaged in manufacturing ***or in agribusiness*** which meets the standards promulgated by the authority pursuant to KRS 154.22-010 to 154.22-070.

(9) "Financing agreement" means any agreement entered into, pursuant to KRS 154.22-010 to 154.22-070, on behalf of the authority or other lenders, or both, and an approved company with respect to an economic development project.

(10) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to it, together with the storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals.

(11) "Qualified county" means any county certified as such by the authority pursuant to KRS 154.22-010 to 154.22-070.

(12) "State agency" shall have the meaning assigned to the term in KRS 56.440(8).

(13) "Revenues" shall not be considered state funds.

Section 5. KRS 154.22-020 is amended to read as follows:

(1) The General Assembly hereby finds and declares that the general welfare and material well-being of citizens of the Commonwealth, and particularly those residing in qualified counties, depends in large measure upon the development and growth of industry in the Commonwealth.

(2) The General Assembly hereby finds and declares further that it is in the best interest of the Commonwealth to induce the location of manufacturing facilities ***and agribusiness operations*** within the qualified counties of the Commonwealth in order to advance the public purposes of relieving unemployment by creating new jobs within the qualified counties that but for the inducements to be offered by the authority to approved companies as herein provided would not exist and of creating new sources of tax revenues for the support of the public services provided by the Commonwealth and qualified counties.

(3) The General Assembly hereby finds and declares further that the authority granted by KRS 154.22-010 to 154.22-070 and the purposes to be accomplished hereby are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the location of manufacturing facilities ***and agribusiness operations*** within qualified counties is of paramount importance, mandating that the provisions of KRS 154.22-010 to 154.22-070 be liberally construed and applied in order to advance the public purposes.

Section 6. KRS 154.26-010 is amended to read as follows:

As used in KRS 154.26-015 to 154.26-100, unless the context clearly indicates otherwise:

(1) "Agreement" means an agreement entered into, pursuant to KRS 154.26-090, on behalf of the authority and an approved company with respect to an economic revitalization project;

(2) "Approved company" means any eligible company approved by the authority pursuant to KRS 154.26-080 requiring an economic revitalization project;

(3) "Approved costs" means:

  (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

  (b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

  (c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

  (d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

  (e) All costs required for the installation of utilities, including, but not limited to, water, sewer, sewer treatment, gas, electricity, communications, and railroads, and including off-site construction of the facilities paid for by the approved company; and

  (f) All other costs comparable with those described above;

(4) "Assessment" means the job revitalization assessment fee authorized by KRS 154.26-100;

(5) "Authority" means the Kentucky Industrial Revitalization Authority created by KRS 154.26-020;

(6) "Board" means the board of directors of the Kentucky Rural Economic Development Authority, or its successor;

(7) "Commonwealth" means the Commonwealth of Kentucky;

(8) "Economic revitalization project" or "project" means the acquisition, construction, equipping, and rehabilitation of machinery and equipment, constituting fixtures or otherwise, and with respect thereto, the construction, rehabilitation, and installation of improvements of facilities necessary or desirable for the acquisition, construction, installation, and rehabilitation of the machinery and equipment, including surveys; installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are utilized to improve the economic situation of the approved company to allow the approved company to remain in operation and retain or create jobs;

(9) "Eligible company" means any corporation, partnership, sole proprietorship, or business trust, employing or intending to employ a minimum of twenty-five (25) persons engaged in manufacturing ***or agribusiness operations*** at the same facility, whether owned or leased, located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval by the authority of an economic revitalization project, including facilities where manufacturing ***or agribusiness operations*** has been temporarily suspended and which meets the standards promulgated by the authority pursuant to KRS 154.26-080;

(10) "Inducements" means the Kentucky income tax credit and the job revitalization assessment fee as prescribed in KRS 154.26-090 and 154.26-100;

(11) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing that results in a change in the condition of the property and any related activity or function, together with the storage, warehousing, distribution, and related office facilities; and

(12) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.010, or any board, commission, institution, or division exercising any function of the state which is not an independent municipal corporation or political subdivision.

Section 7. KRS 154.26-015 is amended to read as follows:

The General Assembly finds and declares that the general welfare and material well-being of the citizens of the Commonwealth depends in large measure upon the revitalization and development of industry in the Commonwealth, and that it is in the best interest of the Commonwealth to induce the revitalization of existing manufacturing ***or agribusiness*** facilities within the Commonwealth in order to advance the public purposes of relieving unemployment by preserving and creating jobs that would not exist if not for the inducements to be offered by the authority to approved companies, and by preserving and creating sources of tax revenues for the support of public services provided by the Commonwealth; and that the authority prescribed by KRS 154.26-015 to 154.26-100, and the purposes to be accomplished under the provisions of KRS 154.26-015 to 154.26-100 are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the creation of projects is of paramount importance mandating that the provisions of KRS 154.26-015 to 154.26-100 be liberally construed and applied in order to advance public purposes.

Section 8. KRS 154.28-010 is amended to read as follows:

As used in KRS 154.28-010 to 154.28-090 and 141.400, unless the context clearly indicates otherwise:

(1) "Agreement" means an agreement entered into, pursuant to KRS 154.28-090, on behalf of the authority and an approved company with respect to an economic development project;

(2) "Approved company" means any eligible company, approved by the authority pursuant to KRS 154.28-080, requiring an economic development project;

(3) "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, rehabilitation, and installation of an economic development project;

(b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, rehabilitation, and installation of an economic project which is not paid by the vendor, supplier, deliverymen, contractors, or otherwise else provided;

(c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation, and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, rehabilitation, and installation of an economic development project;

(d) All costs which shall be required to be paid under the terms of any contract for the acquisition, construction, rehabilitation, and installation of an economic development project;

(e) All costs which shall be required for the installation of utilities such as water, sewer, sewer treatment, gas, electricity, communications, railroads, and similar facilities, and including offsite construction of the facilities paid for by the approved company; and

(f) All other costs comparable to those described above;

(4) "Authority" means the Kentucky Industrial Development Authority created by KRS 154.28-020;

(5) "Commonwealth" means the Commonwealth of Kentucky;

(6) "Economic development project" or "project" means and includes the acquisition of any real estate and the construction and installation of improvements and facilities necessary or desirable for improvement of the real estate, including: surveys, site tests, and inspections; subsurface site work and excavation; removal of structures, roadways, cemeteries, and other site obstructions; filling, grading, provision of drainage, and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; offsite construction of utility extensions to the boundaries of the real estate; and the acquisition and installation of manufacturing facilities ***or agribusiness operations*** on the real estate for the use of the approved company or its affiliates for manufacturing ***or agribusiness operational*** purposes;

(7) "Eligible company" means any corporation, partnership, sole proprietorship, or trust engaged in manufacturing ***or agribusiness operations*** which meets the standards promulgated by the authority pursuant to KRS Chapter 13A;

(8) "Inducement" means the Kentucky income tax credit as set forth in KRS 154.28-090;

(9) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property, and any activity functionally related to it, together with storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals; and

(10) "State agency" shall have the meaning assigned to the term in KRS 56.440(8).

Section 9. KRS 154.28-015 is amended to read as follows:

The General Assembly hereby finds and declares that the general welfare and material well-being of the citizens of the Commonwealth depends in large measure upon the development and growth of industry in the Commonwealth, and that it is in the best interest of the Commonwealth to induce the location of ***agribusiness or*** manufacturing facilities within the Commonwealth in order to advance the public purposes of relieving unemployment by creating new jobs that would not exist if not for the inducements to be offered by the authority to approved companies, and by creating sources of tax revenues for the support of the public services provided by the Commonwealth, and that the authority prescribed by KRS 154.28-015 to 154.28-090 and 141.400, and the purposes to be accomplished under the provisions of KRS 154.28-015 to 154.28-090 and 141.400, are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the location of ***agribusiness or*** manufacturing facilities is of paramount importance, mandating that the provisions of KRS 154.28-015 to 154.28-090 and 141.400 be liberally construed and applied in order to advance the public purposes.

Section 10. KRS 154.28-080 is amended to read as follows:

(1) The authority shall promulgate standards for the determination and approval of eligible companies and their economic development projects in accordance with KRS Chapter 13A.

(2) These standards shall give the greatest weight to the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to the residents of the Commonwealth; and the likelihood of the economic success of the economic development project.

(3) No economic development project which will result in the voluntary replacement of manufacturing ***or agribusiness*** facilities existing within the Commonwealth shall be approved by the authority; however, the authority may approve an economic development project that rehabilitates a manufacturing ***or agribusiness*** facility which has not been in operation for a period of three (3) consecutive months.

(4) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the application, the authority shall make inquiries and request materials of the applicant, including, but not limited to, written evidence that except for the receipt of inducements authorized by KRS 154.28-015 to 154.28-090 and 141.400, the eligible company will not locate its economic development project within the Commonwealth.

(5) After a diligent review of the relevant materials and completion of its inquiries, the authority, by resolution of its board of directors, may designate an eligible company to be an approved company and authorize the undertaking of its economic development project.

(6) All meetings of the board of directors of the authority shall be held in accordance with KRS 61.805 to 61.850. The board of directors of the authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

SECTION 11. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

Industrial entities, agricultural business entities, business enterprises, or private sector firms which are members of a business network within the meaning of Section 1 of this Act in a targeted industrial sector as set forth in the state strategic plan for economic development as prescribed in KRS 154.10-120 shall be given priority consideration under state economic

development loan, grant, and incentive programs administered by the Kentucky Economic Development Finance Authority.

SECTION 12. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) The Regulatory Expediting Center is established within the cabinet to assist industries and businesses proposing to locate or expand existing operations in Kentucky with applications for permits, licenses, certificates, registration, and any other form of authorization or permit required by a state, federal, or local agency to engage in a particular business activity or act.

(2) The center shall train and deploy persons with knowledge and skills essential to expediting a request for assistance by a prospective or expanding business or industry with applications for permits, licenses, certificates, registration, and any other form of authorization required by a state, federal, or local governmental agency to engage in a particular business activity or act.

(3) Assistance given by the center regarding federal and local regulations and requirements necessary to engage in the proposed business activity or act shall be limited to providing the business or industrial entity with copies of application forms and other written information provided by the appropriate federal and local agencies. The Business Information Clearinghouse as prescribed in Section 13 of this Act shall develop and maintain a current list of licensing, permitting, certification, registration, and other authorization requirements applicable to business or industrial development and expansions.

(4) Priority shall be given to business or industrial development or expansion proposals by businesses or industrial entities participating in an approved business network.

Section 13. KRS 154.12-216 is amended to read as follows:

(1) There is established in the department a Business Information Clearinghouse.

(2) By January 1, 1985, the clearinghouse shall develop and maintain a current list of all licenses arranged by the Standard Industrial Classification (SIC) developed by the U.S. Department of Labor or similar classification system as may be developed by the clearinghouse.

(3) The clearinghouse shall, to the extent possible, develop and distribute informational packets for each business classification. The informational packet for each business classification shall include applications, fee schedules, and informational bulletins for the licenses most commonly required of businesses within that classification.

(4) The clearinghouse shall provide a toll-free telephone and referral service for the entire Commonwealth to aid new and continuing businesses with the licensing process.

(5) The clearinghouse shall maintain current information on other agencies' programs that provide business financing and management assistance and shall serve as a referral service to those programs ***to the staff of the Regulatory Expediting Center as established in Section 12 of this Act***.

(6) The manager shall encourage federal and local governments to participate by submitting copies of application forms for licenses applicable to businesses in the Commonwealth.

(7) Work teams may be assembled at the request of the issuing agency, the regulated industry, the Governor, or the General Assembly. The clearinghouse and issuing agency shall coordinate the activities of and provide staff assistance to any work teams. Members of the work teams shall serve without compensation.

(8) The clearinghouse shall prepare an annual report summarizing its work for the Governor and the General Assembly. In addition to other information specifically required to be in this report by KRS 154.12-221, the report shall include a list of all licenses arranged by business classification and agency, the reports of any work teams, and may include recommendations on necessary statute or regulation changes to enable agencies to simplify or consolidate regulatory activities.

SECTION 14. A NEW SECTION OF SUBCHAPTER 31 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) Any business firm that is a member of an approved business network comprising individual firms, companies, agricultural business entities, or industrial entities that have been identified as key industries and that have been targeted by the state's economic development strategic plan as eligible for priority consideration for state assistance shall also be eligible for state assistance under the provisions of this section.

(2) A business networks revolving loan fund shall be established in the State Treasury and shall be administered by the Kentucky Economic Development Finance Authority. The fund shall be maintained and credited with repayments and the fund balance shall be available in perpetuity to provide loans at or below market rates at terms not to exceed thirty (30) years to members of approved business networks to support the development and production of new and expanded products and production facilities, including, but not limited to, financing development and construction of value-added food and fiber production facilities, accelerating modernization of production systems, and making of new technology investments. The maximum amount of loans made available to any member of an approved business network shall not exceed ten percent (10%) of the total amount of available funds.

(3) The Kentucky Economic Development Finance Authority shall cause to be established and implemented fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods for payments and disbursements received and made by the fund and for fund balances at the beginning and end of each accounting period.

(4) In addition to powers and authorities otherwise granted the Kentucky Economic Development Finance Authority, the authority may:

- *(a) Make and condition loans from the fund as required by state or federal law,*
- *(b) Enter into any necessary or required agreement and give or make any necessary or required assurance or certification with any person or entity to receive payments or to make or to provide loans;*
- *(c) Guarantee or purchase insurance for obligations of the fund where the action would improve credit market access or reduce interest rates;*
- *(d) Receive money from any public or private source to implement the purposes of this section;*
- *(e) Approve or reject applications made to it for loans from the fund, and establish standards applicable thereto;*
- *(f) Provide for the issuance of revenue bonds and bond anticipation notes as prescribed by KRS 154.10-035 for the purposes as set forth in this section;*
- *(g) Recommend administrative regulations implementing the purposes of this section to be promulgated by the Kentucky Economic Development Partnership in accordance with KRS Chapter 13A; and*
- *(h) Do all things necessary and convenient to achieve the objectives and purposes of this section which are not otherwise prohibited by state law.*

(5) In carrying out the objectives and purposes of this section, the authority shall consult with the Kentucky Department of Agriculture regarding development of standards and conditions applicable to agribusiness and agriculture related loan applications.

(6) Nothing contained herein shall preclude the authority from contracting with or acquiring services from any state agency or institution regarding implementation of this section.

Section 15. KRS 141.0101 is amended to read as follows:

(1) For property placed in service prior to January 1, 1990, in lieu of the depreciation and expense deductions allowed under Internal Revenue Code Sections 168 and 179, a deduction for a reasonable allowance for depreciation, exhaustion, wear and tear, and obsolescence of property used in a trade or business shall be allowed and computed as set out in subsections (2) to (10) of this section. For property placed in service after December 31, 1989, the depreciation and expense deductions allowed under Sections 168 and 179 of the Internal Revenue Code in effect on December 31, 1989, shall be allowed.

(2) Effective August 1, 1985, "reasonable allowance" as used in subsection (1) of this section shall mean depreciation computed in accordance with Section 167 of the Internal Revenue Code and related regulations in effect on December 31, 1980, for all property placed in service on or after January 1, 1981, except as provided in subsections (5) to (7) of this section.

(3) Depreciation of property placed in service prior to January 1, 1981, shall be computed under Section 167 of the Internal Revenue Code, and the method elected thereunder at the time the property was first placed in service or as changed with the approval of the Commissioner of Internal Revenue Service or as required by changes in federal regulations.

(4) Taxpayers other than corporations shall be allowed to deduct as depreciation on recovery property placed in service before August 1, 1985, an amount calculated under Section 168 of the Internal Revenue Code subject to the provisions of subsections (5) and (7) of this section. Corporations with a taxable year beginning on or after July 1, 1984, and before August 1, 1985, shall calculate a deduction for depreciation on recovery property placed in service prior to August 1, 1985, using either of the following alternative methods:

- (a) Dividing the total of the deductions allowed under Internal Revenue Code Section 168 by one and four tenths (1.4); and
- (b) Calculating the deduction that would be allowed or allowable under the provisions of Section 167 of the Internal Revenue Code.

(5) Recovery property placed in service on or after January 1, 1981, and before August 1, 1985, and subject to transition under subsection (7) of this section, shall be subject to depreciation under Section 167 of the Internal Revenue Code, restricted to the straight line method therein provided over the remaining useful life of such assets.

(6) Depreciation of property placed in service on or after August 1, 1985, shall be computed under Section 167 of the Internal Revenue Code.

(7) Transition from Section 168 of the Internal Revenue Code, Accelerated Cost Recovery System (ACRS) depreciation, to the depreciation allowed or allowable under this section shall be reported in the first taxable year beginning on or after August 1, 1985. To implement the transition, the following adjustments shall be made:

(a) Taxpayers other than corporations shall use the adjusted Kentucky basis for property placed in service on or after January 1, 1981. "Adjusted Kentucky basis" means the basis used for determining depreciation under Section 168 of the Internal Revenue Code less the allowed or allowable depreciation and adjustment for election to expense an asset (Section 179 of the Internal Revenue Code);

(b) Corporations shall adjust the federal unadjusted basis by increasing such basis by the ACRS depreciation not allowed as a deduction in determining Kentucky net income for tax years beginning after June 30, 1984, less allowed or allowable ACRS depreciation for federal income tax purposes. Corporations will not be permitted to adjust the basis by the ACRS depreciation not allowed for Kentucky income tax purposes in tax years beginning on or before June 30, 1984.

(8) A taxpayer may elect to treat the cost of property placed in service on or before July 31, 1985, as an expense as provided in Section 179 of the Internal Revenue Code in effect on December 31, 1981, except that the aggregate cost which may be expensed for corporations shall not exceed five thousand dollars ($5,000). A taxpayer may elect to treat the cost of property placed in service on or after August 1, 1985, as an expense as provided in Section 179 of the Internal Revenue Code in effect on December 31, 1980. Computations, limitations, definitions, exceptions, and other provisions of Section 179 of the Internal Revenue Code and related regulations shall be construed to govern the computation of the allowable deduction.

(9) Upon the sale, exchange, or disposition of any depreciable property placed in service on or after January 1, 1981, capital gains or losses and the amount of ordinary income determined under the provisions of the Internal Revenue Code shall be computed for Kentucky income tax purposes as follows:

(a) Compute the Kentucky unadjusted basis which is the cost of the asset reduced by any basis adjustment made by the taxpayer under Section 48(q)(1) of the Internal Revenue Code and any expense allowed and utilized under Section 179 of the Internal Revenue Code (First Year Expense) in determining Kentucky net income in prior years, and

(b) Compute the adjusted basis by subtracting the depreciation allowed or allowable for Kentucky income tax purposes from the unadjusted basis, except corporations will not be permitted to adjust the basis of assets by the ACRS depreciation not allowed for Kentucky income tax purposes in the tax years beginning on or before June 30, 1984, and

(c) Compute the gain or loss by subtracting the adjusted basis from the value received from the disposition of the depreciable property, and

(d) Compute the recapture of depreciation required under Sections 1245 through 1256 of the Internal Revenue Code and related regulations, and

(e) Unless otherwise provided in this subsection the provisions of the Internal Revenue Code and related regulations governing the determination of capital gains or losses shall apply for Kentucky income tax purposes.

(10) Unless otherwise provided by this chapter, the basis of property placed in service prior to January 1, 1990, for purposes of Kentucky income tax shall be the basis, adjusted or unadjusted, required to be used under Section 167 of the Internal Revenue Code in effect on December 31, 1980.

(11) Notwithstanding any other provision of this section to the contrary, any qualified farming operation, as defined in Section 16 of this Act, shall be allowed to compute the depreciation deduction for new buildings and equipment purchased to enable participation in a networking project, as defined in Section 16 of this Act, on an accelerated basis at two (2) times the rate that would otherwise be permitted under the provisions of this section. The accumulated depreciation allowed under this subsection shall not exceed the taxpayer's basis in such property.

SECTION 16. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

As used in Sections 16 to 18 of this Act, unless the context requires otherwise:

(1) "Approved costs" means the costs incurred during the taxable year by a qualified farming operation for training and improving the skills of managers and employees involved in a networking project.

(2) "Business network" means a formalized, collaborative mechanism organized by and operating among three (3) or more qualified farming operations, industrial entities, business enterprises, or private sector firms for the purposes of, but not limited to: pooling expertise; improving responses to changing technology or markets; lowering the risks to individual entities of accelerated modernization; encouraging new technology investments, new market development, and employee skills improvement; and developing a system of collective intelligence among participating entities.

(3) "Food producing facilities" means establishments that manufacture or process foods and beverages for human consumption, and which are included under the two (2) digit SIC code 20;

(4) "Networking project" means a project by which farmers and other entities involved in the production of food join together to form a network approved by the Cabinet for Economic Development for the purpose of producing or expanding the production of crops or livestock necessary for the establishment or expansion of secondary food-producing facilities in Kentucky.

(5) "Qualified farming operation" means an individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, or institution, engaged in farming in Kentucky that provides raw materials for food-producing facilities in Kentucky, and that purchases new buildings or equipment, or that incurs training expenses, to support its participation in a networking project.

(6) "SIC code" means the classification system grouping business operations or enterprises as published in the "Standard Industrial Classification Manual" of the United States Office of Management and Budget, 1987 edition.

SECTION 17. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) A qualified farming operation shall be entitled to a nonrefundable credit against the Kentucky income tax liability established pursuant to the provisions of this chapter on any income of the qualified farming operation generated by or arising out of the qualified farming operation's participation in a networking project. The annual credit shall be available for the first five (5) years that the farming operation is involved in the networking project. The annual credit shall be equal to the approved costs incurred by the qualified farming operation during the tax year and shall not exceed the income of the qualified farming operation generated by or arising out of the qualified farming operation's participation in a networking project.

(2) Any credit not used in the tax year in which it first becomes available may be carried forward to the next succeeding five (5) tax years until the credit has been fully used. The aggregate credit used in any tax year shall not exceed the income of the qualified farming operation generated by or arising out of the qualified farming operation's participation in a networking project in that tax year.

SECTION 18. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) A qualified farming operation which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040(1) shall:

- *(a) Compute the income tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income as defined by KRS 141.010(11) or taxable net income as defined by KRS 141.010(14), including income from the qualified farming operation's participation in a networking project.*
- *(b) Compute the income tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income as defined by KRS 141.010(11) or taxable net income as defined by KRS 141.010(14), excluding net income attributable to the qualified farming operation's participation in a networking project; and*
- *(c) Be entitled to a tax credit in the amount by which the tax computed under paragraph (a) of this subsection exceeds the tax computed under paragraph (b) of this subsection. The credit shall not exceed the farming operation's approved costs, as defined in Section 16 of this Act.*

(2) Notwithstanding any other provisions of this chapter, a qualified farming operation which is an S-corporation, partnership, or trust shall be subject to income tax on the net income attributable to its participation in a networking project at the rates provided in KRS 141.020(2), and the amount of the tax credit shall be the same as the amount of the tax computed in this subsection. The credit shall not exceed the farming operation's approved costs, as defined in Section 16 of this Act. If the tax computed in this subsection exceeds the tax credit, the difference shall be paid by the S-corporation, partnership, or trust at the times provided by KRS 141.160 for filing the returns.

(3) Notwithstanding any other provisions of this chapter, the net income subject to tax and the tax credit determined under subsection (2) of this section shall be excluded in determining each shareholder's, partner's, or beneficiary's distributive share of net income or credit of an S-corporation, partnership, or trust.

(4) If the networking entity is a separate facility, net income attributable to the project for the purposes of subsections (1), (2), and (3) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the project and overhead expenses apportioned to the project.

(5) If the networking project is an expansion to a previously existing farming operation, net income attributable to the entire operation shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the farming operation's participation in the networking project and overhead expenses apportioned to the networking project, and the net income attributable to the networking project for the purposes of subsections (1), (2), and (3) of this section shall be determined by apportioning the separate accounting net income of the entire networking project to the networking project by a formula approved by the Revenue Cabinet.

(6) If an approved company can show to the satisfaction of the Revenue Cabinet that the nature of the operations and activities of the approved farming operation are such that it is not practical to use the separate accounting method to determine the net income from the networking project, the approved farming operation shall determine net income from its participation in the networking project using an alternative method approved by the Revenue Cabinet.

(7) The Revenue Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A and require the filing of forms designed by the Revenue Cabinet necessary to effectuate Sections 15 to 18 of this Act, and the

allowable income tax credit which an approved farming operation may retain under the provisions of Section 17 and this section of this Act.

SECTION 19. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly hereby finds and declares that it is a policy of the Commonwealth to retain agriculture and enhance the contribution that agriculture makes to its economy. A program to retain and enhance agriculture is in the economic best interests of the Commonwealth and, consequently, constitutes a public benefit that contributes to the health, safety, and general welfare of the residents of the Commonwealth and the nation.

(2) The General Assembly further finds and declares that the use of the Commonwealth's funds for the purpose of paying in whole or part the cost of acquiring agricultural conservation easements as set forth in Sections 19 to 29, including any costs necessarily incident to the acquisition, sale, issuance, and delivery of the funds, and the monitoring and enforcement of agricultural conservation easements, or to the participation of any party for these purposes, will promote the public health, safety, and general welfare of the people of the Commonwealth.

(3) Further, it is the purpose of Sections 19 to 29 of this Act to:

(a) Establish procedures for the acquisition of agricultural conservation easements in order to ensure that lands currently in agricultural use will continue to remain available for agriculture and not be converted to other land uses, and that landowners who participate in this program will be fairly compensated for their agreement to accept deed restrictions limiting the use of their property;

(b) Encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security that land use will remain stable;

(c) Protect normal farming operations in agricultural areas from incompatible nonfarming uses that may render farming impracticable;

(d) Protect normal farming operations from complaints of public nuisance against normal farming operations; and

(e) Maximize the use of agricultural conservation easement purchase funds and protect the investment of taxpayers in agricultural conservation easements.

SECTION 20. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) The Commonwealth is hereby authorized to acquire agricultural conservation easements or other property interests. The property interest acquired may be any less-than-fee-simple interest, including an easement, life estate, covenant, or other contractual right. Acquisition may be accomplished by purchase, gift, grant, bequest, devise, covenant, or contract but only at a price that is equal to or less than the appraised value as provided in this section. The Commonwealth shall purchase these property interests only upon voluntary application of the landowner.

(2) If the landowner so elects, the Commonwealth is authorized to pay the purchase price in a lump-sum single payment at the time of closing, to enter into contracts for pay outs over a term of years against the purchase price, or to enter into installment purchase agreements. When pay outs over time are made, the Commonwealth is authorized to pay interest consistent with prevailing market conditions at the time of the execution of the contract.

(3) The interest which the Commonwealth owns in property other than eligible lands may be exchanged for property interests in eligible lands on an equivalent appraised value basis. If the property exchanged is not exactly equal in appraised value, cash payments may be made to provide net equivalent value in the exchange.

(4) After the Commonwealth acquires an agricultural conservation easement or some property interest less than full ownership in any eligible land, the Commonwealth may purchase the remaining agricultural rights or other property interest in the land when the acquisition is necessary to maintain the agricultural uses of the property.

SECTION 21. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) As used in Sections 19 to 29 of this Act, unless the context clearly indicates otherwise:

(a) "Agricultural conservation easement" or "easement" means an interest in land, less than fee simple, which represents the right to restrict or prevent the development or improvement of the land for purposes other than agricultural production. The easement may be granted by the owner of the fee simple to the Commonwealth or to a qualified organization described in Section 170(c) of the Internal Revenue Code. It may be granted in perpetuity, as the equivalent of the covenants running with the land.

(b) "Agricultural district" means a land use category created by voluntary agreement between the Commonwealth and one or more landowners under Kentucky's agricultural district law, KRS 262.850, where the primary use of land is and will remain to be agriculture.

(c) "Agricultural production" means the production for commercial purposes of crops, livestock and livestock products, and nursery and greenhouse products, including the processing or retail marketing of these crops, livestock and livestock products, and nursery and greenhouse products, if more than fifty percent (50%) of those processed or merchandised products are produced by the farm operator, and the raising and stabling of

horses for commercial purposes.

(d) "Applicant" means a person or qualified organization described in Section 170(c) of the Internal Revenue Code offering to sell to the PACE Corporation under the PACE Program an easement on a tract of land which is in or available for agricultural use.

(e) "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

(f) "Bargain sale" means the sale of an easement by a landowner at a price below appraised market value, when a portion of the value of the easement is donated by the landowner in a properly executed document as a charitable contribution to a qualified organization described in Section 170(c) of the Internal Revenue Code.

(g) "Capability class" means a group of soils that have similar characteristics when used for field crop production.

(h) "Comparable sales" means market sales of similar land. In locating comparable sales, first priority shall be given to parcels located in the same general vicinity. The second priority shall be given to farms located in other areas.

(i) "Conservation plan" means a plan describing best land management practices, including an installation schedule and maintenance program, which, when completely implemented, will improve and maintain soil, water, and related plant and animal resources of the land.

(j) "Contract of sale" means a legally enforceable agreement in a form provided by the PACE Board obligating the owner of a farmland tract to sell and the Commonwealth to purchase an easement or other less-than-fee interest on the farmland tract.

(k) "Commonwealth funds" means money appropriated to the PACE Corporation for the purchase of agricultural conservation easements.

(l) "Development" means the carrying out of any material change in the use or appearance of land, or dividing into two (2) or more parcels.

(m) "Easement value" means the value per acre as determined by a numerical point system or, if an appraisal is used, the difference between the unrestricted value of a farm and its value as restricted by an easement. If only one appraisal is used, unrestricted value is equal to market value and restricted value is equal to the value of the farm, subject to an agricultural conservation easement. If the landowner obtains an independent appraisal, easement value shall be calculated according to the average between the landowner's appraisal and the numerical point system, of if the Commonwealth also obtains an appraisal, the average between the landowner's appraisal and the Commonwealth's appraisal.

(n) "Eligible land" means a farmland tract in which the Commonwealth may acquire an agricultural conservation easement or other property interest as provided by this section.

(o) "Farm" means land in the Commonwealth which is being used for or is available for agricultural production as defined in this section.

(p) "Farmland tract" means land constituting all or part of a farm that is proposed for the purchase of an agricultural conservation easement.

(q) "Farmland value" means the price as of the valuation date for property used for normal farming operations, subject to the terms of an agricultural conservation easement, which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.

(r) "Fund" means the agricultural enhancement fund created by Section 29 of this Act.

(s) "Grantor" means the person or entity holding title to the farmland tract on which an easement is conveyed.

(u) "Grazing or pasture land" means land used for horse paddocks or the growing of grasses and legumes which are consumed by livestock in the field, and at least ninety percent (90%) of which is clear of trees, shrubs, vines, or other woody growth not consumed by livestock.

(v) "Harvested cropland" means land used for the commercial production of field crops, fruit crops, vegetables, and horticultural specialties, such as flowers, nursery stock, and ornamentals.

(w) "Horse paddock" means an enclosed area used for pasturing and exercising horses.

(x) "Landowner" means a person holding title to land.

(y) "Market value" means the price as of the valuation date for the highest and best use of the property which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.

(z) "Nonprofit land conservation organization" means nonprofit organization dedicated to land conservation

purposes recognized by the Internal Revenue Service as a tax-exempt organization under Section 170(c) of the Internal Revenue Code.

(aa) "PACE Corporation" means the Purchase of Agricultural Conservation Easement Corporation created by subsection (1) of Section 22 of this Act.

(bb) "PACE Board" means the board of directors of the Purchase of Agricultural Conservation Easement Corporation created by subsection (2) of Section 22 of this Act.

(cc) "Qualified organization" means a tax-exempt organization described in Section 170(c) of the Internal Revenue Code.

(dd) "Reserved life estate" means property deeded to a nonprofit organization during an owner's lifetime with the owner retaining full use of and responsibility for the property until the death of the last survivor of those retaining life estates, whereupon, the responsibility of the property falls to the nonprofit organization. The property owner is entitled to an income tax deduction based on an appraised value and Internal Revenue Service actuarial tables, and the taxable estate may also be reduced.

(ee) "Restricted land" means land and buildings, the use of which is subject to the terms of an agricultural conservation easement.

(ff) "Restricted value" means the price as of the valuation date for property subject to an agricultural conservation easement which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.

(gg) "Soils report" means a report which sets forth the amount and description of each soil type and class found on a specific farm.

(hh) "Title report" means a report prepared by a person authorized by the state to engage in the sale of title insurance or an attorney setting forth the existence of any liens, restrictions, or other encumbrances on a farmland tract.

(ii) "Unrestricted value" means the current market value of a property.

(jj) "USDA" means the United States Department of Agriculture.

(kk) "USDA-SCS" means the Soil Conservation Service of the United States Department of Agriculture.

(ll) "Viable agriculture land" means land suitable for agricultural production and which will continue to be economically feasible for use if real estate taxes, farm use restrictions, and interference with and constraints on normal farming operations are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of urban and related nonagricultural development.

SECTION 22. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created the Purchase of Agricultural Conservation Easement Corporation which shall oversee all issues involving purchases of agricultural conservation easements. The corporation shall be a de jure municipal corporation and political subdivision of the Commonwealth. The corporation shall be a public agency within the meaning of KRS 61.805 and 61.870 and shall be attached for administrative purposes to the Department of Agriculture.

(2) (a) The corporation shall be governed by a board of directors, consisting of the following eleven (11) members: four (4) public directors who shall be the Commissioner of the Department of Agriculture, the secretary of the Natural Resources and Environmental Protection Cabinet, the dean of the University of Kentucky College of Agriculture, and the chair of the Soil and Water Conservation Commission, or their designees; and seven (7) private directors who shall be appointed by the Governor, as follows:

1. One (1) private director from each of the six (6) congressional districts; and

2. One (1) private director from a list of three (3) persons suggested by the Kentucky Farm Bureau Federation, Inc.

(b) Initial appointment of the private directors by the Governor shall be for staggered terms.

(c) No more than four (4) of the private directors shall be from the same political party. Members shall serve a term of four (4) years, with the exception of the initial members, and may be reappointed. Vacancies shall be filled in the same manner as the appointment is made.

(3) (a) Any member who has an ownership interest in any of the lands eligible for the purchase of an agricultural conservation easement or other property interest and who wishes to apply to sell an easement while serving on the board of directors shall withdraw himself from all board activities prior to application and until the transaction is complete. The Governor shall appoint an interim member to fill the vacancy until the transaction is complete.

(b) Any person who has previously applied for or sold an agricultural conservation easement may serve on the board.

(4) Members shall not be compensated for their services but shall be reimbursed for expenses incurred in the performance of their duties.

SECTION 23. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) The PACE Board shall have the following responsibilities:

(a) Implementing a Purchase of Agricultural Conservation Easement Program in the Commonwealth as provided by this section, including the development and promulgation of any administrative regulations required;

(b) Making decisions in connection with each specific easement purchase to be made with Commonwealth funds from the agricultural enhancement fund;

(c) Evaluating, as necessary, potential sites within the Commonwealth on which agricultural conservation easements or other property interests are to be acquired, applying the criteria set forth in this section and administrative regulations; and

(d) Employing the staff necessary to implement the provisions of this section.

(2) (a) The PACE Board shall establish fair, equitable, objective, nondiscriminatory procedures for determining easement purchase priorities.

(b) The board shall promulgate administrative regulations establishing policies and procedures for determining easement purchase priorities and for purchasing easements.

(c) The program criteria shall be designed to ensure that land is selected for easement purchase because it will make a significant contribution to agricultural production.

SECTION 24. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) During the term of an easement, the restricted land shall be used solely for the production of crops, livestock and livestock products, and nursery and greenhouse products including the processing or retail marketing of these crops, livestock and livestock products, and nursery and greenhouse products if more than fifty percent (50%) of the processed or merchandised products are produced on the subject land, and for the raising and stabling of horses for commercial purposes. For the purposes of this section and administrative regulations promulgated under its provisions, "crops, livestock and livestock products, and nursery and greenhouse products" include, but are not limited to:

(a) Tobacco;

(b) Wheat, soybeans, corn, and all commercially-produced fruits and vegetables;

(c) Horticultural specialties, including nursery stock ornamental shrubs, ornamental trees, and flowers;

(d) Livestock and livestock products, including horses, cattle, poultry, milk, swine, and eggs; and

(e) Aquatic plants and animals and their by-products.

(2) (a) During the term of an easement the landowner and the landowner's assigns, agents or leasees shall not perform, nor knowingly allow others to perform, any act on or affecting the restricted land that is inconsistent with the provisions of this section. The landowner shall be deemed to have authorized the PACE Board to enforce these provisions.

(b) Unless otherwise specified, the landowner shall not be required to take any action to restore the condition of the restricted land after any act of God or other event over which the landowner had no control.

(c) Nothing in the PACE Program shall relieve the landowner of any obligation or restriction on the use of the property imposed by law.

(d) The Commonwealth shall not locate landfills, sewage treatment plants, or other public service facilities that are not compatible with or complimentary to agricultural production on restricted lands.

(3) (a) To retain the agricultural viability of the restricted land, the PACE Board shall require, and the owner of the restricted land shall implement, a conservation plan approved by the soil and water conservation district. This plan shall be updated every ten (10) years and any time the basic farming operation conducted on restricted lands is changed. All farming operations shall be conducted substantially in accordance with the plan.

(b) In addition to the requirements established by the soil and water conservation district, the conservation plan shall require that:

1. The use of the land for growing sod, nursery stock, and ornamental trees and shrubs does not remove excessive soil from the restricted land;

2. The excavation of soil, sand, gravel, stone, or other materials for use in agricultural production on the restricted land is consistent with subsection (4)(h) of this section and is conducted in a location and manner that retains the viability of the restricted land for agricultural production; and

3. The mining of minerals is consistent with subsection (4)(h) of this section and is conducted only *through the use of methods which will not interfere with the viability of the restricted land for agricultural production.*

(4) The construction or reconstruction of any building or other structure, except those existing on the date of the easement or previously approved by the PACE Board, is prohibited except in accordance with this subsection.

(a) Existing fences may be repaired and replaced, and new fences may be built anywhere on the restricted land for purposes of reasonable and customary management of livestock and wildlife, without approval of the PACE Board.

(b) New buildings and other structures and improvements to be used solely for agricultural purposes including the processing or sale of farm products predominantly grown or raised on the restricted land, but not including any dwelling or farm labor housing, may not be built on the restricted land without the advance approval of the PACE Board. The PACE Board shall give approval within a reasonable time, unless it determines that the proposed building, structure, or improvement would not be properly located or would significantly diminish the agricultural production capacity of the restricted land.

(c) All existing single-family residential dwellings may be repaired, reasonably enlarged, and replaced at their current locations without further permission of the PACE Board. No new single-family residential dwellings may be built on the restricted land without the advance approval of the PACE Board. The PACE Board shall give approval within a reasonable time, unless it determines that a proposed dwelling would not be properly located or would significantly diminish the agricultural production capacity of the restricted land.

(d) The subdivision of the restricted land, whether by physical or legal process, is prohibited without the advance written approval of the PACE Board. The PACE Board shall give approval within a reasonable time, unless it determines that the proposed subdivision will diminish or impair the agricultural productivity of the restricted land.

(e) The granting of rights-of-ways through restricted land for the installation of, transportation of, or use of, lines for water, sewage, electric, telephone, gas, oil or oil products is permitted. The term "granting of rights-of-way" includes the right to construct or install the lines. The construction or installation of utility lines other than the types stated in this paragraph is prohibited on the restricted land.

(f) No portion of the restricted land shall be paved or otherwise be covered with concrete, asphalt, gravel, or any other paving material, nor shall any road for access or other purposes be constructed, without the advance written approval of the PACE Board. The PACE Board shall give approval within a reasonable time, unless it determines that the proposed paving or covering of the soil, or the location of any road, will substantially diminish or impair the agricultural productivity of the restricted land.

(g) Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the restricted land. Trees may also be cut to clear land for cultivation or use of livestock, but only if done in accordance with the conservation plan required by subsection (3) of this section. Any commercial timber harvesting on the restricted land shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester.

(h) The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance, using any method that disturbs the surface of the land, is prohibited without the advance written approval of the PACE Board. The PACE Board shall give approval within a reasonable time, unless it determines that the proposed mining or extraction will substantially diminish or impair the agricultural productivity of the restricted land.

(i) The dumping or accumulation of any kind of trash or refuse on the restricted land is prohibited. However, this shall not prevent the storage of agricultural products and by-products on the restricted land, so long as it is done in accordance with all applicable laws, administrative regulations, and ordinances.

(j) Golf courses are prohibited on the restricted land. Buildings and facilities for any other public or private recreational use may not be built on the restricted land without the advance written approval of the PACE Board. The PACE Board shall not give approval unless it determines that the proposed use or facilities will not substantially diminish or impair the agricultural productivity of the restricted land.

(5) Landowners shall retain the right to perform any act not specifically prohibited or limited by this section and administrative regulations promulgated under its provisions. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the restricted land and the right to sell or otherwise transfer the restricted land to anyone of the landowner's choice.

SECTION 25. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

Other than as specified within this section, this section and administrative regulations promulgated under its provisions are not intended to impose any legal or other responsibility on the PACE Board or in any way to affect any existing obligation of the landowner as owner of the restricted land. Accordingly:

(1) The landowner shall continue to be solely responsible for payment of all taxes and assessments levied against the restricted land.

(2) The landowner shall continue to be solely responsible for the upkeep and maintenance of the restricted land, to the extent it may be required by law. The PACE Board and the Commonwealth shall have no obligation for the upkeep or maintenance of the restricted land.

SECTION 26. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

A deed conveying an interest in the restricted land shall set forth the language of the assessment restrictions verbatim. Within thirty (30) days of a change in ownership of the restricted land, the prior owner shall notify the PACE Board in writing of the name and address of the new owner, together with the volume and page of the deed book in which the transfer has been recorded.

SECTION 27. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) If the PACE Board finds what is believes is a violation of the terms of any easement by the property owner, it may take appropriate legal action. Except when an ongoing or imminent violation could irreversibly diminish or impair the agricultural productivity of the restricted land, the PACE Board shall give the landowners written notice of the violation and sixty (60) days to correct it, before taking legal action.

(2) The owner of the restricted land shall bear all costs associated with the correction of a violation of the easement, including:

(a) Costs of work required and materials used to correct the violation and restore the restricted land to its condition prior to the violation;

(b) Administrative costs incurred by the PACE Board; and

(c) Court costs and reasonable attorney's fees incurred by the PACE Board in enforcing the easement.

SECTION 28. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) A grantor may terminate an easement, in whole or in part, only by filing an action in the Franklin Circuit Court, and demonstrating by clear and convincing evidence that conditions on or surrounding the land subject to an agricultural conservation easement have changed so much that agriculture is no longer viable and it has become impossible to fulfill any of the easement's conservation purposes. The grantor shall name the PACE Corporation as the defendant in the action.

(a) In the event that a finding is made by the court that a portion of the land subject to the agricultural conservation easement is no longer suitable for agricultural purposes, the owner shall, at the owner's expense, provide a survey of the land area on which the agricultural conservation easement is to be terminated.

(b) No agricultural conservation easement or portion thereof which has been purchased with Commonwealth funds shall be terminated by the court except upon payment by the grantor to the PACE Corporation of its then fair value. The value of the easement shall be established by one of the following two methods, as determined by the court:

1. The owner shall pay the PACE Corporation an amount equal in current dollars to the full cost of acquiring and monitoring the easement during its full duration, plus reasonable interest as determined by court; or

2. The owner shall pay the PACE Corporation an amount equal to the easement's current market value as determined by independent appraisal, performed at the owner's expense and satisfactory to the Commonwealth.

(c) The PACE Corporation shall place the proceeds from the termination of the easement in the agricultural enhancement fund and use the proceeds consistent with the purposes of Section 19 to Section 29 of this Act.

SECTION 29. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) (a) There is hereby created by this section a special fund in the State Treasury which shall be known as the "Agricultural Enhancement Fund." There shall be deposited in the fund:

1. Moneys received by the Commonwealth, from whatever source and by whatever means, as gifts for purposes of retaining agricultural lands and supporting and abetting agricultural practices and activities which shall improve conservation and natural resource protection practices, enhance the viability of the agriculture industry, and expand the economic contribution that agriculture makes to the Commonwealth;

2. Moneys received by the Commonwealth, from whatever source and by whatever means, as grants or loans for purposes of retaining agricultural lands and supporting and abetting agricultural practices and activities which shall improve conservation and natural resource protection practices, enhance the viability of the agriculture industry, and expand the economic contribution that agriculture makes

to the Commonwealth;

3. Moneys received by the Commonwealth including proceeds of bonds issued for the purpose of funding the PACE Program as dedicated sources of revenue for the fund; and

4. Moneys appropriated to the fund.

(b) The fund shall be in the custody of the Commonwealth. All or any part of these funds may be invested in any securities in which public funds may lawfully be invested. All income derived from investments shall be paid into the fund and become a part thereof. The moneys so invested shall at all times be subject to withdrawal from investment for use as provided in this subsection.

(c) Upon authorization of the PACE Board, the moneys in the fund may be used for:

1. The acquisition of agricultural conservation easements on eligible lands within the Commonwealth;

2. The acquisition of options to purchase agricultural conservation easements on eligible lands within the Commonwealth;

3. The costs of appraisal, engineering, surveying, planning, financial, legal, and other services, and applicable personnel costs lawfully incurred incident to the acquisition of agricultural conservation easements in eligible lands and for monitoring and enforcing easements on restricted lands;

4. The costs incident to the sale, issuance, and delivery of bonds, and to securing funds from other revenue sources for the fund;

5. The provision of guarantees for loans that farmers participating in the PACE Program may need to seek from lending institutions in order to carry out agricultural operations, including loans for annual agricultural production, agriculture- and conservation-related improvements, and changes in the types of and methods employed for agricultural production on farmland tracts enrolled in the PACE Program; and

6. Other expenditures as specified by the PACE Board, providing that the expenditures are consistent with Sections 19 to 29 of this Act and administrative regulations promulgated by the PACE Board and are for the express purpose of retaining agricultural lands, supporting and abetting agricultural lands, and supporting and abetting agricultural practices and activities which shall improve conservation and natural resource protection practices, enhance the viability of the agriculture industry, and expand the economic contribution that agriculture makes to the Commonwealth.

(d) No more than ten percent (10%) of the moneys in the fund shall be expended in any one (1) fiscal year to administer Sections 19 to 29 of this Act.

SECTION 30. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) The State Department of Agriculture shall identify lands of statewide agricultural importance through the use of the United States Department of Agriculture's land evaluation and site assessment program and the state's geographic information system. The department shall provide information on the location of agricultural lands of statewide importance to each local planning unit operating under the requirements of KRS Chapter 100.

(2) The department is authorized to promulgate administrative regulations to implement this section.

Section 31. KRS 100.191 is amended to read as follows:

All elements of the comprehensive plan shall be based upon but not limited to, the following research, analysis, and projections:

(1) An analysis of the general distribution and characteristics of past and present population and a forecast of the extent and character of future population as far into the future as is reasonable to foresee;

(2) An economic survey and analysis of the major existing public and private business activities, and a forecast of future economic levels, including a forecast of anticipated necessary actions by the community to increase the quality of life of its current and future population through the encouragement of economic development as far into the future as is reasonable to foresee;

(3) Research and analysis as to the nature, extent, adequacy, and the needs of the community for the existing land and building use, transportation, and community facilities in terms of their general location, character and extent***, including, the identification and mapping of agricultural lands of statewide importance and analysis of the impacts of community land use needs on these lands***; and

(4) Additional background information for the elements of the comprehensive plan may include any other research analysis, and projections which, in the judgment of the planning commission, will further serve the purposes of the comprehensive plan.

Section 32. KRS 262.850 is amended to read as follows:

(1) This section shall be known as "the Agricultural District and Conservation Act."

(2) It is the policy of the state to conserve, protect and to encourage development and improvement of its agricultural lands

for the production of food and other agricultural products. It is also the policy of this state to conserve and protect the agricultural land base as a valuable natural resource which is both fragile and finite. The pressure imposed by urban expansion, transportation systems, water impoundments, surface mining of mineral resources, utility rights-of-way and industrial development has continually reduced the land resource base necessary to sufficiently produce food and fiber for our future needs. It is the purpose of this section to provide a means by which agricultural land may be protected and enhanced as a viable segment of the state's economy and as an important resource.

(3) The local governing administrative body for an agricultural district shall be the conservation district board of supervisors. The Soil and Water Conservation Commission shall be responsible for statewide administration of the agricultural district program and shall have sole authority to certify or deny agricultural district petitions. The commission may apply for assistance and funds from the Federal Farmland Protection Act of 1981 (PL 97-377) which may be available for the development of the agricultural district program and may accept easements as provided in KRS 65.410 to 65.480.

(4) Any owner or owners of land may submit a petition to the local conservation district board of supervisors requesting the creation of an agricultural district within ***the*** [~~such~~] county. ***The*** [~~Such~~] petition shall include a description of the proposed area, description of each land parcel, location of the proposed boundaries, petitioners' names and addresses, adjacent landowners' names and addresses, and other pertinent information as required in the petition application. The boundary of an agricultural district shall be contiguous. No land shall be included in an agricultural district without the consent of the owner.

(5) Upon receipt of a petition, the local conservation district board of supervisors shall notify the fiscal court and any local or regional planning or zoning body, if any, by sending a copy of the petition and accompanying materials to that body.

(6) The following factors shall be considered by the local conservation district board of supervisors and the Soil and Water Conservation Commission when considering the formation of any agricultural district:

(a) The capability of the land to support agricultural production, as indicated by: soil, climate, topography or other natural factors;

(b) The viability of active farmlands, as indicated by: markets for farm products, extent and nature of farm improvements, present status of farming, anticipated trends in agricultural economic conditions and technology;

(c) That the proposed agricultural district meets the minimum size limit of two hundred fifty (250) contiguous acres***, unless the local conservation district board and the Soil and Water Conservation Commission allow fewer than two hundred fifty (250) contiguous acres if the proposed area meets a minimum annual production performance established by the district board and approved by the commission***;

(d) County development patterns and needs and the location of the district in relation to any urban development boundaries within the county; [~~and~~]

(e) Any matter which may be relevant to evaluate the petition***; and***

(f) Whether an application is from more than one (1) farm owner, in which case a preference shall be given to the application.

(7) The local soil and water conservation district board of supervisors shall review the petition application and submit a recommendation to the Soil and Water Commission within sixty (60) days of receipt. The local conservation district recommendation shall be submitted to the commission in the form of approval, approval with modifications, or denial of the petition accompanied by justification for such a denial.

(8) The Soil and Water Conservation Commission shall review the recommendation of the district board of supervisors and certify or deny the agricultural district's petition within sixty (60) days of receipt.

(9) Upon the approval of a petition by the Soil and Water Conservation Commission, the commission shall notify the area development district in which the agricultural district will lie***, the local county clerk,*** and the secretary of the Governor's Cabinet.

(10) Land within the boundary of an agricultural district shall not be annexed.

(11) Any member, or any successor heir of the member, of an agricultural district may withdraw from the district upon notifying the local conservation district board of supervisors in writing.

(12) It shall be the policy of all state agencies to support the formation of agricultural districts as a means of preserving Kentucky's farmlands and to mitigate the impact of their present and future plans and programs upon the continued agricultural use of land within an agricultural district.

(13) Agricultural districts shall be comprised only of agricultural land as defined in KRS 132.010.

(14) An agricultural district shall be established for five (5) years with a review to be made by the local soil and water conservation district board of supervisors at the end of the five-year period and every five (5) years thereafter. ***Each owner of land shall agree to remain in the district for a five (5) year period, which is renewable at the end of the five (5) years.*** However, the board shall make a review any time upon the written request of a local government which demonstrates that the review is necessary in order to consider development needs of the local government. The board shall consider whether the continued existence of the district is justified, any adjustments which may be necessary due to

urban or county development, and other factors the board finds relevant. The board shall revise the district as necessary based on the review and subject to approval of the State Soil and Water Conservation Commission. Before the state commission takes final action, all interested parties shall be given the opportunity to request the state commission to amend or overturn the local board's decision.

(15) The withdrawal of a member from a district reducing the remaining acreage of agricultural district land to less than two hundred fifty (250) acres or resulting in the remaining land being noncontiguous shall not cause the decertification of the district.

(16) Any member of an agricultural district who has received a summons of condemnation proceedings being instituted concerning the member's land located in the district may request the local soil and water conservation district board of supervisors to hold a public hearing on the proposed taking of land. However a hearing under this section shall not be held if the petitioner in the condemnation proceeding is a utility as defined in KRS 278.010(3) and obtained a certificate of convenience and necessity as required by KRS 278.020(1).

(17) (a) The board shall notify the local property valuation administrator of the farms which belong to an agricultural district and whenever a farm is withdrawn from a district. The board shall also inform all members of a district of the right to have their land assessed by the local property valuation administrator at the land's agricultural use value and shall offer advice and assistance on obtaining such an assessment.

(b) The board shall also notify the local property valuation administrator whenever a farm is released or withdrawn from an agricultural district.

(18) The board may allow an amendment to an existing certified agricultural district if approved by the commission.

Section 33. KRS 262.875 is amended to read as follows:

(1) There shall be created a committee to advise the Governor on state activities that may contribute to the conversion of farmland to nonfarm uses. The committee shall be called the Interagency Farmland Advisory Committee and the members shall be appointed by the Governor and shall include one (1) representative for each of the following:

(a) Governor's Cabinet;
(b) Finance and Administration Cabinet;
(c) Revenue Cabinet;
(d) Cabinet for Economic Development;
(e) Transportation cabinet;
(f) Natural Resources and Environmental Protection Cabinet;
(g) Governor's Office for Coal and Energy Policy;
(h) Department of Agriculture;
(i) Department of Local Government;
(j) Department of Fish and Wildlife Resources;
(k) Environmental Quality Commission;
(l) Soil and Water Conservation Commission;
(m) Dean, College of Agriculture, University of Kentucky;
(n) Two (2) farmer owners and operators of one hundred fifty (150) acres or less, one (1) selected from a list of three (3) persons recommended by the Kentucky Farm Bureau, and one (1) selected from a list of three (3) persons recommended by the national farmers organization;
(o) Two (2) farmer owners and operators of more than one hundred fifty (150) acres, one (1) selected from a list of three (3) persons recommended by the Kentucky Farm Bureau, and one (1) selected from a list of three (3) persons recommended by the national farmers' organization; and
(p) The joint chairpersons of the Interim Joint Committee on Agriculture and Natural Resources.

(2) The representative of the Natural Resources and Environmental Protection Cabinet shall be the chairperson of the committee, and the representative of the Soil and Water Conservation Commission shall be the vice chairperson of the committee. The staff for the committee shall be provided by the Natural Resources and Environmental Protection Cabinet.

(3) In order to advise the Governor, the committee shall review proposed state projects which will convert farmland to nonfarm use. The review shall consider alternatives to the project proposal in an effort to balance the public purpose to be served by the state project against the public purpose of conserving productive farmland.

(4) The Interagency Farmland Advisory Committee shall review proposed projects of all state agencies, including but not limited to, boards and commissions. The review shall be limited to proposed projects which will require the acquisition of more than fifty (50) acres of farmland.

(5) During the planning stage of the project and before any action is taken to acquire farmland, the state agency shall submit

a report to the committee. The report shall explain the project, ***contain an agricultural impact assessment,*** highlight the location of land that must be acquired, present the reasons for needing the land, and explain the reasons for rejecting alternatives to the proposed project.

(6) ***All state projects shall be located to provide minimal interference with the productivity of agricultural lands of statewide importance as identified by Section 30 of this Act.***

(7) The committee shall provide notice of the proposed project to the local community by publishing the notice in the newspaper of greatest local circulation within fifteen (15) days after receiving the report. The notice shall solicit comments on the proposal and state that a public hearing will be held upon a request received within fifteen (15) days of the last published notice. If requested, the public hearing shall be held within fifteen (15) days after receiving the request. No later than ten (10) days after the hearing, the committee shall file its report and any recommendations to the Governor. The committee may recommend to the Governor that action be taken by the Governor to alter the proposed state project if necessary to balance the public interests.

(8)[~~(7)~~] A majority of the members of the committee constitutes a quorum for conducting business, and any action taken in the name of the committee requires an affirmative vote of a majority of the members present and voting.

(9)[~~(8)~~] Members shall receive no compensation but shall be reimbursed for expenses incurred.

SECTION 34. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) The state "Soil Erosion and Water Quality Cost-Share Fund" is hereby created to be administered by the Kentucky Soil and Water Conservation Commission. Moneys from the fund shall be used for a cost-sharing program to provide financial assistance for implementation of best management practices for the purpose of providing cleaner water through the reduction in sediment loading of Kentucky's streams, rivers, and lakes, and reducing the loss of topsoil vital to the sustained production of food.

(2) The commission is hereby empowered to promulgate administrative regulations establishing practices eligible for cost-sharing funds and prescribing amounts and limits of cost sharing. Local conservation districts shall determine the eligibility of landowners to receive the funds as may be allocated to the districts by the commission.

(3) Any landowner who has executed a written agreement with a local conservation district or any member of an agricultural district may be considered for funding under this section if the landowner or member has executed a soil and water conservation plan with the local conservation district and agrees to maintain best management practices for a period of time specified by the commission. Priority for funding within each local conservation district shall be given to animal waste management systems where animal waste has been identified as a major problem to the local community. No cost-sharing funds shall be available for land which does not exceed the soil tolerable limits. Up to five percent (5%) of any total annual appropriation may be used for technical assistance grants to districts and up to five percent (5%) of any total annual appropriation may be used for administrative costs to districts and the commission.

Section 35. KRS 350.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface impacts incident to an underground coal mine. The activities shall include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, extended depth secondary recovery systems, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching, or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine site. The activities shall not include the extraction of coal by a landowner of fifty (50) tons or less within twelve (12) successive calendar months for his own noncommercial use from land owned or leased by him; the extraction of twenty-five (25) to two hundred fifty (250) tons of coal as an incidental part of privately financed construction where the coal is donated to a charitable or educational organization for noncommercial use or noncommercial distribution; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; or coal exploration subject to KRS 350.057. Surface coal mining operations shall also include the areas upon which the activities occur or where the activities disturb the natural land surface. The areas shall also include any adjacent land, the use of which is incidental to the activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to the activities. This definition shall include the terms "strip mining" of coal and the "surface effects of underground mining" of coal as used in this chapter;

(2) "Strip mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include the extraction of coal by a landowner for his own noncommercial use of fifty (50) tons or less within twelve (12) successive calendar months from land owned or leased by him; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; coal exploration subject to KRS 350.057; nor shall it include the surface effects or surface impacts of underground coal mining;

(3) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of the operations as required by this chapter;

(4) "Overburden" means material of any nature, consolidated or unconsolidated, excluding topsoil, which lies above a natural deposit of coal and also means the material after removal from its natural state in the process of surface coal mining;

(5) "Area of land affected" means any area of land or water upon which surface coal mining and reclamation operations are conducted or located or are to be conducted or located;

(6) "Operations" means surface coal mining operations, all of the premises, facilities, roads, and equipment used in the process of producing coal from a designated area or removing overburden for the purpose of determining the location, quality, or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or the removal of coal;

(7) "Method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the coal;

(8) "Operator" means any person, partnership, or corporation engaged in surface coal mining operations who removes or intends to remove more than twenty-five (25) tons of coal from the earth by coal mining within twelve (12) consecutive calendar months in any one (1) location;

(9) "Person" means any persons, partnership, corporation, association, society, joint stock company, firm, company, or other business organization;

(10) "Cabinet" means the Natural Resources and Environmental Protection Cabinet;

(11) "Secretary" means the secretary of the Natural Resources and Environmental Protection Cabinet;

(12) "Reclamation" means the reconditioning of the area affected by surface coal mining operations under a plan approved by the cabinet;

(13) "Degree" when used in this chapter shall mean from the horizontal, and in each case shall be subject to a tolerance of five percent (5%) of error;

(14) "Bench" means the ledge, shelf, or terrace formed in the contour method of strip mining;

(15) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the cabinet determines that they are in compliance with KRS 350.455;

(16) "Certification" by a qualified registered professional engineer, as required by this chapter and regulations promulgated hereunder, means a good faith representation to the best of his or her knowledge and belief, based on adequate knowledge of the requirements of this chapter and regulations promulgated hereunder, related experience, best professional judgment, accepted engineering practices and recognized professional standards, and standard practice as it relates to direct participation by the registered professional engineer or supervision of the registered professional engineer's employees or subordinates. Certification shall not be construed to constitute a warranty or guarantee.

(17) "Reclamation development fund" means only that reconditioning of land affected by surface mining, which will directly promote and benefit the fund administered by the Kentucky Economic Development Finance Authority to foster economic development on surface mining land.

(18) "Reclamation development project" means only that reconditioning of land affected by surface mining, which will directly promote and benefit an economic undertaking which constitutes a project under KRS 154.01-010***(19)***~~[(14)]~~.

(19) "Reclamation development plan" means a plan submitted to the cabinet to show compliance with reclamation standards, and submitted to the Kentucky Economic Development Finance Authority to seek moneys from the reclamation development fund for a reclamation development project.

(20) "Permit applicant" or "applicant" means a person applying for a permit.

(21) "Permittee" means a person holding a permit to conduct surface coal mining and reclamation operations.

Section 36. To carry out the purposes of this Act, there is appropriated out of the general fund in the State Treasury the following:

		1994-95	1995-96
(1)	Cabinet for Economic Development		
(a)	Regulatory Expediting Center	$150,000	$150,000
(b)	Debt service for revolving loan fund for agribusiness and business networks	$1,000,000	$1,000,000
(c)	Support for agribusiness and other networks	$1,500,000	$1,500,000
(2)	Department of Agriculture		
(a)	Study constraints to direct sales of produce to grocery chain stores	$100,000	
(b)	Study of expanding out-of-state and international markets. The department shall contract with the Center for Agricultural Export Development for the international market part of the study.	$110,000	
(c)	The department shall contract with a Commonwealth university to conduct a comprehensive fiscal impact study of the agriculture, equine, and forest products industries.	$125,000	
(3)	Soil erosion and water quality cost-share fund	$500,000	$750,000

Any remaining amount of an appropriation in this section at the end of fiscal year 1994-95 shall be carried forward for the same purpose for fiscal year 1995-96.

Section 37. To carry out the purpose of Section 19 to Section 29 of this Act, there is appropriated to the agricultural enhancement fund in the State Treasury for the PACE Corporation the sum of $5,000,000 in fiscal year 1994-95 for bond funding. Any remaining amount of the appropriation at the end of fiscal year 1994-95 shall be carried forward into fiscal year 1995-96.

Section 38. The provisions of Sections 15 to 18 of this Act shall apply to taxable periods beginning after December 31, 1993.

The Committee Substitute to **HB 483** is as follows:

HB 483, AN ACT relating to development of business and agriculture and making appropriations therefor.

WHEREAS, the creation of the Kentucky Economic Development Partnership in 1992 signalled that agribusiness is an integral part of, and not separate from, economic development in Kentucky; and

WHEREAS, adding value to Kentucky-grown agriculture commodities before shipment out of state can greatly increase the total economic impact of the state's agriculture; and

WHEREAS, a prosperous agricultural economy is essential to healthy agribusiness and economic development; and

WHEREAS, agriculture has been and is a vital part of the social fabric of the state; and

WHEREAS, assisting the agricultural sector of Kentucky's economy to become globally competitive will require training, capital, technology, market development, and the creation of supporting networks; and

WHEREAS, the preservation of farmland is imperative to sustaining agriculture;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 154.01-010 is amended to read as follows:

As used in this chapter, unless the context indicates otherwise:

(1) ***"Agribusiness" or "agricultural business entity" means any person, partnership, corporation, or any entity engaged in a business that processes raw agricultural products, including timber, or provides value-added functions with***

regard to raw agricultural products;

(2) "Approved business network" or "approved flexible industrial network" means a business network comprising three (3) or more business firms or industries which have been identified as key industries and targeted by the state's strategic economic development plan for special consideration and assistance by the agencies of the Commonwealth;

(3) "Authority" means the Kentucky Economic Development Finance Authority, consisting of a committee as set forth in KRS 154.20-010;

(4)[~~(2)~~] "Board" means the Kentucky Economic Development Partnership, an administrative body within the meaning of KRS 12.010, and the governing body of the Cabinet for Economic Development, as created and established in KRS 154.10-010;

(5) "Business network" or "flexible industrial network" means a formalized, collaborative mechanism organized by and operating among three (3) or more industrial entities, business enterprises, or private sector firms for the purposes of, but not limited to: pooling expertise; improving responses to changing technology or markets; lowering the risks to individual entities of accelerated modernization; encouraging new technology investments, new market development, and employee skills improvement; and developing a system of collective intelligence among participating entities;

(6)[~~(3)~~] "Cabinet" means the Cabinet for Economic Development as established under KRS 12.250, and governed by the Kentucky Economic Development Partnership;

(7)[~~(4)~~] "Commonwealth" means the Commonwealth of Kentucky;

(8)[~~(5)~~] "Cost of a project" means the cost of the acquisition, construction, reconstruction, conversion, or leasing of any industrial, commercial, health care, agricultural, or forestry enterprise, or any part thereof, to carry out the purposes and objectives of this chapter, including, but not limited to, acquisition of land or interest in land, buildings, structures, or other planned or existing planned improvements to land, including leasehold improvements, machinery, equipment, or furnishings; working capital; and administrative costs including, but not limited to, engineering, architectural, legal, and accounting fees which are necessary for the project;

(9)[~~(6)~~] "Local and regional economic development interest" means any local business or economic development interest, including, but not limited to, chambers of commerce, business development associations, industrial development organizations, area development districts, and public economic development entities;

(10)[~~(7)~~] "Industrial entity" means any corporation, partnership, person, or any other legal entity, domestic or foreign, which will itself or through its subsidiaries or affiliates, engage in an industrial improvement project in the Commonwealth;

(11)[~~(8)~~] "Industrial improvement project" means and includes the acquisition, construction, or implementation of new manufacturing, processing, or assembling facilities, equipment, methods or processes, or improvements to or repair of existing manufacturing, processing, or assembling facilities, equipment, methods, or processes, as well as improvements to the real estate upon which the facilities are located, and includes any capital improvement to any existing facility, including any restructuring, retooling, rebuilding, reequipping, or any other form of upgrading such existing facility and equipment and any other improvements to such real estate, existing facility, or manufacturing, processing, or assembling equipment, method, or process;

(12) "Key industry" means an industry or business within an industrial sector which has been identified in and targeted by the state's economic development strategic plan as having major importance to the sustained economic growth of the Commonwealth and in which member firms sell goods or services into markets for which national or international competition exists, including, but not limited to, secondary forest products manufacturing, agribusiness, and high technology and biotechnology manufacturing and services;

(13)[~~(9)~~] "Municipality" means a county, city, village, township, development organization, an institution of higher education, a community or junior college, a subdivision or instrumentality of any of the foregoing, or any entity created by two (2) or more municipalities pursuant to the Interlocal Cooperation Act, KRS 65.210 to 65.300;

(14) "Network broker" means a person who is trained to assist private sector firms to form business networks and make other similar efforts to provide for joint manufacturing, marketing, technology development, information dissemination, and other activities;

(15)[~~(10)~~] "Non-appropriation-supported bond" means any long-term financial borrowing instrument for which regular debt service does not originate from an appropriation of the General Assembly;

(16)[~~(11)~~] "Non-appropriation-supported note" means any short-term financial borrowing instrument for which loan payments do not originate from an appropriation of the General Assembly;

(17)[~~(12)~~] "Person" means an individual, partnership, joint venture, profit or nonprofit corporation including a public or private college or university, or other association of persons organized for agricultural, commercial, health care, or industrial purposes; or a public utility or local industrial development corporation;

(18)[~~(13)~~] "Private sector" means any source other than the authority, a state or federal entity, or an agency thereof;

(19)[~~(14)~~] "Project" means an endeavor approved by the cabinet or authority and related to industrial, manufacturing, mining, mining reclamation for economic development, commercial, health care, or agricultural enterprise. Project shall include, but is not limited to, ***agribusiness,*** agricultural or forestry production, harvesting, storage, or processing facilities or equipment; equipment or facilities designed to produce energy from renewable resources; research parks; office facilities; engineering facilities; research and development laboratories; warehousing facilities; parts distribution facilities; depots or storage facilities; port facilities; railroad facilities, including trackage, right-of-way, and appurtenances; airports and airport renovation; water and air pollution control equipment or waste disposal facilities; tourist facilities; theme or recreational parks; health care and health related facilities; farms, ranches, forests, and other agricultural or forestry commodity producers; agricultural harvesting, storage, transportation, or processing facilities or equipment; grain elevators; shipping heads and livestock pens; livestock; wharves and dock facilities; water, electricity, hydroelectric, coal, petroleum, or natural gas provision facilities; dams and irrigation facilities; sewage, liquid, and solid waste collection, disposal treatment, and drainage services and facilities. Except for airport-related facilities, project shall not include that portion of an endeavor devoted to the sale of goods at retail or that portion of an endeavor devoted to housing which does not consist of the manufacture of housing;

(20)[~~(15)~~] "Reclamation development fund" means the fund administered by the Kentucky Economic Development Finance Authority to foster economic development on surface mining land;

(21)[~~(16)~~] "Reclamation development project" means only that reconditioning of land affected by surface mining, which will directly promote and benefit an economic undertaking which constitutes a project under subsection (14) of this section;

(22)[~~(17)~~] "Reclamation development plan" means a plan submitted to the Natural Resources and Environmental Protection Cabinet to show compliance with reclamation standards, and submitted to the Kentucky Economic Development Finance Authority to seek moneys from the reclamation development fund for a reclamation development project;

(23)[~~(18)~~] "Secretary" means the chief executive officer and secretary of the Cabinet for Economic Development;

(24)[~~(19)~~] "State" means the Commonwealth of Kentucky; and

(25)[~~(20)~~] "Tax revenues" means any revenues received by the Commonwealth directly or indirectly as a result of the industrial improvement project, including state corporate income taxes, state income taxes paid by employees who work in the project, state property taxes, state corporation license taxes, or state sales and use taxes.

Section 2. KRS 154.20-030 is amended to read as follows:

It shall be the purpose of the Kentucky Economic Development Finance Authority to develop and expand existing and alternative sources of energy and the conservation of energy, to assist business enterprise in obtaining additional sources of financing to aid this state in achieving the goal of long-term economic growth and full employment, to meet the growing competition for business enterprises, to preserve existing jobs, to create new jobs, to reduce the cost of business and production, to reduce the costs and liabilities by encouraging and financing efforts to reduce and avoid the generation of hazardous waste and toxic by-products, to foster export activity, to foster economic development on surface mining land, and to alleviate and prevent unemployment through the retention, promotion, and development of agriculture and agricultural facilities, ***agribusiness,*** forestry and forestry facilities, commerce and commercial facilities, health care and health related facilities, export markets and export activities, industry and industrial buildings and facilities, tourism and tourist facilities, including the sites therefor, and agricultural, forestry, commercial, and industrial machinery and equipment, water and air pollution control equipment, and solid waste disposal facilities with respect thereto or for use by individuals for private sector employment. Such purposes shall be public purposes for which public money may be spent.

Section 3. KRS 154.20-310 is amended to read as follows:

As used in KRS 154.20-300 to 154.20-390 unless the context requires otherwise:

(1) "Commonwealth Venture Fund" means the venture capital entity established and managed pursuant to KRS 154.20-320.

(2) "Qualified investment" means an investment in the Commonwealth venture fund purchased in cash by a Kentucky taxpayer.

(3) "State tax liability" means a taxpayer's total state tax liability that is incurred under:

  (a) KRS 136.070 - Corporation license tax;

  (b) KRS 136.270 - Bank and trust company share tax;

  (c) KRS 136.300 - Savings and loan tax;

  (d) KRS 136.320 - Domestic life insurance property tax; and

  (e) KRS Chapter 141 - Income tax.

(4) "Taxpayer" means any person, corporation, partnership or other entity that has any state tax liability.

(5) "Small business" means a Kentucky based company, including start-up and pre-start-up businesses, employing less than five hundred (500) people, with capitalization limits as follows:

  (a) Less than one million dollars ($1,000,000) for a nonmanufacturing firm; or

  (b) Less than three million dollars ($3,000,000) for a manufacturing firm.

Employment and capitalization limits of this subsection shall apply only at the point of any initial investment by the fund.

(6) "Capitalization" means owners' equity, common stock, preferred stock, and retained earnings.

(7) [~~"Agribusiness" means any person, partnership, corporation, or any entity engaged in an agricultural endeavor, including forestry, horticulture, and aquaculture, or an agriculturally related business.~~

~~(8)~~] "Fiscal rate of return" means a measurable future revenue stream to the Kentucky Revenue Cabinet in exchange for the foregone current revenues because of the targeted venture capital tax credit of seven million dollars ($7,000,000) as specified in KRS 154.20-350.

Section 4. KRS 154.22-010 is amended to read as follows:

The following words and terms as used in KRS 154.22-010 to 154.22-070, unless the context clearly indicates a different meaning, shall have the following meanings:

(1) "Approved company" means any eligible company seeking to locate an economic development project in a qualified county, which eligible company is approved by the authority pursuant to KRS 154.22-010 to 154.22-070.

(2) "Approved costs" means:

(a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;

(b) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;

(c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project which is not paid by the contractor or contractors or otherwise provided for;

(d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;

(e) All costs which shall be required to be paid under the terms of any contract or contracts for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and

(f) All other costs of a nature comparable to those described above.

(3) "Assessment" means the job development assessment fee authorized by KRS 154.22-010 to 154.22-070.

(4) "Authority" means the Kentucky Economic Development Finance Authority as created in KRS 154.20-010.

(5) "Bonds" means the revenue bonds, notes, or other debt obligations of the authority authorized to be issued by the authority, eligible companies, or other state agency.

(6) "Commonwealth" means the Commonwealth of Kentucky.

(7) "Economic development project" means and includes the acquisition of any real estate in a qualified county by either the authority or the approved company, and the construction, installation, equipping, and rehabilitation of improvements, including fixtures and equipment, and facilities necessary or desirable for improvement of the real estate, including surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage, storm water retention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities on the real estate, for use and occupancy by the approved company or its affiliates for manufacturing purposes ***or for agribusiness purposes***.

(8) "Eligible company" means any corporation, partnership, sole proprietorship, or business trust engaged in manufacturing ***or in agribusiness*** which meets the standards promulgated by the authority pursuant to KRS 154.22-010 to 154.22-070.

(9) "Financing agreement" means any agreement entered into, pursuant to KRS 154.22-010 to 154.22-070, on behalf of the authority or other lenders, or both, and an approved company with respect to an economic development project.

(10) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to it, together with the storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals.

(11) "Qualified county" means any county certified as such by the authority pursuant to KRS 154.22-010 to 154.22-070.

(12) "State agency" shall have the meaning assigned to the term in KRS 56.440(8).

(13) "Revenues" shall not be considered state funds.

Section 5. KRS 154.22-020 is amended to read as follows:

(1) The General Assembly hereby finds and declares that the general welfare and material well-being of citizens of the Commonwealth, and particularly those residing in qualified counties, depends in large measure upon the development and growth of industry in the Commonwealth.

(2) The General Assembly hereby finds and declares further that it is in the best interest of the Commonwealth to induce the location of manufacturing facilities ***and agribusiness operations*** within the qualified counties of the Commonwealth in order to advance the public purposes of relieving unemployment by creating new jobs within the qualified counties that but for the inducements to be offered by the authority to approved companies as herein provided would not exist and of creating new sources of tax revenues for the support of the public services provided by the Commonwealth and qualified counties.

(3) The General Assembly hereby finds and declares further that the authority granted by KRS 154.22-010 to 154.22-070 and the purposes to be accomplished hereby are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the location of manufacturing facilities ***and agribusiness operations*** within qualified counties is of paramount importance, mandating that the provisions of KRS 154.22-010 to 154.22-070 be liberally construed and applied in order to advance the public purposes.

Section 6. KRS 154.26-010 is amended to read as follows:

As used in KRS 154.26-015 to 154.26-100, unless the context clearly indicates otherwise:

(1) "Agreement" means an agreement entered into, pursuant to KRS 154.26-090, on behalf of the authority and an approved company with respect to an economic revitalization project;

(2) "Approved company" means any eligible company approved by the authority pursuant to KRS 154.26-080 requiring an economic revitalization project;

(3) "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

(c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(e) All costs required for the installation of utilities, including, but not limited to, water, sewer, sewer treatment, gas, electricity, communications, and railroads, and including off-site construction of the facilities paid for by the approved company; and

(f) All other costs comparable with those described above;

(4) "Assessment" means the job revitalization assessment fee authorized by KRS 154.26-100;

(5) "Authority" means the Kentucky Industrial Revitalization Authority created by KRS 154.26-020;

(6) "Board" means the board of directors of the Kentucky Rural Economic Development Authority, or its successor;

(7) "Commonwealth" means the Commonwealth of Kentucky;

(8) "Economic revitalization project" or "project" means the acquisition, construction, equipping, and rehabilitation of machinery and equipment, constituting fixtures or otherwise, and with respect thereto, the construction, rehabilitation, and installation of improvements of facilities necessary or desirable for the acquisition, construction, installation, and rehabilitation of the machinery and equipment, including surveys; installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are utilized to improve the economic situation of the approved company to allow the approved company to remain in operation and retain or create jobs;

(9) "Eligible company" means any corporation, partnership, sole proprietorship, or business trust, employing or intending to employ a minimum of twenty-five (25) persons engaged in manufacturing ***or agribusiness operations*** at the same facility, whether owned or leased, located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval by the authority of an economic revitalization project, including facilities where manufacturing ***or agribusiness operations*** has been temporarily suspended and which meets the standards promulgated by the authority pursuant to KRS 154.26-080;

(10) "Inducements" means the Kentucky income tax credit and the job revitalization assessment fee as prescribed in KRS

154.26-090 and 154.26-100;

(11) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing that results in a change in the condition of the property and any related activity or function, together with the storage, warehousing, distribution, and related office facilities; and

(12) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.010, or any board, commission, institution, or division exercising any function of the state which is not an independent municipal corporation or political subdivision.

Section 7. KRS 154.26-015 is amended to read as follows:

The General Assembly finds and declares that the general welfare and material well-being of the citizens of the Commonwealth depends in large measure upon the revitalization and development of industry in the Commonwealth, and that it is in the best interest of the Commonwealth to induce the revitalization of existing manufacturing ***or agribusiness*** facilities within the Commonwealth in order to advance the public purposes of relieving unemployment by preserving and creating jobs that would not exist if not for the inducements to be offered by the authority to approved companies, and by preserving and creating sources of tax revenues for the support of public services provided by the Commonwealth; and that the authority prescribed by KRS 154.26-015 to 154.26-100, and the purposes to be accomplished under the provisions of KRS 154.26-015 to 154.26-100 are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the creation of projects is of paramount importance mandating that the provisions of KRS 154.26-015 to 154.26-100 be liberally construed and applied in order to advance public purposes.

Section 8. KRS 154.28-010 is amended to read as follows:

As used in KRS 154.28-010 to 154.28-090 and 141.400, unless the context clearly indicates otherwise:

(1) "Agreement" means an agreement entered into, pursuant to KRS 154.28-090, on behalf of the authority and an approved company with respect to an economic development project;

(2) "Approved company" means any eligible company, approved by the authority pursuant to KRS 154.28-080, requiring an economic development project;

(3) "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, rehabilitation, and installation of an economic development project;

(b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, rehabilitation, and installation of an economic project which is not paid by the vendor, supplier, deliverymen, contractors, or otherwise else provided;

(c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation, and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, rehabilitation, and installation of an economic development project;

(d) All costs which shall be required to be paid under the terms of any contract for the acquisition, construction, rehabilitation, and installation of an economic development project;

(e) All costs which shall be required for the installation of utilities such as water, sewer, sewer treatment, gas, electricity, communications, railroads, and similar facilities, and including offsite construction of the facilities paid for by the approved company; and

(f) All other costs comparable to those described above;

(4) "Authority" means the Kentucky Industrial Development Authority created by KRS 154.28-020;

(5) "Commonwealth" means the Commonwealth of Kentucky;

(6) "Economic development project" or "project" means and includes the acquisition of any real estate and the construction and installation of improvements and facilities necessary or desirable for improvement of the real estate, including: surveys, site tests, and inspections; subsurface site work and excavation; removal of structures, roadways, cemeteries, and other site obstructions; filling, grading, provision of drainage, and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; offsite construction of utility extensions to the boundaries of the real estate; and the acquisition and installation of manufacturing facilities ***or agribusiness operations*** on the real estate for the use of the approved company or its affiliates for manufacturing ***or agribusiness operational*** purposes;

(7) "Eligible company" means any corporation, partnership, sole proprietorship, or trust engaged in manufacturing ***or agribusiness operations*** which meets the standards promulgated by the authority pursuant to KRS Chapter 13A;

(8) "Inducement" means the Kentucky income tax credit as set forth in KRS 154.28-090;

(9) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property, and any activity functionally related to it,

together with storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals; and

(10) "State agency" shall have the meaning assigned to the term in KRS 56.440(8).

Section 9. KRS 154.28-015 is amended to read as follows:

The General Assembly hereby finds and declares that the general welfare and material well-being of the citizens of the Commonwealth depends in large measure upon the development and growth of industry in the Commonwealth, and that it is in the best interest of the Commonwealth to induce the location of ***agribusiness or*** manufacturing facilities within the Commonwealth in order to advance the public purposes of relieving unemployment by creating new jobs that would not exist if not for the inducements to be offered by the authority to approved companies, and by creating sources of tax revenues for the support of the public services provided by the Commonwealth, and that the authority prescribed by KRS 154.28-015 to 154.28-090 and 141.400, and the purposes to be accomplished under the provisions of KRS 154.28-015 to 154.28-090 and 141.400, are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the location of ***agribusiness or*** manufacturing facilities is of paramount importance, mandating that the provisions of KRS 154.28-015 to 154.28-090 and 141.400 be liberally construed and applied in order to advance the public purposes.

Section 10. KRS 154.28-080 is amended to read as follows:

(1) The authority shall promulgate standards for the determination and approval of eligible companies and their economic development projects in accordance with KRS Chapter 13A.

(2) These standards shall give the greatest weight to the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to the residents of the Commonwealth; and the likelihood of the economic success of the economic development project.

(3) No economic development project which will result in the voluntary replacement of manufacturing ***or agribusiness*** facilities existing within the Commonwealth shall be approved by the authority; however, the authority may approve an economic development project that rehabilitates a manufacturing ***or agribusiness*** facility which has not been in operation for a period of three (3) consecutive months.

(4) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the application, the authority shall make inquiries and request materials of the applicant, including, but not limited to, written evidence that except for the receipt of inducements authorized by KRS 154.28-015 to 154.28-090 and 141.400, the eligible company will not locate its economic development project within the Commonwealth.

(5) After a diligent review of the relevant materials and completion of its inquiries, the authority, by resolution of its board of directors, may designate an eligible company to be an approved company and authorize the undertaking of its economic development project.

(6) All meetings of the board of directors of the authority shall be held in accordance with KRS 61.805 to 61.850. The board of directors of the authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

SECTION 11. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

Industrial entities, agricultural business entities, business enterprises, or private sector firms which are members of a business network within the meaning of Section 1 of this Act in a targeted industrial sector as set forth in the state strategic plan for economic development as prescribed in KRS 154.10-120 shall be given priority consideration under state economic development loan, grant, and incentive programs administered by the Kentucky Economic Development Finance Authority.

SECTION 12. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) The Regulatory Expediting Center is established within the cabinet to assist industries and businesses proposing to locate or expand existing operations in Kentucky with applications for permits, licenses, certificates, registration, and any other form of authorization or permit required by a state, federal, or local agency to engage in a particular business activity or act.

(2) The center shall train and deploy persons with knowledge and skills essential to expediting a request for assistance by a prospective or expanding business or industry with applications for permits, licenses, certificates, registration, and any other form of authorization required by a state, federal, or local governmental agency to engage in a particular business activity or act.

(3) Assistance given by the center regarding federal and local regulations and requirements necessary to engage in the proposed business activity or act shall be limited to providing the business or industrial entity with copies of application forms and other written information provided by the appropriate federal and local agencies. The Business Information Clearinghouse as prescribed in Section 13 of this Act shall develop and maintain a current list of licensing, permitting, certification, registration, and other authorization requirements applicable to business or industrial development and expansions.

(4) Priority shall be given to business or industrial development or expansion proposals by businesses or industrial entities participating in an approved business network.

Section 13. KRS 154.12-216 is amended to read as follows:

(1) There is established in the department a Business Information Clearinghouse.

(2) By January 1, 1985, the clearinghouse shall develop and maintain a current list of all licenses arranged by the Standard Industrial Classification (SIC) developed by the U.S. Department of Labor or similar classification system as may be developed by the clearinghouse.

(3) The clearinghouse shall, to the extent possible, develop and distribute informational packets for each business classification. The informational packet for each business classification shall include applications, fee schedules, and informational bulletins for the licenses most commonly required of businesses within that classification.

(4) The clearinghouse shall provide a toll-free telephone and referral service for the entire Commonwealth to aid new and continuing businesses with the licensing process.

(5) The clearinghouse shall maintain current information on other agencies' programs that provide business financing and management assistance and shall serve as a referral service to those programs *to the staff of the Regulatory Expediting Center as established in Section 12 of this Act*.

(6) The manager shall encourage federal and local governments to participate by submitting copies of application forms for licenses applicable to businesses in the Commonwealth.

(7) Work teams may be assembled at the request of the issuing agency, the regulated industry, the Governor, or the General Assembly. The clearinghouse and issuing agency shall coordinate the activities of and provide staff assistance to any work teams. Members of the work teams shall serve without compensation.

(8) The clearinghouse shall prepare an annual report summarizing its work for the Governor and the General Assembly. In addition to other information specifically required to be in this report by KRS 154.12-221, the report shall include a list of all licenses arranged by business classification and agency, the reports of any work teams, and may include recommendations on necessary statute or regulation changes to enable agencies to simplify or consolidate regulatory activities.

SECTION 14. A NEW SECTION OF SUBCHAPTER 31 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) Any business firm that is a member of an approved business network comprising individual firms, companies, agricultural business entities, or industrial entities that have been identified as key industries and that have been targeted by the state's economic development strategic plan as eligible for priority consideration for state assistance shall also be eligible for state assistance under the provisions of this section.

(2) A business networks revolving loan fund shall be established and shall be administered by the Kentucky Economic Development Finance Authority. The fund shall be maintained and credited with repayments and the fund balance shall be available in perpetuity to provide loans at or below market rates at terms not to exceed thirty (30) years to members of approved business networks to support the development and production of new and expanded products and production facilities, including, but not limited to, financing development and construction of value-added food and fiber production facilities, accelerating modernization of production systems, and making of new technology investments. The maximum amount of loans made available to any member of an approved business network shall not exceed ten percent (10%) of the total amount of available funds.

(3) The Kentucky Economic Development Finance Authority shall cause to be established and implemented fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods for payments and disbursements received and made by the fund and for fund balances at the beginning and end of each accounting period.

(4) In addition to powers and authorities otherwise granted the Kentucky Economic Development Finance Authority, the authority may:

(a) Make and condition loans from the fund as required by state or federal law,

(b) Enter into any necessary or required agreement and give or make any necessary or required assurance or certification with any person or entity to receive payments or to make or to provide loans;

(c) Guarantee or purchase insurance for obligations of the fund where the action would improve credit market access or reduce interest rates;

(d) Receive money from any public or private source to implement the purposes of this section;

(e) Approve or reject applications made to it for loans from the fund, and establish standards applicable thereto;

(f) Provide for the issuance of revenue bonds and bond anticipation notes as prescribed by KRS 154.10-035 for the purposes as set forth in this section;

(g) Promulgate administrative regulations implementing the purposes of this section in accordance with KRS

Chapter 13A; and

(h) Do all things necessary and convenient to achieve the objectives and purposes of this section which are not otherwise prohibited by state law.

(5) In carrying out the objectives and purposes of this section, the authority shall consult with the Kentucky Department of Agriculture regarding development of standards and conditions applicable to agribusiness and agriculture related loan applications.

(6) Nothing contained herein shall preclude the authority from contracting with or acquiring services from any state agency or institution regarding implementation of this section.

Section 15. KRS 141.0101 is amended to read as follows:

(1) For property placed in service prior to January 1, 1990, in lieu of the depreciation and expense deductions allowed under Internal Revenue Code Sections 168 and 179, a deduction for a reasonable allowance for depreciation, exhaustion, wear and tear, and obsolescence of property used in a trade or business shall be allowed and computed as set out in subsections (2) to (10) of this section. For property placed in service after December 31, 1989, the depreciation and expense deductions allowed under Sections 168 and 179 of the Internal Revenue Code in effect on December 31, 1989, shall be allowed.

(2) Effective August 1, 1985, "reasonable allowance" as used in subsection (1) of this section shall mean depreciation computed in accordance with Section 167 of the Internal Revenue Code and related regulations in effect on December 31, 1980, for all property placed in service on or after January 1, 1981, except as provided in subsections (5) to (7) of this section.

(3) Depreciation of property placed in service prior to January 1, 1981, shall be computed under Section 167 of the Internal Revenue Code, and the method elected thereunder at the time the property was first placed in service or as changed with the approval of the Commissioner of Internal Revenue Service or as required by changes in federal regulations.

(4) Taxpayers other than corporations shall be allowed to deduct as depreciation on recovery property placed in service before August 1, 1985, an amount calculated under Section 168 of the Internal Revenue Code subject to the provisions of subsections (5) and (7) of this section. Corporations with a taxable year beginning on or after July 1, 1984, and before August 1, 1985, shall calculate a deduction for depreciation on recovery property placed in service prior to August 1, 1985, using either of the following alternative methods:

(a) Dividing the total of the deductions allowed under Internal Revenue Code Section 168 by one and four tenths (1.4); and

(b) Calculating the deduction that would be allowed or allowable under the provisions of Section 167 of the Internal Revenue Code.

(5) Recovery property placed in service on or after January 1, 1981, and before August 1, 1985, and subject to transition under subsection (7) of this section, shall be subject to depreciation under Section 167 of the Internal Revenue Code, restricted to the straight line method therein provided over the remaining useful life of such assets.

(6) Depreciation of property placed in service on or after August 1, 1985, shall be computed under Section 167 of the Internal Revenue Code.

(7) Transition from Section 168 of the Internal Revenue Code, Accelerated Cost Recovery System (ACRS) depreciation, to the depreciation allowed or allowable under this section shall be reported in the first taxable year beginning on or after August 1, 1985. To implement the transition, the following adjustments shall be made:

(a) Taxpayers other than corporations shall use the adjusted Kentucky basis for property placed in service on or after January 1, 1981. "Adjusted Kentucky basis" means the basis used for determining depreciation under Section 168 of the Internal Revenue Code less the allowed or allowable depreciation and adjustment for election to expense an asset (Section 179 of the Internal Revenue Code);

(b) Corporations shall adjust the federal unadjusted basis by increasing such basis by the ACRS depreciation not allowed as a deduction in determining Kentucky net income for tax years beginning after June 30, 1984, less allowed or allowable ACRS depreciation for federal income tax purposes. Corporations will not be permitted to adjust the basis by the ACRS depreciation not allowed for Kentucky income tax purposes in tax years beginning on or before June 30, 1984.

(8) A taxpayer may elect to treat the cost of property placed in service on or before July 31, 1985, as an expense as provided in Section 179 of the Internal Revenue Code in effect on December 31, 1981, except that the aggregate cost which may be expensed for corporations shall not exceed five thousand dollars ($5,000). A taxpayer may elect to treat the cost of property placed in service on or after August 1, 1985, as an expense as provided in Section 179 of the Internal Revenue Code in effect on December 31, 1980. Computations, limitations, definitions, exceptions, and other provisions of Section 179 of the Internal Revenue Code and related regulations shall be construed to govern the computation of the allowable deduction.

(9) Upon the sale, exchange, or disposition of any depreciable property placed in service on or after January 1, 1981, capital gains or losses and the amount of ordinary income determined under the provisions of the Internal Revenue Code shall be

computed for Kentucky income tax purposes as follows:

(a) Compute the Kentucky unadjusted basis which is the cost of the asset reduced by any basis adjustment made by the taxpayer under Section 48(q)(1) of the Internal Revenue Code and any expense allowed and utilized under Section 179 of the Internal Revenue Code (First Year Expense) in determining Kentucky net income in prior years, and

(b) Compute the adjusted basis by subtracting the depreciation allowed or allowable for Kentucky income tax purposes from the unadjusted basis, except corporations will not be permitted to adjust the basis of assets by the ACRS depreciation not allowed for Kentucky income tax purposes in the tax years beginning on or before June 30, 1984, and

(c) Compute the gain or loss by subtracting the adjusted basis from the value received from the disposition of the depreciable property, and

(d) Compute the recapture of depreciation required under Sections 1245 through 1256 of the Internal Revenue Code and related regulations, and

(e) Unless otherwise provided in this subsection the provisions of the Internal Revenue Code and related regulations governing the determination of capital gains or losses shall apply for Kentucky income tax purposes.

(10) Unless otherwise provided by this chapter, the basis of property placed in service prior to January 1, 1990, for purposes of Kentucky income tax shall be the basis, adjusted or unadjusted, required to be used under Section 167 of the Internal Revenue Code in effect on December 31, 1980.

(11) Notwithstanding any other provision of this section to the contrary, any qualified farming operation, as defined in Section 16 of this Act, shall be allowed to compute the depreciation deduction for new buildings and equipment purchased to enable participation in a networking project, as defined in Section 16 of this Act, on an accelerated basis at two (2) times the rate that would otherwise be permitted under the provisions of this section. The accumulated depreciation allowed under this subsection shall not exceed the taxpayer's basis in such property.

SECTION 16. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

As used in Sections 16 to 18 of this Act, unless the context requires otherwise:

(1) "Approved costs" means the costs incurred during the taxable year by a qualified farming operation for training and improving the skills of managers and employees involved in a networking project.

(2) "Business network" means a formalized, collaborative mechanism organized by and operating among three (3) or more qualified farming operations, industrial entities, business enterprises, or private sector firms for the purposes of, but not limited to: pooling expertise; improving responses to changing technology or markets; lowering the risks to individual entities of accelerated modernization; encouraging new technology investments, new market development, and employee skills improvement; and developing a system of collective intelligence among participating entities.

(3) "Food producing facilities" means establishments that manufacture or process foods and beverages for human consumption, and which are included under the two (2) digit SIC code 20;

(4) "Networking project" means a project by which farmers and other entities involved in the production of food join together to form a network approved by the Cabinet for Economic Development for the purpose of producing or expanding the production of crops or livestock necessary for the establishment or expansion of secondary food-producing facilities in Kentucky.

(5) "Qualified farming operation" means an individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, or institution, engaged in farming in Kentucky that provides raw materials for food-producing facilities in Kentucky, and that purchases new buildings or equipment, or that incurs training expenses, to support its participation in a networking project.

(6) "SIC code" means the classification system grouping business operations or enterprises as published in the "Standard Industrial Classification Manual" of the United States Office of Management and Budget, 1987 edition.

SECTION 17. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) A qualified farming operation shall be entitled to a nonrefundable credit against the Kentucky income tax liability established pursuant to the provisions of this chapter on any income of the qualified farming operation generated by or arising out of the qualified farming operation's participation in a networking project. The annual credit shall be available for the first five (5) years that the farming operation is involved in the networking project. The annual credit shall be equal to the approved costs incurred by the qualified farming operation during the tax year and shall not exceed the income of the qualified farming operation generated by or arising out of the qualified farming operation's participation in a networking project.

(2) Any credit not used in the tax year in which it first becomes available may be carried forward to the next succeeding five (5) tax years until the credit has been fully used. The aggregate credit used in any tax year shall not exceed the income of the qualified farming operation generated by or arising out of the qualified farming operation's

participation in a networking project in that tax year.

SECTION 18. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) A qualified farming operation which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040(1) shall:

(a) Compute the income tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income as defined by KRS 141.010(11) or taxable net income as defined by KRS 141.010(14), including income from the qualified farming operation's participation in a networking project.

(b) Compute the income tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income as defined by KRS 141.010(11) or taxable net income as defined by KRS 141.010(14), excluding net income attributable to the qualified farming operation's participation in a networking project; and

(c) Be entitled to a tax credit in the amount by which the tax computed under paragraph (a) of this subsection exceeds the tax computed under paragraph (b) of this subsection. The credit shall not exceed the farming operation's approved costs, as defined in Section 16 of this Act.

(2) Notwithstanding any other provisions of this chapter, a qualified farming operation which is an S-corporation, partnership, or trust shall be subject to income tax on the net income attributable to its participation in a networking project at the rates provided in KRS 141.020(2), and the amount of the tax credit shall be the same as the amount of the tax computed in this subsection. The credit shall not exceed the farming operation's approved costs, as defined in Section 16 of this Act. If the tax computed in this subsection exceeds the tax credit, the difference shall be paid by the S-corporation, partnership, or trust at the times provided by KRS 141.160 for filing the returns.

(3) Notwithstanding any other provisions of this chapter, the net income subject to tax and the tax credit determined under subsection (2) of this section shall be excluded in determining each shareholder's, partner's, or beneficiary's distributive share of net income or credit of an S-corporation, partnership, or trust.

(4) If the networking entity is a separate facility, net income attributable to the project for the purposes of subsections (1), (2), and (3) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the project and overhead expenses apportioned to the project.

(5) If the networking project is an expansion to a previously existing farming operation, net income attributable to the entire operation shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the farming operation's participation in the networking project and overhead expenses apportioned to the networking project, and the net income attributable to the networking project for the purposes of subsections (1), (2), and (3) of this section shall be determined by apportioning the separate accounting net income of the entire networking project to the networking project by a formula approved by the Revenue Cabinet.

(6) If an approved company can show to the satisfaction of the Revenue Cabinet that the nature of the operations and activities of the approved farming operation are such that it is not practical to use the separate accounting method to determine the net income from the networking project, the approved farming operation shall determine net income from its participation in the networking project using an alternative method approved by the Revenue Cabinet.

(7) The Revenue Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A and require the filing of forms designed by the Revenue Cabinet necessary to effectuate Sections 15 to 18 of this Act, and the allowable income tax credit which an approved farming operation may retain under the provisions of Section 17 and this section of this Act.

SECTION 19. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly hereby finds and declares that it is a policy of the Commonwealth to retain agriculture and enhance the contribution that agriculture makes to its economy. A program to retain and enhance agriculture is in the economic best interests of the Commonwealth and, consequently, constitutes a public benefit that contributes to the health, safety, and general welfare of the residents of the Commonwealth and the nation.

(2) The General Assembly further finds and declares that the use of the Commonwealth's funds for the purpose of paying in whole or part the cost of acquiring agricultural conservation easements as set forth in Sections 19 to 29, including any costs necessarily incident to the acquisition, sale, issuance, and delivery of the funds, and the monitoring and enforcement of agricultural conservation easements, or to the participation of any party for these purposes, will promote the public health, safety, and general welfare of the people of the Commonwealth.

(3) Further, it is the purpose of Sections 19 to 29 of this Act to:

(a) Establish procedures for the acquisition of agricultural conservation easements in order to ensure that lands currently in agricultural use will continue to remain available for agriculture and not be converted to other land uses, and that landowners who participate in this program will be fairly compensated for their agreement to accept deed restrictions limiting the use of their property;

(b) Encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security that land use will remain stable;

(c) Protect normal farming operations in agricultural areas from incompatible nonfarming uses that may render farming impracticable;

(d) Protect normal farming operations from complaints of public nuisance against normal farming operations; and

(e) Maximize the use of agricultural conservation easement purchase funds and protect the investment of taxpayers in agricultural conservation easements.

SECTION 20. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) The Commonwealth is hereby authorized to acquire agricultural conservation easements or other property interests. The property interest acquired may be any less-than-fee-simple interest, including an easement, life estate, covenant, or other contractual right. Acquisition may be accomplished by purchase, gift, grant, bequest, devise, covenant, or contract but only at a price that is equal to or less than the appraised value as provided in this section. The Commonwealth shall purchase these property interests only upon voluntary application of the landowner.

(2) If the landowner so elects, the Commonwealth is authorized to pay the purchase price in a lump-sum single payment at the time of closing, to enter into contracts for pay outs over a term of years against the purchase price, or to enter into installment purchase agreements. When pay outs over time are made, the Commonwealth is authorized to pay interest consistent with prevailing market conditions at the time of the execution of the contract.

(3) The interest which the Commonwealth owns in property other than eligible lands may be exchanged for property interests in eligible lands on an equivalent appraised value basis. If the property exchanged is not exactly equal in appraised value, cash payments may be made to provide net equivalent value in the exchange.

(4) After the Commonwealth acquires an agricultural conservation easement or some property interest less than full ownership in any eligible land, the Commonwealth may purchase the remaining agricultural rights or other property interest in the land when the acquisition is necessary to maintain the agricultural uses of the property.

SECTION 21. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) As used in Sections 19 to 29 of this Act, unless the context clearly indicates otherwise:

(a) "Agricultural conservation easement" or "easement" means an interest in land, less than fee simple, which represents the right to restrict or prevent the development or improvement of the land for purposes other than agricultural production. The easement may be granted by the owner of the fee simple to the Commonwealth or to a qualified organization described in Section 170(c) of the Internal Revenue Code. It may be granted in perpetuity, as the equivalent of the covenants running with the land.

(b) "Agricultural district" means a land use category created by voluntary agreement between the Commonwealth and one or more landowners under Kentucky's agricultural district law, KRS 262.850, where the primary use of land is and will remain to be agriculture.

(c) "Agricultural production" means the production for commercial purposes of crops, livestock and livestock products, and nursery and greenhouse products, including the processing or retail marketing of these crops, livestock and livestock products, and nursery and greenhouse products, if more than fifty percent (50%) of those processed or merchandised products are produced by the farm operator, and the raising and stabling of horses for commercial purposes.

(d) "Applicant" means a person or qualified organization described in Section 170(c) of the Internal Revenue Code offering to sell to the PACE Corporation under the PACE Program an easement on a tract of land which is in or available for agricultural use.

(e) "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

(f) "Bargain sale" means the sale of an easement by a landowner at a price below appraised market value, when a portion of the value of the easement is donated by the landowner in a properly executed document as a charitable contribution to a qualified organization described in Section 170(c) of the Internal Revenue Code.

(g) "Capability class" means a group of soils that have similar characteristics when used for field crop production.

(h) "Comparable sales" means market sales of similar land. In locating comparable sales, first priority shall be given to parcels located in the same general vicinity. The second priority shall be given to farms located in other areas.

(i) "Conservation plan" means a plan describing best land management practices, including an installation schedule and maintenance program, which, when completely implemented, will improve and maintain soil, water, and related plant and animal resources of the land.

(j) "Contract of sale" means a legally enforceable agreement in a form provided by the PACE Board obligating the owner of a farmland tract to sell and the Commonwealth to purchase an easement or other less-than-fee interest on the farmland tract.

(k) "Commonwealth funds" means money appropriated to the PACE Corporation for the purchase of agricultural conservation easements.

(l) "Development" means the carrying out of any material change in the use or appearance of land, or dividing into two (2) or more parcels.

(m) "Easement value" means the value per acre as determined by a numerical point system or, if an appraisal is used, the difference between the unrestricted value of a farm and its value as restricted by an easement. If only one appraisal is used, unrestricted value is equal to market value and restricted value is equal to the value of the farm, subject to an agricultural conservation easement. If the landowner obtains an independent appraisal, easement value shall be calculated according to the average between the landowner's appraisal and the numerical point system, or if the Commonwealth also obtains an appraisal, the average between the landowner's appraisal and the Commonwealth's appraisal.

(n) "Eligible land" means a farmland tract in which the Commonwealth may acquire an agricultural conservation easement or other property interest as provided by this section.

(o) "Farm" means land in the Commonwealth which is being used for or is available for agricultural production as defined in this section.

(p) "Farmland tract" means land constituting all or part of a farm that is proposed for the purchase of an agricultural conservation easement.

(q) "Farmland value" means the price as of the valuation date for property used for normal farming operations, subject to the terms of an agricultural conservation easement, which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.

(r) "Fund" means the agricultural enhancement fund created by Section 29 of this Act.

(s) "Grantor" means the person or entity holding title to the farmland tract on which an easement is conveyed.

(u) "Grazing or pasture land" means land used for horse paddocks or the growing of grasses and legumes which are consumed by livestock in the field, and at least ninety percent (90%) of which is clear of trees, shrubs, vines, or other woody growth not consumed by livestock.

(v) "Harvested cropland" means land used for the commercial production of field crops, fruit crops, vegetables, and horticultural specialties, such as flowers, nursery stock, and ornamentals.

(w) "Horse paddock" means an enclosed area used for pasturing and exercising horses.

(x) "Landowner" means a person holding title to land.

(y) "Market value" means the price as of the valuation date for the highest and best use of the property which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.

(z) "Nonprofit land conservation organization" means nonprofit organization dedicated to land conservation purposes recognized by the Internal Revenue Service as a tax-exempt organization under Section 170(c) of the Internal Revenue Code.

(aa) "PACE Corporation" means the Purchase of Agricultural Conservation Easement Corporation created by subsection (1) of Section 22 of this Act.

(bb) "PACE Board" means the board of directors of the Purchase of Agricultural Conservation Easement Corporation created by subsection (2) of Section 22 of this Act.

(cc) "Qualified organization" means a tax-exempt organization described in Section 170(c) of the Internal Revenue Code.

(dd) "Reserved life estate" means property deeded to a nonprofit organization during an owner's lifetime with the owner retaining full use of and responsibility for the property until the death of the last survivor of those retaining life estates, whereupon, the responsibility of the property falls to the nonprofit organization. The property owner is entitled to an income tax deduction based on an appraised value and Internal Revenue Service actuarial tables, and the taxable estate may also be reduced.

(ee) "Restricted land" means land and buildings, the use of which is subject to the terms of an agricultural conservation easement.

(ff) "Restricted value" means the price as of the valuation date for property subject to an agricultural conservation easement which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.

(gg) "Soils report" means a report which sets forth the amount and description of each soil type and class found on a specific farm.

(hh) "Title report" means a report prepared by a person authorized by the state to engage in the sale of title insurance or an attorney setting forth the existence of any liens, restrictions, or other encumbrances on a farmland tract.

(ii) "Unrestricted value" means the current market value of a property.

(jj) "USDA" means the United States Department of Agriculture.

(kk) "USDA-SCS" means the Soil Conservation Service of the United States Department of Agriculture.

(ll) "Viable agriculture land" means land suitable for agricultural production and which will continue to be economically feasible for use if real estate taxes, farm use restrictions, and interference with and constraints on normal farming operations are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of urban and related nonagricultural development.

SECTION 22. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created the Purchase of Agricultural Conservation Easement Corporation which shall oversee all issues involving purchases of agricultural conservation easements. The corporation shall be a de jure municipal corporation and political subdivision of the Commonwealth. The corporation shall be a public agency within the meaning of KRS 61.805 and 61.870 and shall be attached for administrative purposes to the Department of Agriculture.

(2) (a) The corporation shall be governed by a board of directors, consisting of the following eleven (11) members: four (4) public directors who shall be the Commissioner of the Department of Agriculture, the secretary of the Natural Resources and Environmental Protection Cabinet, the dean of the University of Kentucky College of Agriculture, and the chair of the Soil and Water Conservation Commission, or their designees; and seven (7) private directors who shall be appointed by the Governor, as follows:

1. One (1) private director from each of the six (6) congressional districts; and

2. One (1) private director from a list of three (3) persons suggested by the Kentucky Farm Bureau Federation, Inc.

(b) Initial appointment of the private directors by the Governor shall be for staggered terms.

(c) No more than four (4) of the private directors shall be from the same political party. Members shall serve a term of four (4) years, with the exception of the initial members, and may be reappointed. Vacancies shall be filled in the same manner as the appointment is made.

(3) (a) Any member who has an ownership interest in any of the lands eligible for the purchase of an agricultural conservation easement or other property interest and who wishes to apply to sell an easement while serving on the board of directors shall withdraw himself from all board activities prior to application and until the transaction is complete. The Governor shall appoint an interim member to fill the vacancy until the transaction is complete.

(b) Any person who has previously applied for or sold an agricultural conservation easement may serve on the board.

(4) Members shall not be compensated for their services but shall be reimbursed for expenses incurred in the performance of their duties.

SECTION 23. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) The PACE Board shall have the following responsibilities:

(a) Implementing a Purchase of Agricultural Conservation Easement Program in the Commonwealth as provided by this section, including the development and promulgation of any administrative regulations required;

(b) Making decisions in connection with each specific easement purchase to be made with Commonwealth funds from the agricultural enhancement fund;

(c) Evaluating, as necessary, potential sites within the Commonwealth on which agricultural conservation easements or other property interests are to be acquired, applying the criteria set forth in this section and administrative regulations; and

(d) Employing the staff necessary to implement the provisions of this section.

(2) (a) The PACE Board shall establish fair, equitable, objective, nondiscriminatory procedures for determining easement purchase priorities.

(b) The board shall promulgate administrative regulations establishing policies and procedures for determining easement purchase priorities and for purchasing easements.

(c) The program criteria shall be designed to ensure that land is selected for easement purchase because it will make a significant contribution to agricultural production.

SECTION 24. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) During the term of an easement, the restricted land shall be used solely for the production of crops, livestock and livestock products, and nursery and greenhouse products including the processing or retail marketing of these crops, livestock and livestock products, and nursery and greenhouse products if more than fifty percent (50%) of the processed or merchandised products are produced on the subject land, and for the raising and stabling of horses for commercial purposes. For the purposes of this section and administrative regulations promulgated under its provisions, "crops, livestock and livestock products, and nursery and greenhouse products" include, but are not limited to:

(a) Tobacco;

(b) Wheat, soybeans, corn, and all commercially-produced fruits and vegetables;

(c) Horticultural specialties, including nursery stock ornamental shrubs, ornamental trees, and flowers;

(d) Livestock and livestock products, including horses, cattle, poultry, milk, swine, and eggs; and

(e) Aquatic plants and animals and their by-products.

(2) (a) During the term of an easement the landowner and the landowner's assigns, agents or leasees shall not perform, nor knowingly allow others to perform, any act on or affecting the restricted land that is inconsistent with the provisions of this section. The landowner shall be deemed to have authorized the PACE Board to enforce these provisions.

(b) Unless otherwise specified, the landowner shall not be required to take any action to restore the condition of the restricted land after any act of God or other event over which the landowner had no control.

(c) Nothing in the PACE Program shall relieve the landowner of any obligation or restriction on the use of the property imposed by law.

(d) The Commonwealth shall not locate landfills, sewage treatment plants, or other public service facilities that are not compatible with or complimentary to agricultural production on restricted lands.

(3) (a) To retain the agricultural viability of the restricted land, the PACE Board shall require, and the owner of the restricted land shall implement, a conservation plan approved by the soil and water conservation district. This plan shall be updated every ten (10) years and any time the basic farming operation conducted on restricted lands is changed. All farming operations shall be conducted substantially in accordance with the plan.

(b) In addition to the requirements established by the soil and water conservation district, the conservation plan shall require that:

1. The use of the land for growing sod, nursery stock, and ornamental trees and shrubs does not remove excessive soil from the restricted land;

2. The excavation of soil, sand, gravel, stone, or other materials for use in agricultural production on the restricted land is consistent with subsection (4)(h) of this section and is conducted in a location and manner that retains the viability of the restricted land for agricultural production; and

3. The mining of minerals is consistent with subsection (4)(h) of this section and is conducted only through the use of methods which will not interfere with the viability of the restricted land for agricultural production.

(4) The construction or reconstruction of any building or other structure, except those existing on the date of the easement or previously approved by the PACE Board, is prohibited except in accordance with this subsection.

(a) Existing fences may be repaired and replaced, and new fences may be built anywhere on the restricted land for purposes of reasonable and customary management of livestock and wildlife, without approval of the PACE Board.

(b) New buildings and other structures and improvements to be used solely for agricultural purposes including the processing or sale of farm products predominantly grown or raised on the restricted land, but not including any dwelling or farm labor housing, may not be built on the restricted land without the advance approval of the PACE Board. The PACE Board shall give approval within a reasonable time, unless it determines that the proposed building, structure, or improvement would not be properly located or would significantly diminish the agricultural production capacity of the restricted land.

(c) All existing single-family residential dwellings may be repaired, reasonably enlarged, and replaced at their current locations without further permission of the PACE Board. No new single-family residential dwellings may be built on the restricted land without the advance approval of the PACE Board. The PACE Board shall give approval within a reasonable time, unless it determines that a proposed dwelling would not be properly located or would significantly diminish the agricultural production capacity of the restricted land.

(d) The subdivision of the restricted land, whether by physical or legal process, is prohibited without the advance written approval of the PACE Board. The PACE Board shall give approval within a reasonable time, unless it determines that the proposed subdivision will diminish or impair the agricultural productivity of the restricted land.

(e) The granting of rights-of-ways through restricted land for the installation of, transportation of, or use of, lines for water, sewage, electric, telephone, gas, oil or oil products is permitted. The term "granting of rights-of-way" includes the right to construct or install the lines. The construction or installation of utility lines other than the types stated in this paragraph is prohibited on the restricted land.

(f) No portion of the restricted land shall be paved or otherwise be covered with concrete, asphalt, gravel, or any other paving material, nor shall any road for access or other purposes be constructed, without the advance written approval of the PACE Board. The PACE Board shall give approval within a reasonable time, unless it determines that the proposed paving or covering of the soil, or the location of any road, will substantially diminish or impair the agricultural productivity of the restricted land.

(g) Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the restricted land. Trees may also be cut to clear land for cultivation or use of livestock, but only if done in accordance with the conservation plan required by subsection (3) of this section. Any commercial timber harvesting on the restricted land shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester.

(h) The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance, using any method that disturbs the surface of the land, is prohibited without the advance written approval of the PACE Board. The PACE Board shall give approval within a reasonable time, unless it determines that the proposed mining or extraction will substantially diminish or impair the agricultural productivity of the restricted land.

(i) The dumping or accumulation of any kind of trash or refuse on the restricted land is prohibited. However, this shall not prevent the storage of agricultural products and by-products on the restricted land, so long as it is done in accordance with all applicable laws, administrative regulations, and ordinances.

(j) Golf courses are prohibited on the restricted land. Buildings and facilities for any other public or private recreational use may not be built on the restricted land without the advance written approval of the PACE Board. The PACE Board shall not give approval unless it determines that the proposed use or facilities will not substantially diminish or impair the agricultural productivity of the restricted land.

(5) Landowners shall retain the right to perform any act not specifically prohibited or limited by this section and administrative regulations promulgated under its provisions. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the restricted land and the right to sell or otherwise transfer the restricted land to anyone of the landowner's choice.

SECTION 25. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

Other than as specified within this section, this section and administrative regulations promulgated under its provisions are not intended to impose any legal or other responsibility on the PACE Board or in any way to affect any existing obligation of the landowner as owner of the restricted land. Accordingly:

(1) The landowner shall continue to be solely responsible for payment of all taxes and assessments levied against the restricted land.

(2) The landowner shall continue to be solely responsible for the upkeep and maintenance of the restricted land, to the extent it may be required by law. The PACE Board and the Commonwealth shall have no obligation for the upkeep or maintenance of the restricted land.

SECTION 26. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

A deed conveying an interest in the restricted land shall set forth the language of the assessment restrictions verbatim. Within thirty (30) days of a change in ownership of the restricted land, the prior owner shall notify the PACE Board in writing of the name and address of the new owner, together with the volume and page of the deed book in which the transfer has been recorded.

SECTION 27. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) If the PACE Board finds what is believes is a violation of the terms of any easement by the property owner, it may take appropriate legal action. Except when an ongoing or imminent violation could irreversibly diminish or impair the agricultural productivity of the restricted land, the PACE Board shall give the landowners written notice of the violation and sixty (60) days to correct it, before taking legal action.

(2) The owner of the restricted land shall bear all costs associated with the correction of a violation of the easement, including:

(a) Costs of work required and materials used to correct the violation and restore the restricted land to its condition prior to the violation;

(b) Administrative costs incurred by the PACE Board; and

(c) Court costs and reasonable attorney's fees incurred by the PACE Board in enforcing the easement.

SECTION 28. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) A grantor may terminate an easement, in whole or in part, only by filing an action in the Franklin Circuit Court, and demonstrating by clear and convincing evidence that conditions on or surrounding the land subject to an agricultural conservation easement have changed so much that agriculture is no longer viable and it has become impossible to fulfill any of the easement's conservation purposes. The grantor shall name the PACE Corporation as the defendant in the action.

(a) In the event that a finding is made by the court that a portion of the land subject to the agricultural conservation easement is no longer suitable for agricultural purposes, the owner shall, at the owner's expense, provide a survey of the land area on which the agricultural conservation easement is to be terminated.

(b) No agricultural conservation easement or portion thereof which has been purchased with Commonwealth funds shall be terminated by the court except upon payment by the grantor to the PACE Corporation of its then fair value. The value of the easement shall be established by one of the following two methods, as determined by the court:

1. The owner shall pay the PACE Corporation an amount equal in current dollars to the full cost of acquiring and monitoring the easement during its full duration, plus reasonable interest as determined by court; or

2. The owner shall pay the PACE Corporation an amount equal to the easement's current market value as determined by independent appraisal, performed at the owner's expense and satisfactory to the Commonwealth.

(c) The PACE Corporation shall place the proceeds from the termination of the easement in the agricultural enhancement fund and use the proceeds consistent with the purposes of Section 19 to Section 29 of this Act.

SECTION 29. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) (a) There is hereby created by this section a special fund in the State Treasury which shall be known as the "Agricultural Enhancement Fund." There shall be deposited in the fund:

1. Moneys received by the Commonwealth, from whatever source and by whatever means, as gifts for purposes of retaining agricultural lands and supporting and abetting agricultural practices and activities which shall improve conservation and natural resource protection practices, enhance the viability of the agriculture industry, and expand the economic contribution that agriculture makes to the Commonwealth;

2. Moneys received by the Commonwealth, from whatever source and by whatever means, as grants or loans for purposes of retaining agricultural lands and supporting and abetting agricultural practices and activities which shall improve conservation and natural resource protection practices, enhance the viability of the agriculture industry, and expand the economic contribution that agriculture makes to the Commonwealth;

3. Moneys received by the Commonwealth including proceeds of bonds issued for the purpose of funding the PACE Program as dedicated sources of revenue for the fund; and

4. Moneys appropriated to the fund.

(b) The fund shall be in the custody of the Commonwealth. All or any part of these funds may be invested in any securities in which public funds may lawfully be invested. All income derived from investments shall be paid into the fund and become a part thereof. The moneys so invested shall at all times be subject to withdrawal from investment for use as provided in this subsection.

(c) Upon authorization of the PACE Board, the moneys in the fund may be used for:

1. The acquisition of agricultural conservation easements on eligible lands within the Commonwealth;

2. The acquisition of options to purchase agricultural conservation easements on eligible lands within the Commonwealth;

3. The costs of appraisal, engineering, surveying, planning, financial, legal, and other services, and applicable personnel costs lawfully incurred incident to the acquisition of agricultural conservation easements in eligible lands and for monitoring and enforcing easements on restricted lands;

4. The costs incident to the sale, issuance, and delivery of bonds, and to securing funds from other revenue sources for the fund;

5. The provision of guarantees for loans that farmers participating in the PACE Program may need to seek from lending institutions in order to carry out agricultural operations, including loans for annual agricultural production, agriculture- and conservation-related improvements, and changes in the types of and methods employed for agricultural production on farmland tracts enrolled in the PACE Program; and

6. Other expenditures as specified by the PACE Board, providing that the expenditures are consistent with Sections 19 to 29 of this Act and administrative regulations promulgated by the PACE Board and are for the express purpose of retaining agricultural lands, supporting and abetting agricultural lands, and supporting and abetting agricultural practices and activities which shall improve conservation and natural resource protection practices, enhance the viability of the agriculture industry, and expand the economic contribution that agriculture makes to the Commonwealth.

(d) No more than ten percent (10%) of the moneys in the fund shall be expended in any one (1) fiscal year to administer Sections 19 to 29 of this Act.

SECTION 30. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) The State Department of Agriculture shall identify lands of statewide agricultural importance through the use of the United States Department of Agriculture's land evaluation and site assessment program and the state's geographic information system. The department shall provide information on the location of agricultural lands of statewide importance to each local planning unit operating under the requirements of KRS Chapter 100.

(2) The department is authorized to promulgate administrative regulations to implement this section.

Section 31. KRS 100.191 is amended to read as follows:

All elements of the comprehensive plan shall be based upon but not limited to, the following research, analysis, and projections:

(1) An analysis of the general distribution and characteristics of past and present population and a forecast of the extent and character of future population as far into the future as is reasonable to foresee;

(2) An economic survey and analysis of the major existing public and private business activities, and a forecast of future economic levels, including a forecast of anticipated necessary actions by the community to increase the quality of life of its current and future population through the encouragement of economic development as far into the future as is reasonable to foresee;

(3) Research and analysis as to the nature, extent, adequacy, and the needs of the community for the existing land and building use, transportation, and community facilities in terms of their general location, character and extent***, including, the identification and mapping of agricultural lands of statewide importance and analysis of the impacts of community land use needs on these lands***; and

(4) Additional background information for the elements of the comprehensive plan may include any other research analysis, and projections which, in the judgment of the planning commission, will further serve the purposes of the comprehensive plan.

Section 32. KRS 262.850 is amended to read as follows:

(1) This section shall be known as "the Agricultural District and Conservation Act."

(2) It is the policy of the state to conserve, protect and to encourage development and improvement of its agricultural lands for the production of food and other agricultural products. It is also the policy of this state to conserve and protect the agricultural land base as a valuable natural resource which is both fragile and finite. The pressure imposed by urban expansion, transportation systems, water impoundments, surface mining of mineral resources, utility rights-of-way and industrial development has continually reduced the land resource base necessary to sufficiently produce food and fiber for our future needs. It is the purpose of this section to provide a means by which agricultural land may be protected and enhanced as a viable segment of the state's economy and as an important resource.

(3) The local governing administrative body for an agricultural district shall be the conservation district board of supervisors. The Soil and Water Conservation Commission shall be responsible for statewide administration of the agricultural district program and shall have sole authority to certify or deny agricultural district petitions. The commission may apply for assistance and funds from the Federal Farmland Protection Act of 1981 (PL 97-377) which may be available for the development of the agricultural district program and may accept easements as provided in KRS 65.410 to 65.480.

(4) Any owner or owners of land may submit a petition to the local conservation district board of supervisors requesting the creation of an agricultural district within ***the*** ~~[such]~~ county. ***The*** ~~[Such]~~ petition shall include a description of the proposed area, description of each land parcel, location of the proposed boundaries, petitioners' names and addresses, adjacent landowners' names and addresses, and other pertinent information as required in the petition application. The boundary of an agricultural district shall be contiguous. No land shall be included in an agricultural district without the consent of the owner.

(5) Upon receipt of a petition, the local conservation district board of supervisors shall notify the fiscal court and any local or regional planning or zoning body, if any, by sending a copy of the petition and accompanying materials to that body.

(6) The following factors shall be considered by the local conservation district board of supervisors and the Soil and Water Conservation Commission when considering the formation of any agricultural district:

(a) The capability of the land to support agricultural production, as indicated by: soil, climate, topography or other natural factors;

(b) The viability of active farmlands, as indicated by: markets for farm products, extent and nature of farm improvements, present status of farming, anticipated trends in agricultural economic conditions and technology;

(c) That the proposed agricultural district meets the minimum size limit of two hundred fifty (250) contiguous acres***, unless the local conservation district board and the Soil and Water Conservation Commission allow fewer than two hundred fifty (250) contiguous acres if the proposed area meets a minimum annual production performance established by the district board and approved by the commission***;

(d) County development patterns and needs and the location of the district in relation to any urban development boundaries within the county; ~~[and]~~

(e) Any matter which may be relevant to evaluate the petition***; and***

(f) Whether an application is from more than one (1) farm owner, in which case a preference shall be given to the application.

(7) The local soil and water conservation district board of supervisors shall review the petition application and submit a recommendation to the Soil and Water Commission within sixty (60) days of receipt. The local conservation district recommendation shall be submitted to the commission in the form of approval, approval with modifications, or denial of the petition accompanied by justification for such a denial.

(8) The Soil and Water Conservation Commission shall review the recommendation of the district board of supervisors and certify or deny the agricultural district's petition within sixty (60) days of receipt.

(9) Upon the approval of a petition by the Soil and Water Conservation Commission, the commission shall notify the area development district in which the agricultural district will lie***, the local county clerk,*** and the secretary of the Governor's Cabinet.

(10) Land within the boundary of an agricultural district shall not be annexed.

(11) Any member, or any successor heir of the member, of an agricultural district may withdraw from the district upon notifying the local conservation district board of supervisors in writing.

(12) It shall be the policy of all state agencies to support the formation of agricultural districts as a means of preserving Kentucky's farmlands and to mitigate the impact of their present and future plans and programs upon the continued agricultural use of land within an agricultural district.

(13) Agricultural districts shall be comprised only of agricultural land as defined in KRS 132.010.

(14) An agricultural district shall be established for five (5) years with a review to be made by the local soil and water conservation district board of supervisors at the end of the five-year period and every five (5) years thereafter. ***Each owner of land shall agree to remain in the district for a five (5) year period, which is renewable at the end of the five (5) years.*** However, the board shall make a review any time upon the written request of a local government which demonstrates that the review is necessary in order to consider development needs of the local government. The board shall consider whether the continued existence of the district is justified, any adjustments which may be necessary due to urban or county development, and other factors the board finds relevant. The board shall revise the district as necessary based on the review and subject to approval of the State Soil and Water Conservation Commission. Before the state commission takes final action, all interested parties shall be given the opportunity to request the state commission to amend or overturn the local board's decision.

(15) The withdrawal of a member from a district reducing the remaining acreage of agricultural district land to less than two hundred fifty (250) acres or resulting in the remaining land being noncontiguous shall not cause the decertification of the district.

(16) Any member of an agricultural district who has received a summons of condemnation proceedings being instituted concerning the member's land located in the district may request the local soil and water conservation district board of supervisors to hold a public hearing on the proposed taking of land. However a hearing under this section shall not be held if the petitioner in the condemnation proceeding is a utility as defined in KRS 278.010(3) and obtained a certificate of convenience and necessity as required by KRS 278.020(1).

(17) (a) The board shall notify the local property valuation administrator of the farms which belong to an agricultural district and whenever a farm is withdrawn from a district. The board shall also inform all members of a district of the right to have their land assessed by the local property valuation administrator at the land's agricultural use value and shall offer advice and assistance on obtaining such an assessment.

(b) The board shall also notify the local property valuation administrator whenever a farm is released or withdrawn from an agricultural district.

(18) The board may allow an amendment to an existing certified agricultural district if approved by the commission.

Section 33. KRS 262.875 is amended to read as follows:

(1) There shall be created a committee to advise the Governor on state activities that may contribute to the conversion of farmland to nonfarm uses. The committee shall be called the Interagency Farmland Advisory Committee and the members shall be appointed by the Governor and shall include one (1) representative for each of the following:

(a) Governor's Cabinet;

(b) Finance and Administration Cabinet;

(c) Revenue Cabinet;

(d) Cabinet for Economic Development;

(e) Transportation cabinet;

(f) Natural Resources and Environmental Protection Cabinet;

(g) Governor's Office for Coal and Energy Policy;

(h) Department of Agriculture;

(i) Department of Local Government;

(j) Department of Fish and Wildlife Resources;

(k) Environmental Quality Commission;

(l) Soil and Water Conservation Commission;

(m) Dean, College of Agriculture, University of Kentucky;

(n) Two (2) farmer owners and operators of one hundred fifty (150) acres or less, one (1) selected from a list of three (3) persons recommended by the Kentucky Farm Bureau, and one (1) selected from a list of three (3) persons recommended by the national farmers organization;

(o) Two (2) farmer owners and operators of more than one hundred fifty (150) acres, one (1) selected from a list of three (3) persons recommended by the Kentucky Farm Bureau, and one (1) selected from a list of three (3) persons recommended by the national farmers' organization; and

(p) The joint chairpersons of the Interim Joint Committee on Agriculture and Natural Resources.

(2) The representative of the Natural Resources and Environmental Protection Cabinet shall be the chairperson of the committee, and the representative of the Soil and Water Conservation Commission shall be the vice chairperson of the committee. The staff for the committee shall be provided by the Natural Resources and Environmental Protection Cabinet.

(3) In order to advise the Governor, the committee shall review proposed state projects which will convert farmland to nonfarm use. The review shall consider alternatives to the project proposal in an effort to balance the public purpose to be served by the state project against the public purpose of conserving productive farmland.

(4) The Interagency Farmland Advisory Committee shall review proposed projects of all state agencies, including but not limited to, boards and commissions. The review shall be limited to proposed projects which will require the acquisition of more than fifty (50) acres of farmland.

(5) During the planning stage of the project and before any action is taken to acquire farmland, the state agency shall submit a report to the committee. The report shall explain the project, ***contain an agricultural impact assessment,*** highlight the location of land that must be acquired, present the reasons for needing the land, and explain the reasons for rejecting alternatives to the proposed project.

(6) ***All state projects shall be located to provide minimal interference with the productivity of agricultural lands of statewide importance as identified by Section 30 of this Act.***

(7) The committee shall provide notice of the proposed project to the local community by publishing the notice in the newspaper of greatest local circulation within fifteen (15) days after receiving the report. The notice shall solicit comments on the proposal and state that a public hearing will be held upon a request received within fifteen (15) days of the last published notice. If requested, the public hearing shall be held within fifteen (15) days after receiving the request. No later than ten (10) days after the hearing, the committee shall file its report and any recommendations to the Governor. The committee may recommend to the Governor that action be taken by the Governor to alter the proposed state project if necessary to balance the public interests.

(8)[~~(7)~~] A majority of the members of the committee constitutes a quorum for conducting business, and any action taken in the name of the committee requires an affirmative vote of a majority of the members present and voting.

(9)[~~(8)~~] Members shall receive no compensation but shall be reimbursed for expenses incurred.

SECTION 34. A NEW SECTION OF KRS CHAPTER 262 IS CREATED TO READ AS FOLLOWS:

(1) The state "Soil Erosion and Water Quality Cost-Share Fund" is hereby created to be administered by the Kentucky Soil and Water Conservation Commission. Moneys from the fund shall be used for a cost-sharing program to provide financial assistance for implementation of best management practices for the purpose of providing cleaner

water through the reduction in sediment loading of Kentucky's streams, rivers, and lakes, and reducing the loss of topsoil vital to the sustained production of food.

(2) The commission is hereby empowered to promulgate administrative regulations establishing practices eligible for cost-sharing funds and prescribing amounts and limits of cost sharing. Local conservation districts shall determine the eligibility of landowners to receive the funds as may be allocated to the districts by the commission.

(3) Any landowner who has executed a written agreement with a local conservation district or any member of an agricultural district may be considered for funding under this section if the landowner or member has executed a soil and water conservation plan with the local conservation district and agrees to maintain best management practices for a period of time specified by the commission. Priority for funding within each local conservation district shall be given to animal waste management systems where animal waste has been identified as a major problem to the local community. No cost-sharing funds shall be available for land which does not exceed the soil tolerable limits. Up to five percent (5%) of any total annual appropriation may be used for technical assistance grants to districts and up to five percent (5%) of any total annual appropriation may be used for administrative costs to districts and the commission.

Section 35. KRS 350.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface impacts incident to an underground coal mine. The activities shall include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, extended depth secondary recovery systems, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching, or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine site. The activities shall not include the extraction of coal by a landowner of fifty (50) tons or less within twelve (12) successive calendar months for his own noncommercial use from land owned or leased by him; the extraction of twenty-five (25) to two hundred fifty (250) tons of coal as an incidental part of privately financed construction where the coal is donated to a charitable or educational organization for noncommercial use or noncommercial distribution; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; or coal exploration subject to KRS 350.057. Surface coal mining operations shall also include the areas upon which the activities occur or where the activities disturb the natural land surface. The areas shall also include any adjacent land, the use of which is incidental to the activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to the activities. This definition shall include the terms "strip mining" of coal and the "surface effects of underground mining" of coal as used in this chapter;

(2) "Strip mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include the extraction of coal by a landowner for his own noncommercial use of fifty (50) tons or less within twelve (12) successive calendar months from land owned or leased by him; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; coal exploration subject to KRS 350.057; nor shall it include the surface effects or surface impacts of underground coal mining;

(3) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of the operations as required by this chapter;

(4) "Overburden" means material of any nature, consolidated or unconsolidated, excluding topsoil, which lies above a natural deposit of coal and also means the material after removal from its natural state in the process of surface coal mining;

(5) "Area of land affected" means any area of land or water upon which surface coal mining and reclamation operations are conducted or located or are to be conducted or located;

(6) "Operations" means surface coal mining operations, all of the premises, facilities, roads, and equipment used in the

process of producing coal from a designated area or removing overburden for the purpose of determining the location, quality, or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or the removal of coal;

(7) "Method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the coal;

(8) "Operator" means any person, partnership, or corporation engaged in surface coal mining operations who removes or intends to remove more than twenty-five (25) tons of coal from the earth by coal mining within twelve (12) consecutive calendar months in any one (1) location;

(9) "Person" means any persons, partnership, corporation, association, society, joint stock company, firm, company, or other business organization;

(10) "Cabinet" means the Natural Resources and Environmental Protection Cabinet;

(11) "Secretary" means the secretary of the Natural Resources and Environmental Protection Cabinet;

(12) "Reclamation" means the reconditioning of the area affected by surface coal mining operations under a plan approved by the cabinet;

(13) "Degree" when used in this chapter shall mean from the horizontal, and in each case shall be subject to a tolerance of five percent (5%) of error;

(14) "Bench" means the ledge, shelf, or terrace formed in the contour method of strip mining;

(15) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the cabinet determines that they are in compliance with KRS 350.455;

(16) "Certification" by a qualified registered professional engineer, as required by this chapter and regulations promulgated hereunder, means a good faith representation to the best of his or her knowledge and belief, based on adequate knowledge of the requirements of this chapter and regulations promulgated hereunder, related experience, best professional judgment, accepted engineering practices and recognized professional standards, and standard practice as it relates to direct participation by the registered professional engineer or supervision of the registered professional engineer's employees or subordinates. Certification shall not be construed to constitute a warranty or guarantee.

(17) "Reclamation development fund" means only that reconditioning of land affected by surface mining, which will directly promote and benefit the fund administered by the Kentucky Economic Development Finance Authority to foster economic development on surface mining land.

(18) "Reclamation development project" means only that reconditioning of land affected by surface mining, which will directly promote and benefit an economic undertaking which constitutes a project under KRS 154.01-010***(19)***[~~(14)~~].

(19) "Reclamation development plan" means a plan submitted to the cabinet to show compliance with reclamation standards, and submitted to the Kentucky Economic Development Finance Authority to seek moneys from the reclamation development fund for a reclamation development project.

(20) "Permit applicant" or "applicant" means a person applying for a permit.

(21) "Permittee" means a person holding a permit to conduct surface coal mining and reclamation operations.

Section 36. To carry out the purposes of this Act, there is appropriated out of the general fund in the State Treasury the following:

		1994-95	1995-96
(1)	Cabinet for Economic Development		
(a)	Regulatory Expediting Center	$150,000	$150,000
(b)	Debt service for revolving loan fund for agribusiness and business networks	$1,000,000	$1,000,000
(c)	Support for agribusiness and other networks	$1,500,000	$1,500,000
(2)	Department of Agriculture		
(a)	Study constraints to direct sales of produce to grocery chain stores	$100,000	
(b)	Study of expanding out-of-state and international markets. The department shall contract with the Center for	$110,000	

	Agricultural Export Development for the international market part of the study.		
(c)	The department shall contract with a Commonwealth university to conduct a comprehensive fiscal impact study of the agriculture, equine, and forest products industries.	$125,000	
(3)	Soil erosion and water quality cost-share fund	$500,000	$750,000

Any remaining amount of an appropriation in this section at the end of fiscal year 1994-95 shall be carried forward for the same purpose for fiscal year 1995-96.

Section 37. To carry out the purpose of Section 19 to Section 29 of this Act, there is appropriated to the agricultural enhancement fund in the State Treasury for the PACE Corporation the sum of $5,000,000 in fiscal year 1994-95 for bond funding. Any remaining amount of the appropriation at the end of fiscal year 1994-95 shall be carried forward into fiscal year 1995-96.

Section 38. The provisions of Sections 15 to 18 of this Act shall apply to taxable periods beginning after December 31, 1993.

HB 511, AN ACT relating to financing of development generally.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 154.20-010 is amended to read as follows:

(1) There is created and established within the cabinet***, subject to the authority of the board,*** the Kentucky Economic Development Finance Authority ***as an agency, instrumentality, and political subdivision of the Commonwealth and a public body corporate and politic with*** [~~which shall have~~] all powers, duties, and responsibilities delegated to it by the board or as otherwise provided by law, including, all programs, powers, duties, rights, and obligations of the Kentucky Development Finance Authority and the Kentucky Rural Economic Development Authority.

(2) Any interest, right, or cause of action held in whole or in part by any person, corporation, partnership, government agency, or entity under any agreement, contract, lease, mortgage, guarantee, bond, note, refund bond, or other financial transaction or obligation, made, issued, or otherwise entered into by any of the authorities, programs, or funds specified in subsection (1) of this section or that may be delegated to the authority by the board, shall not be impaired or otherwise diminished.

(3) Any interest, right, or cause of action held in whole or in part by any of the authorities, programs, or funds specified in subsection (1) of this section shall not be impaired or otherwise diminished, but shall be assumed by the authority, for and on behalf of the cabinet.

(4) The authority shall consist of a committee of ***seven (7)*** [~~five (5)~~] persons appointed by the board ***and shall be private citizens of the Commonwealth***. Any person appointed to the committee shall have experience and expertise in ***business or*** finance.

(5) Two (2) members initially appointed to the committee shall have a term of one (1) year each, ***two (2) members initially appointed to the committee shall have a term of two (2) years each,*** and three (3) members initially appointed to the committee shall have a term of ***three (3)*** [~~two (2)~~] years each, except that any person appointed to fill a vacancy shall serve only for the remainder of the unexpired term. All subsequent appointments shall be for a term of ***three (3)*** [~~two (2)~~] years.

(6) Any person appointed to the committee shall be eligible for reappointment***, including any member of the committee appointed prior to the effective date of this Act***.

(7) The members of the committee shall elect biennially from their membership the following officers: chairman, vice chairman, [~~and~~] secretary-treasurer***, and any assistant secretaries and assistant treasurers the committee deems necessary***.

(8) A majority of the members of the committee, determined by excluding any existing vacancies from the total number of members, shall constitute a quorum for the purposes of conducting its business and exercising its powers and for all other purposes.

(9)[~~(8)~~] The committee shall prepare bylaws and procedures applicable to the operations of the authority and submit them to the board to be promulgated as administrative regulations in accordance with KRS Chapter 13A.

(10)[~~(9)~~] Members of the committee shall be entitled to compensation for their services in an amount of one hundred dollars ($100) for each regular meeting of the committee and shall be entitled to reimbursement for all necessary expenses in connection with the performance of their duties.

(11)[~~(10)~~] A majority of the entire committee shall be required to conduct any business of the authority.

Section 2. KRS 154.20-130 is amended to read as follows:

(1) No member of the authority or officer or employee thereof shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the authority for any matter, cause***,*** or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such authority.

(2) Should a member, officer or employee of the authority have such an interest, then the member, officer or employee of the authority shall:

(a) Disclose the interest;

(b) Refrain from participating in discussions relating to any such contract or agreement with the authority; and

(c) Refrain from voting or otherwise taking action on any such contract or agreement of the authority.

(3) If any contract or agreement shall be made in violation of the provisions of this section the same shall be null and void and no action shall be maintained thereon against such authority.

Section 3. KRS 154.22-010 is amended to read as follows:

The following words and terms as used in KRS 154.22-010 to 154.22-070, unless the context clearly indicates a different meaning, shall have the following meanings:

(1) ***"Affiliate" means the following:***

(a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;

(b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;

(c) Two (2) corporations which are members of the same controlled group, which includes and is limited to:

1. One (1) or more claims of corporations connected through stock ownership with a common parent corporation if:

a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and

b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

(d) A grantor and a fiduciary of any trust;

(e) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(f) A fiduciary of a trust and a beneficiary of that trust;

(g) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(h) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(i) A corporation and a partnership if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership;

(j) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or

(k) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended.

(2) "Approved company" means any eligible company seeking to locate an economic development project in a qualified county, which eligible company is approved by the authority pursuant to KRS 154.22-010 to 154.22-070.

(3)[~~(2)~~] "Approved costs" means:

(a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;

(b) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;

(c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project which is not paid by the contractor or contractors or otherwise provided for;

(d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;

(e) All costs which shall be required to be paid under the terms of any contract or contracts for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and

(f) All other costs of a nature comparable to those described above.

(4)[~~(3)~~] "Assessment" means the job development assessment fee authorized by KRS 154.22-010 to 154.22-070.

(5)[~~(4)~~] "Authority" means the Kentucky Economic Development Finance Authority as created in KRS 154.20-010.

(6)[~~(5)~~] "Bonds" means the revenue bonds, notes, or other debt obligations of the authority authorized to be issued by the authority, eligible companies, or other state agency.

(7)[~~(6)~~] "Commonwealth" means the Commonwealth of Kentucky.

(8)[~~(7)~~] "Economic development project" means and includes***:***

(a) The acquisition of any real estate in a qualified county by [~~either~~] the authority***,*** [~~or~~] the approved company, ***or its affiliate; or***

(b) The fee ownership of real estate in a qualified county by the approved company or its affiliate.

With respect to (a) or (b) of this subsection, [~~and~~] the construction, installation, equipping, and rehabilitation of improvements, including fixtures and equipment, and facilities necessary or desirable for improvement of the real estate, including surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage, storm water retention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities on the real estate, for use and occupancy by the approved company or its affiliates for manufacturing purposes.

(9)[~~(8)~~] "Eligible company" means any corporation, partnership, sole proprietorship, or business trust engaged in manufacturing [~~which meets the standards promulgated by the authority pursuant to KRS 154.22-010 to 154.22-070~~].

(10)[~~(9)~~] "Financing agreement" means any agreement entered into, pursuant to KRS 154.22-010 to 154.22-070, on behalf of the authority or other lenders, or both, and an approved company with respect to an economic development project.

(11) "Inducements" means the assessment and the income tax credits allowed by KRS 154.22-060.

(12)[~~(10)~~] "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to it, together with the storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals.

(13)[~~(11)~~] "Qualified county" means any county certified as such by the authority pursuant to KRS 154.22-010 to 154.22-070.

(14) "Revenues" shall not be considered state funds.

(15)[~~(12)~~] "State agency" shall have the meaning assigned to the term in KRS 56.440(8).

[~~(13) "Revenues" shall not be considered state funds.~~]

Section 4. KRS 154.22-030 is amended to read as follows:

The Kentucky Economic Development Finance Authority shall have in addition to the powers provided in this chapter all the powers necessary or convenient to carry out and effectuate the purposes and provisions of KRS 154.22-010 to 154.22-070, including, but without limiting the generality of the foregoing, the power to:

(1) Provide and finance economic development projects pursuant to the provisions of KRS 154.22-010 to 154.22-070, and cooperate with qualified counties and eligible companies in order to promote, foster and support economic development within the qualified counties;

(2) Conduct hearings and inquiries, in the manner and by the methods as it deems desirable, including without limitation, appointment of special committees, for the purpose of gathering information with respect to qualified counties, eligible companies, and economic development projects, for the purpose of making any determinations necessary or desirable in the furtherance of KRS 154.22-010 to 154.22-070; and

(3) Negotiate the terms of***, including the amount of approved costs,*** and enter into financing agreements with approved companies, and in connection therewith to acquire, convey, sell, mortgage, finance, or otherwise dispose of any property, real or personal, loan bond proceeds, or grant Kentucky income tax incentives and permit the use of job development assessment fees, in connection with an economic development project, and to pay, or cause to be paid, in accordance with the provisions of a financing agreement, the approved costs of an economic development project from any funds available therefor.

Section 5. KRS 154.22-040 is amended to read as follows:

(1) Each year the authority shall under its rural economic development assistance program, on the basis of the final unemployment figures calculated by the Department of Employment Services within the Cabinet for Human Resources, determine which counties have had a countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth in the most recent five (5) consecutive calendar years and shall certify those counties as qualified counties. If the authority determines that a county which has previously been certified as a qualified county no longer has an unemployment rate above the state average, the authority shall decertify that county. The authority shall not finance any facilities in that county and an approved company shall not be eligible for the incentives offered by KRS 154.22-010 to 154.22-070 unless the financing agreements required herein are entered into by all parties ***prior to July 1 of the year following the calendar year in which the authority decertified that county*** [~~within one (1) year after the date of the decertification.~~

~~(2) Notwithstanding KRS 154.22-040(1), on a one-time basis, after July 14, 1992, the authority shall, on the basis of the final unemployment rates for calendar years 1987-1991 calculated by the Department of Employment Services within the Cabinet for Human Resources, determine which counties have a countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth in the most recent five (5) consecutive calendar years and shall certify those counties as qualified counties. Any county previously certified as a qualified county by the authority which no longer has an unemployment rate above the state average for the indicated period shall lose that certification and no longer be qualified. If a company is approved prior to July 14, 1992, the loss of certification as a qualified county by a county as the result of actions taken by the authority in accordance with the provisions of this subsection shall not be construed as prohibiting the approved company from being eligible for incentives provided under KRS 154.22-030 to 154.22-070, unless the required financing agreements are entered into by all parties within one (1) year after the date of the loss of certification by the county~~].

(2)[~~(3)~~] The authority shall establish the procedures and standards for the determination and approval of eligible companies and their economic development projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A. These standards shall give greatest weight to the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to residents of the Commonwealth; and the likelihood of the economic success of the economic development project. No economic development project which will result in the [~~voluntary~~] replacement of manufacturing facilities existing in the state shall be approved by the authority; however, the authority may approve an economic development project that***:***

(a) Rehabilitates a manufacturing facility***:***

1. Which has not been in operation for a period of ***ninety (90) or more consecutive days; or***

2. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction; or

(b) Replaces a manufacturing facility existing in the Commonwealth:

1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) [~~three (3) or more consecutive~~] months.

(3) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the application, the authority shall request materials and make inquiries of the applicant as necessary or appropriate. After a diligent review of relevant materials and completion of its inquiries, the authority may by resolution of its governing committee designate an eligible company to be an approved company and authorize the undertaking of its economic development project in the qualified county.

Section 6. KRS 154.22-050 is amended to read as follows:

The authority may enter into, with any approved company, a financing agreement with respect to its economic development project. Subject to the inclusion of the mandatory provisions set forth below, the terms and provisions of each financing agreement shall be determined by negotiations between the authority and the approved company.

(1) If an eligible company, at the time of submission of its application to the authority to become an approved company, requests the authority in writing to issue bonds on its behalf, then each financing agreement used in connection with the issuance of bonds by the authority shall include the following provisions:

(a) The term of a financing agreement shall not be less than the last maturity of the bonds issued with respect to the economic development project, except that the financing agreement may terminate upon the earlier redemption of all of the bonds issued with respect to the economic development project and, if the authority owns the economic development project, the authority may grant to the approved company ***or its affiliate*** an option to purchase, for the consideration the authority may approve, the economic development project from the authority upon the termination of the financing agreement. Nothing in this subsection shall limit the extension of the term of a financing agreement if there is a refunding of the correlative bonds or otherwise; and

(b) The financing agreement shall specify that the annual obligations of the approved company pursuant to KRS 154.22-010 to 154.22-070 shall equal in each year the annual debt service for that year on the bonds issued with respect to the economic development project; and the approved company shall pay such obligation of the financing agreement to the trustee for bonds issued for the benefit of the approved company, at such time and in such amounts sufficient to amortize such bonds.

(c) 1. In consideration for financing agreement payment, the approved company may be permitted the following during the period of time ***not to exceed fifteen (15) years*** in which the financing agreement is in effect, ***which period of time shall commence for purposes of the following upon the date of the financing agreement***~~[not to exceed twenty five (25) years]~~.

a. A one hundred percent (100%) credit against the Kentucky income tax that otherwise would be owed in the year, as determined under KRS 141.347, to the Commonwealth by the approved company on the income of the approved company generated by or arising out of the economic development project, the credit not to exceed the total debt service paid under the respective financing agreement; plus

b. The aggregate assessment withheld by the approved company in each year.

2. The income tax credited to the approved company referred to herein shall be credited ***for*** ~~[in]~~ the fiscal year ***for*** ~~[of the financing agreement in]~~ which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042.

(d) 1. The financing agreement shall provide that the assessments, when added to the credit for the Kentucky income tax herein granted, shall not exceed the total financing agreement annual payment by the approved company in any year; however, to the extent that financing agreement annual payments exceed credits received and assessments collected in any year, the excess payment may be recouped from excess credits or assessment collections in succeeding years.

2. If ***in*** ~~[during]~~ any fiscal year of ***the approved company during which*** the financing agreement ***is in effect*** the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees equals the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of ***that*** ~~[the]~~ fiscal year of the ***approved company, and the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year***~~[financing agreement]~~.

3. If in any fiscal year of the approved company during which the financing agreement is in effect, the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the approved company shall pay the excess to the Commonwealth as income tax.

4. If in any fiscal year of the approved company during which the financing agreement is in effect the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and

applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.

(e) The financing agreement shall provide in substance that:

1. It may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to such effect; and

2. Upon default by the approved company in any obligations under the financing agreement or other documents evidencing, securing, or related to the approved company's obligations, the authority, or any of its assignees***,*** shall have the right, at its option, to declare the financing agreement or other such documents in default; and

a. Accelerate and declare the total of all such payments due by the approved company and sell the economic development project at public, private, or judicial sale;

b. Pursue any remedy provided under the financing agreement or other such documents;

c. Pursue all other remedies available to it under the Kentucky Uniform Commercial Code;

d. Be entitled to the appointment of a receiver by the Circuit Court wherein any part of the economic development project is located; and

e. Pursue any other remedy at law to which it appears entitled.

3.[~~f.~~] All remedies provided in subsection (1)(e)2. of this section shall be deemed cumulative.

(2) If an eligible company, at the time of submission of its application to the authority to become an approved company, does not request the authority in writing to issue bonds on its behalf, then each financing agreement used in connection with loans or other financing (other than bonds issued by the authority for which subsection (1) of this section shall be used) shall include the following provisions:

(a) The term of a financing agreement***, which shall commence on the date of the financing agreement,*** shall not be longer than:

1. The maturity of any loan or other financing incurred in connection with the economic development project, except that the financing agreement may terminate upon the earlier prepayment of all loans or other financing incurred in connection with the economic development project; or

2. ***Fifteen (15)*** [~~Twenty-five (25)~~] years from the date of the original financing agreement.

3. Nothing in this subsection shall limit the extension of the term of a financing agreement if there is a refinancing of the loans or other financing. The authority shall not own an economic development project that is the subject of this form of financing agreement.

(b) 1. The approved company may be permitted the following during the ***term of*** [~~period of time in which~~] the financing agreement [~~is in effect~~]:

a. A one-hundred percent (100%) credit against the Kentucky income tax that otherwise would be owed in the year, as determined under KRS 141.347, to the Commonwealth by the approved company on the income of the approved company generated by or arising out of the economic development project, such credit not to exceed the total debt service paid with respect to the loans or other financing incurred in connection with the economic development project; plus

b. The aggregate assessment withheld by the approved company in each year.

2. The income tax credited to the approved company shall be credited ***for*** [~~in~~] the fiscal year ***for*** [~~of the financing agreement in~~] which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042.

(c) 1. The financing agreement shall provide that the assessments, when added to the credit for the Kentucky income tax as provided in KRS 154.22-060, shall not exceed the total annual debt service payments of the approved company with respect to the loans or other financing incurred in connection with the economic development project in any year; however, to the extent that such annual debt service payments exceed credits received and assessments collected in any year, the excess payment may be recouped from excess credits or assessment collections in succeeding years.

2. If, ***in*** [~~during~~] any fiscal year of ***the approved company during which*** the financing agreement ***is in effect***, the total of the income tax credit granted to the approved company, plus the assessment collected from the wages of the employees, equals the annual debt service payments with respect to the loans or other financing incurred in connection with the economic development project, and if all excess payments with respect to the loans or other financing incurred in connection with the economic development project accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of ***that*** [~~the~~] fiscal year of the ***approved company and the approved company shall resume normal personal income tax and occupational license fee withholdings from***

the employees' wages for the remainder of that fiscal year[~~financing agreement~~].

3. If in any fiscal year of the approved company during which the financing agreement is in effect the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the approved company shall pay the excess to the Commonwealth as income tax.

4. If in any fiscal year of the approved company during which the financing agreement is in effect the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees wages next succeeding the first date when the approved company collected excess assessments.

(d) The financing agreement shall provide in substance that it may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.

(e) The financing agreement shall provide that an approved company shall require of any lender to the approved company funding the loans or other financing incurred in connection with the economic development project written evidence to be provided to the authority of payments of all annual debt service to such lender. Such evidence shall be provided to the authority within forty-five (45) days after the end of each fiscal year of the financing agreement.

(f) The financing agreement shall provide that if an approved company fails to comply with its respective obligations under the financing agreement, or that the lender to an approved company fails to comply with its requirements set forth in subsection (2)(e) of this section, or is declared in default under the loans or other financing incurred in connection with the economic development project, then the authority, or any of its assignees, shall have the right, at its option, to:

1. Suspend the availability of the income tax credits and job development assessment fees to the approved company;

2. Pursue any remedy provided under the financing agreement, including termination thereof; and

3. Pursue any other remedy at law to which it appears entitled.

(3) All remedies provided in subsection (2)(f) of this section shall be deemed cumulative.

Section 7. KRS 154.22-055 is amended to read as follows:

(1) The authority may execute and deliver a financing agreement and consummate the transactions described in the agreement upon:

(a) The adoption of a resolution by the authority authorizing the ***financing*** [~~financial~~] agreement, as described in KRS 154.22-050(2), with respect to an approved company and loans for other financing in connection with an economic development project; and

(b) The publication of a summary of the adopted resolution in:

1. A newspaper authorized to publish official advertisements for the authority; and

2. A newspaper of general circulation in the qualified county in which the economic development project is to be located.

(2) The summary of the resolution as provided in subsection (1)(b) of this section shall include the following:

(a) The date the resolution was adopted by the authority;

(b) The title of the resolution;

(c) The maximum amount of loans or other financing, as described in KRS 154.22-050(2), incurred in connection with the economic development project; and

(d) The name of the approved company.

Section 8. KRS 154.22-060 is amended to read as follows:

(1) The approved company shall be entitled to a credit against the Kentucky income tax liability mandated by KRS Chapter 141, on any income that may result from the operation of the approved economic development project; the credit shall be equal to the total amount of the tax liability, ***and together with the aggregate assessments*** not to exceed the total debt service paid:

(a) Under the financing agreement in connection with the economic development project financed by bonds as described in KRS 154.22-050(1); or

(b) On loans or other financing, as described in KRS 154.22-050(2), incurred in connection with the economic development project, as described in KRS 154.22-050(2).

(2) Ninety (90) days after the filing of the tax return of the approved company, the Revenue Cabinet of the Commonwealth shall certify to the authority the Kentucky income tax liability for the preceding ***fiscal*** year ***of the approved company for which the return was filed*** of each approved company with respect to an economic development project financed through the issuance of bonds***,*** [~~or~~] loans or other financing incurred in connection with the economic development project and the amounts of any tax credits taken pursuant to KRS 154.22-010 to 154.22-070.

Section 9. KRS 154.22-070 is amended to read as follows:

(1) The approved company may require that each employee, ***subject to state tax imposed by KRS 141.020,*** as a condition of employment, agree to pay a job development assessment fee, not to exceed six percent (6%) of the gross wages of each employee whose job was created as a result of the economic development project, for the purpose of retiring:

(a) The bonds, as described in KRS 154.22-050(1), which fund the economic development project; or

(b) The loans or other financing as described in KRS 154.22-050(2), incurred in connection with the economic development project.

(2) Each employee so assessed shall be entitled to credits against Kentucky income and local occupational taxes as follows:

(a) Two-thirds (2/3) of the job development assessment fee withheld from wages during the calendar year shall be permitted as a credit of Kentucky income tax withheld as provided by KRS 141.310 and 141.350;

(b) One-third (1/3) of the job development assessment fee withheld from wages during the calendar year shall be permitted as a credit against any local occupational license fee incurred by the employee for the taxable year in the jurisdiction in which the economic development project is located. No credit, however, shall be allowed against any local occupational license fee imposed ***by*** or dedicated solely to a local board of education.

(3) If an approved company shall elect to impose the assessment as a condition of employment, it shall ***be authorized to*** deduct the assessment from each paycheck of each employee.

(4) Any approved company collecting an assessment as provided in subsection (1) of this section shall make its payroll books and records available to the authority at such reasonable times as the authority shall request and shall file with the authority documentation respecting the assessment as the authority may require.

(5) Any assessment of the wages of employees of an approved company in connection with their employment at an economic development project pursuant to subsection (1) of this section shall ***permanently*** lapse on the date:

(a) The bonds, as described in KRS 154.22-050(1), are retired; or

(b) Any loans or other financing, as described in KRS 154.22-050(2), incurred in connection with the economic development project mature or are prepaid in full.

SECTION 10. A NEW SECTION OF SUBCHAPTER 22 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) If the authority adopts a preliminary resolution designating an eligible company as an approved company and preliminary approving the project of the eligible company as an economic development project prior to the effective date of this Act, and the authority adopts a final resolution approving the eligible company as an approved company and the project of the eligible company as an economic development project, and the authority and the eligible company enter into a financing agreement no later than June 30, 1995, then the approved company thereafter shall be subject to KRS 154.22-010 to 154.22-070 as in effect prior to the effective date of this Act.

(2) Notwithstanding subsection (1) of this section, an approved company shall be subject to subsection (1)(d) and (2)(c) of KRS 154.22-050 commencing with the fiscal year of an approved company that begins after December 31, 1994.

Section 11. KRS 154.24-010 is amended to read as follows:

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings in KRS 154.24-010 to 154.24-150:

(1) "Agreement" means any agreement made pursuant to KRS 154.24-120, between the authority and an approved company with respect to an economic development project***;***[~~.~~]

(2) "Approved company" means any eligible company seeking to locate an economic development project from outside the Commonwealth into the Commonwealth, or undertaking an economic development project in the Commonwealth for which it is approved pursuant to KRS 154.24-090***;***[~~.~~]

(3) "Approved costs" means fifty percent (50%) of the total of the start-up costs, plus the annual rent for each elapsed year of the service and technology agreement;

(4) "Assessment" means the "service and technology job creation assessment fee" authorized by KRS 154.24-110;

(5) "Authority" means the "Kentucky Jobs Development Authority" created and established under KRS 154.24-030;

(6) "Commonwealth" means the Commonwealth of Kentucky;

(7) "Economic development project" or "project" means a service or technology activity conducted by an approved company;

(8) "Eligible company" means any corporation, partnership, sole proprietorship, or business trust engaged in service or technology and meeting the standards promulgated by the authority in accordance with KRS Chapter 13A;

(9) ***"In lieu of credits" means a local government appropriation to the extent permitted by law, or other form of local government grant or service benefit, directly related to the economic development project and in an amount equal to one percent (1%) of employees' gross wages, exclusive of any noncash benefits provided to an employee, or the provision by a local government of an in-kind contribution directly related to the economic development project and in an amount equal to one half (1/2) of the rent for the duration of the agreement;***

(10) "Inducements" means the income tax credits allowed and the assessment authorized by KRS 154.24-110, which are intended to induce companies engaged in service and technology industries to locate or expand in the Commonwealth;

(11)[~~(10)~~] "Person" means an individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity or government, whether federal, state, county, city, or otherwise, including without limitation, any instrumentality, division, political subdivision, district, court, agency, or department thereof;

(12)[~~(11)~~] "Relocation costs" means the identified expenditures by the company for moving costs, separation costs, and any other expenditures substantiated by the company which directly related to the move from an existing location outside of Kentucky to locations approved by the authority;

(13)[~~(12)~~] "Rent" means:

(a) The actual annual rent or leasing fee paid by an approved company to a bona fide entity negotiated at arms length for the use of a building by the approved company to conduct the approved activity for which the inducement has been granted; or

(b) The fair rental value on an annual basis in a building owned by the approved company of the space used by the approved company to conduct the approved activity for which the inducement has been granted as determined by the authority using criteria which is customary in the real estate industry for the type of building being used***. The fair rental value shall include an analysis of*** the cost of amortizing the cost of land and building over the period of time customary in the real estate industry for the type of building and for ***the land*** [~~grounds~~] being utilized***;***[~~, plus~~]

(c) Rent shall include the customary cost of occupancy including, but not limited to, property taxes, heating and air-conditioning, electricity, water, sewer, and insurance;

(14)[~~(13)~~] "Service or technology" means any activity involving the performance of work not otherwise classified by division, including such successor divisions as agriculture, forestry and fishing, mining, construction, and manufacturing, in accordance with the "Standard Industrial Classification Manual", as revised by the United States Office of Management and Budget from time to time, or any successor publication. [~~Notwithstanding the excluded classifications by divisions, those service and technology activities of~~] A company ***otherwise*** engaged in an ineligible activity may ***operate a service and technology activity in*** [~~be operated as~~] a separate division and, with the approval of the authority and subject to the record keeping requirements established by the authority***, the service and technology activity*** may be deemed an eligible activity; and

(15)[~~(14)~~] "Start-up costs" means the cost of furnishing and equipping the building for ordinary business functions, including computers, nonrecurring costs of fixed telecommunication equipment, furnishings, office equipment, and relocation costs as verified and approved by the authority in accordance with KRS 154.24-130.

Section 12. KRS 154.24-040 is amended to read as follows:

The authority, or its successor, shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of KRS 154.24-010 to 154.24-150, including, but not limited to, power and authority to:

(1) Provide and assist economic development projects pursuant to the provisions of KRS 154.24-010 to 154.24-150, and cooperate with eligible companies in order to promote, foster, and support economic development within the Commonwealth;

(2) Conduct hearings and inquiries, in the manner and by the methods as it deems desirable, including without limitation, appointment of special committees for the purpose of gathering information with respect to eligible companies and economic development projects for the purpose of making any determinations necessary or desirable in the furtherance of the purposes of KRS 154.24-010 to 154.24-150;

(3) Negotiate the terms of***, including the amount of approved costs,*** and enter into service and technology agreements with approved companies;

(4) Appoint an executive director, who shall be an officer of the authority, to administer the business of the authority as provided in KRS 154.24-010 to 154.24-150, and to delegate to the executive director the rights and powers of the authority required for the proper and desirable execution of the purpose of the authority;

(5) Modify the terms of any service and technology agreement of any kind to which it is a party;

(6) Include in any service and technology agreement the amounts deemed necessary by the authority to pay consultation, advisory, and legal fees, and other expenses necessary or incident to the preparation, adoption, implementation, and enforcement of the terms of the service and technology agreement; however, all fees and expenses incident thereto shall be the responsibility of the approved company;

(7) Promulgate administrative regulations in accordance with KRS Chapter 13A, respecting its programs, duties, and responsibilities as prescribed under the provisions of KRS 154.24-010 to 154.24-150***;***~~[.]~~

(8) Make, execute, and effectuate any agreement or other document with any person, necessary or appropriate to accomplish the purposes of KRS 154.24-010 to 154.24-150;

(9) Accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source, and to agree to, and to comply with, conditions incidental thereto;

(10) Sue and be sued in its own name, plead and be impleaded;

(11) Maintain an office in the city of Frankfort and at any other place or places as it may determine;

(12) Adopt an official seal and alter the same at pleasure;

(13) Adopt bylaws for the regulation of its affairs and the conduct of its business;

(14) Employ fiscal consultants, attorneys, appraisers, ***investment*** ~~[investments]~~ advisors and other consultants, agents, and employees required in the judgment of the authority, and to fix and pay their compensation from funds available to the authority;

(15) Invest any funds held by the authority or its agents, or any moneys not required for immediate disbursement, including investment income, in obligations authorized by KRS 386.020; and

(16) Exercise any or all of the general corporate powers of a nonprofit corporation organized under and not inconsistent with the laws of the Commonwealth.

Section 13. KRS 154.24-080 is amended to read as follows:

(1) No director, officer, or employee of the authority shall be interested, directly or indirectly, or shall be an officer or employee of, or have an ownership interest in, any firm or corporation interested, directly or indirectly, in any contract with the authority.

(2) Should a director, officer or employee of the authority have such an interest or be an officer or employee of or have an ownership interest in any such firm or corporation, then the director, officer or employee of the authority shall:

(a) Disclose the interest and the office, employment, or ownership in that firm or corporation;

(b) Refrain from participation in discussions relating to any contract of the firm or corporation with the authority; and

(c) Refrain from voting or otherwise taking action on any contract or proposed contract of the authority with the firm or corporation.

(3) If any contract or agreement shall be made in violation of the provisions of this section it shall be null and void and no action shall be maintained against the authority.

Section 14. KRS 154.24-090 is amended to read as follows:

Administrative regulations promulgated by the authority in accordance with KRS Chapter 13A, regarding the approval of eligible companies and economic development projects conducted by those companies shall include, but not be limited to, the following criteria:

(1) A determination by the authority that more than seventy-five percent (75%) of services provided by the eligible company from the proposed project shall be provided for persons located outside the Commonwealth during each year of the period during which it receives inducements as authorized in KRS 154.24-110;

(2) The economic development project shall result in the creation by the eligible company of a minimum of twenty-five (25) new ***full time*** jobs ***for Kentucky residents to be employed by the eligible company and to be*** held by persons subject to the personal income tax of the Commonwealth within ***one (1) year*** ~~[eighteen (18) months]~~ of the date of the final resolution authorizing the economic development project. ~~[This period may be extended by]~~ The authority ***may extend this one (1) year period*** upon ***the written application*** ~~[its approval]~~ of an ~~[applicant by the]~~ eligible company ***requesting*** ~~[for]~~ an extension;

(3) Written evidence that:

(a) Approval of the economic development project and the resulting inducements to be offered are essential to the creation of new jobs in the Commonwealth by an eligible company in connection with its economic development project; and

(b) No significant number of existing jobs in the Commonwealth will be lost, or adversely affected, due to the designation of an eligible company as an approved company, and to the approval of the ***eligible*** company's economic development project; and

(4) That the economic development project could reasonably and efficiently locate outside of the Commonwealth and, without the inducements offered by the authority, the ***eligible*** company would likely locate outside the state.

Section 15. KRS 154.24-100 is amended to read as follows:

(1) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the ***eligible*** company's application, the authority shall request materials and make all [~~necessary and appropriate~~] inquiries respecting the application ***the authority deems necessary***. After a diligent review of relevant materials and completion of [~~all~~] inquiries, the authority may, by resolution of the board of directors, preliminarily designate an eligible company as an approved company, preliminarily authorize the undertaking of the economic development project, and approve a [~~comprehensive~~] report as prescribed in subsection (2) of this section.

(2) A [~~comprehensive~~] report ***describing the economic development project*** as prescribed in subsection (1) of this section shall set out the following:

(a) The name, location, business, and standard industrial classification of the eligible company***, and if the standard industrial classification is indicative of other than a service or technology activity, then an explanation of the service or technology activity of the eligible company***;

(b) The nature [~~and extent~~] of the economic development project;

(c) The use and projected amounts of the inducements to be available to the eligible company by year; and

(d) Other information the authority may require[~~, but records of a confidential nature shall not be made available except under the provisions of KRS 61.870 to 61.884~~].

(3) After the adoption of the board's resolution preliminarily designating an eligible company as an approved company, preliminarily authorizing the economic development project, and approving the [~~comprehensive~~] report ***as prescribed in subsection (2) of this section***, an agent designated by the authority shall hold at least one (1) public hearing to solicit public comments regarding the preliminary designation of an eligible company as an approved company and the preliminary authorization of the company's economic development project. Notice of the public hearing shall be given pursuant to KRS Chapter 424.

(4) Unless the board, within ***one (1) year after the adoption of the resolution prescribed in subsection (1) of this section*** [~~sixty (60) days from the conclusion of the public hearing~~], adopts a final resolution designating the eligible company as an approved company, authorizing the ***economic development*** project, and executing a service and technology agreement between the ***eligible*** company and the authority, the approved company's request for designation and ***economic development*** project authorization shall be considered denied.

(5) The decision to grant ***an eligible*** [~~a~~] company the status of approved company shall be solely that of the authority, which the board shall base its decision upon consideration of all information provided.

Section 16. KRS 154.24-110 is amended to read as follows:

(1) The approved company shall be entitled to an income tax credit equal to one hundred percent (100%) of the income tax that would otherwise be due to the Commonwealth by the approved company attributable to the economic development project, as limited by the provisions of this section and KRS 154.24-130. The amount of the approved company's income that is attributable to the economic development project shall be determined under KRS 141.407.

(a) The income tax credit allowed to the approved company shall be subtracted from the approved cost balance in the fiscal year of the ***approved company for*** [~~agreement in~~] which the tax return of the approved company is filed; and

(b) Ninety (90) days after the filing of the income tax return of the approved company, the Revenue Cabinet shall certify to the authority the Kentucky income tax liability [~~for the preceding year~~] of the approved company with respect to an economic development project ***for the preceding fiscal year of the approved company for which the return was filed***, and the amounts of any tax credit allowed pursuant to KRS 141.407.

(2) The approved company may require each employee, subject to state tax imposed by KRS 141.020, as a condition of employment, to agree to pay a service and technology job creation assessment fee up to five percent (5%) of the gross wages ***exclusive of any noncash benefits provided to an employee*** for each employee whose job has been deemed by the authority to be created as a result of the economic development project.

(a) Each employee paying the assessment shall be entitled to ***a credit*** [~~credits~~] against his Kentucky income tax ***required to be withheld under KRS 141.310 equal to four-fifths (4/5) of the assessment;*** [~~and local occupational tax, as follows:~~]

(b) If the assessment has been approved by the local jurisdiction as provided in KRS 154.24-150, each employee paying the assessment also shall be entitled, in the local

[~~1. Four-fifths (4/5) of the assessment withheld from wages during the calendar year shall be permitted as a credit against the Kentucky income tax which would otherwise have been withheld as provided by KRS 141.310;~~

~~2. One-fifth (1/5) of the assessment withheld from wages during the calendar year shall be permitted as a~~

~~credit against any local occupational license fee incurred by the employee for the tax year in the~~] jurisdiction in which the economic development project is located***, to a credit against his local occupational license fee in the form of a simultaneous adjustment of his local occupational license fee withholding equal to one-fifth (1/5) of the assessment***. If more than one (1) local tax is incurred, the one-fifth (1/5) assessment shall be prorated proportionately among the taxes ***unless one (1) local jurisdiction agrees to forego the receipt of these taxes in an amount equal to the one-fifth (1/5) assessment, in which case no proration need be made***; [~~and~~

~~3. Employees paying the assessment shall not be subject to income tax withholding as required by KRS 141.310, and shall have any occupational license fee reduced by one fifth (1/5) of the assessment, if the reduction has been approved by the local jurisdiction as provided in KRS 154.24-150; and~~]

(c)[~~(b)~~]If an approved company elects to impose the assessment as a condition of employment, it shall be authorized to deduct the assessment from each payment of wages to the employee;

(d)[~~(c)~~]No credit, or portion thereof, shall be allowed against any occupational license fee imposed ***by*** or dedicated solely ***to*** [~~by~~] the board of education in a local jurisdiction;

(e)[~~(d)~~]The approved company collecting an assessment shall make its payroll, books, and records available to the authority when the authority shall request, and shall file with the authority documentation pertaining to the assessment as the authority may require; and

(f)[~~(e)~~] Any assessment of the wages of employees of an approved company in connection with their employment at an economic development project shall ***permanently*** cease at the expiration of the agreement.

Section 17. KRS 154.24-120 is amended to read as follows:

Before any approved company is granted inducements as prescribed in KRS 154.24-010 to 154.24-150, a service and technology agreement with respect to the company's economic development project shall be entered into between the authority and the approved company. The terms and provisions of the agreement***, including the amount of approved costs,*** shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

(1) The term of an agreement shall not be longer than ten (10) years from the activation date established by the approved company. The activation date shall be any time within a ***one (1)*** [~~two (2)~~] year period after ***the date of final*** approval of the agreement by the authority. In order to implement the activation date, the approved company shall notify the authority, the Kentucky Revenue Cabinet, the employees, and the affected local jurisdiction, if any, of the ***activation*** date on which implementation of the inducements authorized in the agreement shall occur.

(2) The agreement shall include:

(a) A description of the authorized inducements to be used by the approved company;

(b) A provision that, if the total number of full-time ***employees who are residents of the Commonwealth and who are subject to the Kentucky income tax is less than*** [~~employee falls below~~] twenty-five (25), ***or in the case of an existing Kentucky business the approved company fails to maintain the increase of at least twenty-five (25) full-time employees who are residents of the Commonwealth and who are subject to the Kentucky income tax,*** the authorized inducements shall be suspended until the number of full-time ***employees who are residents of the Commonwealth and who are subject to the Kentucky income tax equals*** [~~employees equal~~] or ***exceeds*** [~~exceed~~] twenty-five (25); ***or in the case of an existing Kentucky business until the maintenance requirement of subsection (4) of KRS 154.24-140 is satisfied;*** [~~and~~]

(c) ***A provision that, if seventy-five percent (75%) or less of services provided by the approved company from the economic development project should be provided to persons located outside of the Commonwealth during any fiscal year of the approved company as prescribed in KRS 154.24-090, the authorized inducements shall be suspended until the percentage of these services again exceeds seventy-five percent (75%) for a full fiscal year of the approved company; and***

(d) A provision that neither income tax credits nor assessments are assignable without written consent by the authority.

Section 18. KRS 154.24-130 is amended to read as follows:

(1) Before the end of the first year following the activation date, the authority shall, using data supplied by the approved company, verify and determine the total start-up costs for the approved company's economic development project. The initial approved costs shall be fifty percent (50%) of the start-up cost.

(2) Each year, during the ten (10) year life span of the agreement, fifty percent (50%) of the annualized rental payments shall be added to the unrecouped balance of approved costs.

(3) Each year, the inducement earned ***and any in lieu of credits received*** shall be subtracted from the approved costs.

(4) If, ***in*** [~~during~~] any fiscal year of the ***approved company during which the*** agreement ***is in effect***, the accumulated

inducements equal the ***unrecouped*** remaining balance of the approved costs ***then expended***, the assessments collected from the wages of the employees shall cease for the remainder of that fiscal year ***of the approved company***, and the approved company shall resume normal personal income tax and occupational license fee withholdings from the ***employees'*** [~~employees~~] wages for the remainder of that ***fiscal*** year.

(5) If ***in*** [~~during~~] any fiscal year of the ***approved company during which the*** agreement ***is in effect***, the total of the income tax credit granted to the approved company ***plus the assessment collected from the wages of the employees*** exceeds the remaining balance of the approved costs ***then expended***, the approved company shall pay the excess to the Commonwealth as income tax.

(6) If in any fiscal year of the approved company during which the agreement is in effect the assessment collected from the wages of the employees exceeds the unrecouped remaining balance of the approved costs then expended, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.

Section 19. KRS 154.24-140 is amended to read as follows:

(1) If an eligible company operates an existing service and technology business in Kentucky, and wishes to expand that business within the Commonwealth, the eligible company may submit an application to the authority to become an approved company and eligible for the inducements offered in KRS 154.24-010 to 154.24-150.

(2) If an existing business becomes an approved company, the authority shall determine a base level of employment and a base level of state income tax liability of the approved company for determining eligible credits in remaining years of the approved company's project period. The base level shall be determined by taking into consideration any seasonal fluctuations or aberrations of employment levels over a preceding three (3) year period. ***Notwithstanding the determination of a base level of employment, no employee of the existing business who is an employee of such business prior to the date of the preliminary resolution of the authority as prescribed in KRS 154.24-100 shall be subject to assessment.***

(3) The authority shall identify, by name, all of the existing employees engaged in the service and technology activity, and these employees shall be exempt from the assessment. If any of these employees cease working in the activity, another employee shall be added to the base level of employment, based on the earliest date of entry into the work force, and he shall be exempt from the assessment. The authority may negotiate with the approved company a different method of determining the base level of employment which would yield a more equitable result for the approved company, the Commonwealth, local jurisdictions, and the employees.

(4) To become eligible for inducements, the approved company shall create and maintain ***above the base level of employment*** an increase of at least twenty-five (25) ***full-time*** employees ***who are residents of the Commonwealth and who are subject to the Kentucky income tax*** [~~above the base level of employment~~].

(5) The approved company shall continue to pay to the Commonwealth, on an annualized basis during the term of the agreement, the base level of income tax, adjusted on an annual basis to reflect changes in the consumers price index. Any excess income tax owed may be taken as a credit.

(6) If any approved company expands because of an increase in business or because of the commencement of a new line of business, it shall be eligible, at the discretion of the authority, to negotiate a separate and additional agreement to cover the expanded business under the same conditions as authorized for expansion in this section.

Section 20. KRS 154.24-150 is amended to read as follows:

(1) Before any agreement as prescribed in KRS 154.24-120 shall become effective, the legislative body of any local jurisdiction which may lose revenue as a result of the inducements offered pursuant to KRS 154.24-010 to 154.24-150 ***and which assesses a local occupational license fee*** shall approve by official action the granting of ***inducements*** [~~inducement~~] to the approved company. ***If a local jurisdiction which satisfies the requirements of the previous sentence of this subsection does not approve the granting of the inducements or does not elect to provide in lieu of credits as described in subsection (2) of this section, then an approved company shall not be permitted to impose assessments against the wages of its employees.***

(2) ***Subject to the prior written approval of the authority of any proposed in lieu of credits*** [~~In lieu of a credit against the local occupational license fee~~], the local government may elect, by vote of its legislative body, to provide for ***in lieu of credits for the approved company and its economic development project*** [~~the benefit of the approved company, a benefit of service deemed to be equal to one percent (1%) of the employees' wages which would have been subject to the local occupational license fee, or may provide an in-kind contribution equal to one-half (1/2) of the rent for the duration of the agreement. For purposes of this subsection, benefits and in-kind contributions shall be services and programs deemed eligible by the local jurisdiction's governing body~~].

(3) If the local government elects to provide ***in lieu of credits as described in subsection (2) of this section*** [~~an incentive other than a credit against its local occupational license fee~~], the assessment authorized by KRS 154.24-110 shall be four percent (4%), one hundred percent (100%) of which shall be permitted as a credit against Kentucky income tax withheld pursuant to KRS 141.350.

(4) If a local jurisdiction in which the economic development project is to be located does not assess a local occupational license fee and does not elect to provide in lieu of credits as described in subsection (2) of this section, then the approved company may require that each employee subject to state tax imposed by KRS 141.020, as a condition of employment, agree to pay a service and technology job creation assessment fee up to five percent (5%) of the gross wages as prescribed in subsection (2) of KRS 154.24-110, provided that each employee paying the assessment shall only be entitled to credits against his Kentucky income tax as prescribed in subsection (2)(a) of KRS 154.24-110.

(5) If a local jurisdiction in which the economic development project is to be located assesses less than a one percent (1%) local occupational license fee and does not elect to provide in lieu of credits as described in subsection (2) of this section, then the approved company may require that each employee subject to state tax imposed by KRS 141.020, as a condition of employment, agree to pay a service and technology job creation assessment fee up to five percent (5%) of the gross wages as prescribed in KRS 154.24-110(2), provided that each employee paying the assessment shall only be entitled to credits against his Kentucky income tax as prescribed in subsection (2)(a) of KRS 154.24-110 and to credits against his local occupational license fee to the extent of the local occupational license fee collected by the local jurisdiction.

(6) If a local jurisdiction in which the economic development project is to be located does not assess a local occupational license fee and elects to provide in lieu of credits as described in subsection (2) of this section, then the assessment shall be in accordance with subsection (3) of this section.

Section 21. KRS 154.26-010 is amended to read as follows:

As used in KRS 154.26-015 to 154.26-100, unless the context clearly indicates otherwise:

(1) "Agreement" means ***a revitalization*** [~~an~~] agreement entered into, pursuant to KRS 154.26-090, on behalf of the authority and an approved company with respect to an economic revitalization project;

(2) ***"Appropriation agreement" means an agreement entered into, pursuant to KRS 154.26-090(1)(d)2.b., among the approved company, the authority, and local governmental entities with respect to appropriations by these local governmental entities for the benefit of the approved company.***

(3) "Approved company" means any eligible company approved by the authority pursuant to KRS 154.26-080 requiring an economic revitalization project;

(4)[~~(3)~~] "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

(c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(e) All costs required for the installation of utilities, including, but not limited to, water, sewer, sewer treatment, gas, electricity, communications, and railroads, and including off-site construction of the facilities paid for by the approved company; and

(f) All other costs comparable with those described above;

(5)[~~(4)~~] "Assessment" means the job revitalization assessment fee authorized by KRS 154.26-100;

(6)[~~(5)~~] "Authority" means the Kentucky Industrial Revitalization Authority created by KRS 154.26-020;

(7)[~~(6)~~] "Board" means the board of directors of the [~~Kentucky Rural Economic Development~~] authority, or its successor;

(8)[~~(7)~~] "Commonwealth" means the Commonwealth of Kentucky;

(9)[~~(8)~~] "Economic revitalization project" or "project" means the acquisition, construction, equipping, and rehabilitation of machinery and equipment, constituting fixtures or otherwise, and with respect thereto, the construction, rehabilitation, and installation of improvements of facilities necessary or desirable for the acquisition, construction, installation, and rehabilitation of the machinery and equipment, including surveys; installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are utilized to improve the economic situation of the approved company to allow the approved company to remain in operation and retain or create jobs;

(10)[~~(9)~~] "Eligible company" means any corporation, partnership, sole proprietorship, or business trust, employing or intending to employ ***full-time*** a minimum of twenty-five (25) persons engaged in manufacturing at the same facility, whether owned or leased, located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval by the authority of an economic revitalization project, including facilities where manufacturing has been temporarily suspended and which meets the standards promulgated by the authority pursuant to KRS 154.26-080;

(11)[~~(10)~~] "Inducements" means the Kentucky income tax credit and the job revitalization assessment fee as prescribed in KRS 154.26-090 and 154.26-100;

(12)[~~(11)~~] "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing that results in a change in the condition of the property and any related activity or function, together with the storage, warehousing, distribution, and related office facilities; and

(13)[~~(12)~~] "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.010, or any board, commission, institution, or division exercising any function of the state which is not an independent municipal corporation or political subdivision.

Section 22. KRS 154.26-020 is amended to read as follows:

(1) The Kentucky Industrial Revitalization Authority is created and established as an agency, and instrumentality, and political subdivision of the Commonwealth and a public body corporate and politic with powers and authority to perform essential governmental and public functions and purposes to improve and otherwise promote the general welfare and material well-being of the people of the Commonwealth by promoting, supporting, and approving projects.

(2) The authority shall be governed by a board of directors consisting of the board of directors of the Kentucky [~~Rural~~] Economic Development ***Finance*** Authority, or its successor, as prescribed in KRS ***154.20-010*** [~~152.264~~].

(3) The board of directors shall comply with the provisions of KRS ***154.20-010*** [~~152.264~~] in regard to its operations.

Section 23. KRS 154.26-070 is amended to read as follows:

(1) No director, officer, or employee of the authority shall be interested, directly or indirectly, or shall be an officer or employee, or have an ownership interest in any firm or corporation interested, directly or indirectly, in any contract with the authority.

(2) Should a director, officer or employee of the authority have such an interest or be an officer or employee of or have an ownership interest in any such firm or corporation, then the director, officer or employee of the authority shall:

- ***(a) Disclose the interest and the office, employment, or ownership in the firm or corporation;***
- ***(b) Refrain from participating in discussions relating to any contract of the firm or corporation with the authority; and***
- ***(c) Refrain from voting or otherwise taking action on any contract or proposed contract of the authority with the firm or corporation.***

(3) If any contract or agreement shall be made in violation of the provisions of this section, it shall be null and void and no action shall be maintained against the authority.

Section 24. KRS 154.26-080 is amended to read as follows:

(1) The authority shall establish standards for the determination and approval of eligible companies and their projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.

(2) These standards shall give greatest weight to the need for the project; the new capital investment in the project that will result in financial stability for the manufacturing facility; and the retention or expansion of the greatest number of employees at the manufacturing facility.

(3) With respect to each eligible company making an application to the authority for inducements, and with respect to the project described in the application, the authority shall make inquiries and request materials of the applicant, including, but not limited to, written evidence that except ***for*** a substantial investment in the project, assisted by the inducements authorized by KRS 154.26-015 to 154.26-100, the eligible company will close its manufacturing facility, permanently lay off its employees, and cease operations.

(4) The eligible company shall, in a manner acceptable to the authority, detail the condition of the facility, including, but not limited to, financial, efficiency, and productivity matters; explain in detail why the company intends to close the facility; and set out alternatives that are available to the company.

(5) The authority shall engage the services of a competent consulting firm or technical resource to analyze the data made available by the company, and to collect and analyze additional information necessary to determine that, in ***the*** [~~its~~]

independent judgment ***of the consultant***, the company will close the facility absent ***a substantial investment in the project, assisted by the inducements authorized by KRS 154.26-015 to 154.26-100*** [~~intervention by the authority~~]. The company shall pay the cost of this evaluation.

(6) The company shall cooperate with the consultant and provide all of the data which could reasonably be required by the consultant to make a fair assessment of the company's intentions to close the facility.

(7) The authority shall review the report of the consultant and other information which has been made available to it ***in order to assist the authority in determining*** [~~to determine~~] whether the company intends to close the facility for valid reasons. The authority shall determine the potential of the proposed revitalization project to make the facility stable, productive, and competitive in its market.

(8) The authority shall hold a public hearing to solicit public comment from any person, group, or interested party regarding the proposed project.

(9) After the public hearing, the authority, by resolution of its board of directors, may declare the jobs then existing at the facility to be lost; may approve the eligible company's application for a project; and may grant to the eligible company the status of an approved company. The decision reached by the authority shall be final and no appeal shall be granted.

(10) All meetings of the board of directors of the authority shall be held in accordance with KRS 61.805 to 61.850. The board of directors of the authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

Section 25. KRS 154.26-090 is amended to read as follows:

(1) The authority, upon adoption of an authorizing resolution, may enter into, with any approved company, ***an*** [~~a revitalization~~] agreement with respect to its project. The terms and provisions of each [~~revitalization~~] agreement***, including the amount of approved costs,*** shall be determined by negotiations between the authority and the approved company, except that each [~~revitalization~~] agreement shall include the following provisions:

(a) The agreement shall set a date by which the approved company will have completed the project. Within three (3) months of the completion date, the ***approved*** company shall document the actual cost of the project in a manner acceptable to the authority. The authority may employ an independent consultant or utilize technical resources to verify the cost of the project. The approved company shall reimburse the authority for the cost of the consultant;

(b) In consideration of the execution of the agreement, the approved company may be permitted during the time ***not to exceed ten (10) years during*** [~~in~~] which the agreement is in effect, which ***time*** shall ***commence on the date of the agreement for purposes of the inducements*** [~~not exceed ten (10) years, the following~~]:

1. A credit against the Kentucky income tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the ***economic revitalization*** project as determined under KRS 141.403; plus

2. The aggregate [~~job revitalization~~] assessment withheld by the approved company in each year;

(c) The income tax credit allowed to the approved company shall be equal to the lesser of the total amount of the tax liability or fifty percent (50%) of the approved cost that has not yet been recovered***, which fifty percent (50%) shall be reduced by any recovery through the collection of assessments and appropriations made under any appropriation agreement***. The credit shall be allowed ***for*** [~~in~~] each fiscal year of the ***approved company during the term of the*** [~~revitalization~~] agreement ***and for*** [~~in~~] which a tax return of the approved company is filed until the entire fifty percent (50%) of the approved cost has been received ***through a combination of credits, assessments, if assessments are elected to be imposed, and appropriations made under any appropriation agreement***. The approved company shall not be required to pay estimated income tax payments as prescribed under KRS 141.044 or 141.305 on income from the economic revitalization project. Ninety (90) days after the filing of the tax return of the approved company, the Revenue Cabinet of the Commonwealth shall certify to the authority ***for the preceding fiscal year of an approved company for which a return was filed with respect to an economic revitalization project of the approved company*** the state income tax liability [~~for the preceding year~~] of the approved company [~~with respect to a project~~] receiving inducements under KRS 154.26-015 to 154.26-100 and the amount of any tax credits taken pursuant to this section;

(d) The agreement shall provide that:

1. The term shall not be longer than the earlier of:

a. The date on which the approved company has received ***inducements*** [~~Kentucky income tax credits~~] or withholds assessments equal to fifty percent (50%) of the approved costs of its ***economic revitalization*** project; or

b. Ten (10) years from the date of the execution of the agreement.

2. Prior to [~~final~~] execution of the agreement, the ***eligible*** company shall secure from all local governmental authorities responsible for collecting local occupational license fees one (1) of the following:

a. A resolution or order of the local governmental entities acknowledging and consenting to the termination or partial termination of the receipt of local occupational license fees paid by the approved company on behalf of its employees to the local government entities resulting from the execution of the agreement; or

b. In lieu of the credit against the local occupational license fee, an ***appropriation*** agreement with ***the authority and*** the local governmental entities by which the local governmental entities will appropriate funds in an amount equal to the amount of the credit of the local occupational license fee for the benefit of the approved company in a manner consistent with the applicable state laws.

If more than one (1) local occupational license fee is imposed upon the employees of the approved company, [~~the portion of~~] the assessment ***imposed upon the employees shall be*** credited against the local occupational license fee ***and*** shall be apportioned to each local occupational license fee according to each local occupational license fee's proportion to the total of all local occupational license fees ***for such employees***. No credit, or portion thereof shall be allowed against any local occupational license fee imposed ***by*** or dedicated solely to a local board of education.

3. If in any fiscal year of the approved company during which the agreement is in effect the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees exceeds fifty percent (50%) of the approved costs then expended, the approved company shall pay the excess to the Commonwealth as income tax.

4. If in any fiscal year of the approved company during which the agreement is in effect the assessment collected from the wages of the employees exceeds fifty percent (50%) of the approved costs then expended, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.

(2) If [~~, prior to the execution of the assessment agreement,~~] the approved company elects to utilize the [~~job revitalization~~] assessment [~~fee~~] as prescribed in KRS 154.26-100, a vote of the employees shall be taken by the approved company to approve or disapprove the withholding of the assessment. The vote shall be conducted in a manner approved by the authority.

(3) ***If the approved company elects to utilize the assessment, neither the appropriation agreement, if it is so used, nor*** he agreement shall [~~not~~] be executed unless the assessment is approved by a majority of the employees voting. ***If the approved company elects not to utilize the assessment, no employee vote shall be required for the execution of the agreement.***

(4) A majority vote of the employees of the approved company voting in favor of the assessment shall authorize the approved company to invoke the assessment on all employees of the approved company.

(5) [~~Each employee shall sign a written authorization in a form acceptable to the authority by which the employer is authorized to deduct the assessment from the employee's wages.~~

~~(6)~~] Notwithstanding the provisions of this section, no approved company shall assess the wages of an employee who is party to an individual employment contract with the approved company, or the wages of an employee whose wages will fall below applicable federal or state minimum wage standards if the job revitalization assessment fee is imposed.

(6)[~~(7)~~] ***Neither the appropriation agreement nor*** the agreement shall [~~not~~] be transferable or assignable by the approved company without the expressed written consent of the authority.

Section 26. KRS 154.26-100 is amended to read as follows:

(1) The approved company may require that each employee subject to the income tax imposed by KRS 141.020, whose job was preserved or created as a result of the project, as a condition of employment or the retention of employment, agree to pay ***an*** [~~a job revitalization~~] assessment [~~fee~~], not to exceed, during any fiscal year of the approved company, six percent (6%) of the gross wages of each employee subject to the income tax imposed by KRS 141.020 whose job was retained or created as a result of the project. However, if the ***appropriation*** agreement [~~under KRS 154.26-090(1)(d)2.b.~~] is consummated, the [~~job revitalization~~] assessment [~~fee~~] shall be five percent (5%) of each employee's gross wages subject to the income tax imposed by KRS 141.020.

(2) Each assessed employee shall be entitled to a credit against his Kentucky income tax required to be withheld under KRS 141.310 equal to two-thirds (2/3) of the [~~job revitalization~~] assessment [~~fee~~]; or if the ***appropriation*** agreement [~~set forth in KRS 154.26-090(1)(d)2.b.~~] is consummated, the credit shall be equal to four-fifths (4/5) of the [~~job revitalization~~] assessment [~~fee~~].

(3) Each assessed employee also shall be entitled to a credit against his local occupational license fee in the form of a simultaneous adjustment of his local occupational license fee withholding equal to one-sixth (1/6) of the [~~job~~

~~revitalization]~~ assessment ~~[fee]~~, unless the ***appropriation*** agreement ~~[set forth in KRS 154.26-090(1)(d)2.b.]~~ is consummated.

(4) If an approved company shall elect to impose the assessment ~~[fee]~~ as a condition of employment or the retention of employment, it shall deduct the assessment from each paycheck of each employee subject to subsections (2) and (3) of this section.

(5) Any approved company collecting an assessment as provided in subsection (1) of this section shall make its payroll books and records available to the authority at ***such*** reasonable times ***as*** the authority shall request, and shall file with the authority the documentation respecting the assessment the authority may require.

(6) Any assessment of the wages of the employees of an approved company pursuant to subsection (1) of this section shall ***permanently*** lapse upon expiration or termination of the agreement.

Section 27. KRS 154.28-010 is amended to read as follows:

As used in KRS 154.28-010 to 154.28-090 and 141.400, unless the context clearly indicates otherwise:

(1) ***"Affiliate" means the following:***

(a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors and lineal descendants of an individual;

(b) An individual and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;

(c) Two (2) corporations which are members of the same controlled group, which includes and is limited to:

1. One (1) or more claims of corporations connected through stock ownership with a common parent corporation if:

a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and

b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing such voting power or value, stock owned directly by the other corporations; or

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

(d) A grantor and a fiduciary of any trust;

(e) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(f) A fiduciary of a trust and a beneficiary of that trust;

(g) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(h) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(i) A corporation and a partnership if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership;

(j) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or

(k) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation: S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended.

(2) "Agreement" means an agreement entered into, pursuant to KRS 154.28-090, on behalf of the authority and an approved company with respect to an economic development project;

(3)~~[(2)]~~ "Approved company" means any eligible company, approved by the authority pursuant to KRS 154.28-080, requiring an economic development project;

(4)[~~(3)~~] "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, rehabilitation, and installation of an economic development project;

(b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, rehabilitation, and installation of an economic project which is not paid by the vendor, supplier, deliverymen, contractors, or otherwise else provided;

(c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation, and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, rehabilitation, and installation of an economic development project;

(d) All costs which shall be required to be paid under the terms of any contract for the acquisition, construction, rehabilitation, and installation of an economic development project;

(e) All costs which shall be required for the installation of utilities such as water, sewer, sewer treatment, gas, electricity, communications, railroads, and similar facilities, and including offsite construction of the facilities paid for by the approved company; and

(f) All other costs comparable to those described above;

(5)[~~(4)~~] "Authority" means the Kentucky Industrial Development Authority created by KRS 154.28-020;

(6)[~~(5)~~] "Commonwealth" means the Commonwealth of Kentucky;

(7)[~~(6)~~] "Economic development project" or "project" means and includes***:***

(a) The acquisition of any real estate ***by the approved company or its affiliate; or***

(b) The fee ownership of real estate by the approved company or its affiliate; and

(c) With respect to (a) or (b) of this subsection, the construction and installation of improvements and facilities necessary or desirable for improvement of the real estate, including: surveys, site tests, and inspections; subsurface site work and excavation; removal of structures, roadways, cemeteries, and other site obstructions; filling, grading, provision of drainage, and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; offsite construction of utility extensions to the boundaries of the real estate; and the acquisition and installation of manufacturing facilities on the real estate for the use of the approved company or its affiliates for manufacturing purposes;

(8)[~~(7)~~] "Eligible company" means any corporation, partnership, sole proprietorship, or trust engaged in manufacturing [~~which meets the standards promulgated by the authority pursuant to KRS Chapter 13A~~];

(9)[~~(8)~~] "Inducement" means the Kentucky income tax credit as set forth in KRS 154.28-090;

(10)[~~(9)~~] "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property, and any activity functionally related to it, together with storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals; and

(11)[~~(10)~~] "State agency" shall have the meaning assigned to the term in KRS 56.440(8).

Section 28. KRS 154.28-020 is amended to read as follows:

(1) The Kentucky Industrial Development Authority is created and established as an agency, instrumentality, and political subdivision of the Commonwealth and a public body corporate and politic with powers and authority to perform essential governmental and public functions and purposes in improving and otherwise promoting the general welfare and material well-being of the people of the Commonwealth by promoting, supporting, and approving economic development projects.

(2) The authority shall be governed by a board of directors which shall consist of the board of directors of the Kentucky ***Economic Development Finance*** [~~Rural Economic Development~~] Authority, or its successor, as prescribed in KRS ***154.20-010*** [~~152.264~~].

(3) The board of directors shall comply with the provisions of KRS ***154.20-010*** [~~152.264~~] in regard to its operations.

Section 29. KRS 154.28-030 is amended to read as follows:

The authority shall have all the powers necessary or convenient to carry out the purposes and provisions of KRS 154.28-015 to 154.28-090 and 141.400, including, but not limited to:

(1) Provide for economic development projects pursuant to the provisions of KRS 154.28-015 to 154.28-090 and 141.400, and to cooperate with eligible companies in order to promote, foster, and support economic development within the Commonwealth;

(2) Conduct hearings and inquiries, in the manner and by methods as it deems desirable, including, but not limited to, the appointing of special committees to gather information with respect to eligible companies and economic ***development***

projects for the purpose of making any determinations necessary or desirable in the furtherance of KRS 154.28-015 to 154.28-090 and 141.400;

(3) Appoint an executive director, who shall be an officer of the authority, to administer the business of the authority as provided in KRS 154.28-015 to 154.28-090 and 141.400, and to delegate to him the rights and powers of the authority required for the proper and desirable execution of the purposes of the authority;

(4) Consent, if it deems necessary or desirable in the fulfillment of its purposes, to the modification of the terms of an agreement of any kind to which the authority is a party;

(5) Promulgate administrative regulations in accordance with KRS Chapter 13A, respecting its programs and purposes;

(6) Make, execute, and give effect to any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, organization, or entity, necessary or appropriate to accomplish the purposes of KRS 154.28-015 to 154.28-090 and 141.400;

(7) Accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source and to agree to, and to comply with, conditions attached thereto;

(8) Sue and be sued in its own name, plead and be impleaded;

(9) Maintain an office in the city of Frankfort and at any other place or places as it may determine;

(10) Adopt an official seal and alter it at its pleasure;

(11) Adopt bylaws for the regulation of its affairs and the conduct of its business;

(12) Employ fiscal consultants, attorneys, appraisers, investment advisors, trustees, other consultants, agents, and employees, and to fix and pay their compensation from funds available to the authority;

(13) Exercise any or all of the general corporate powers of a nonprofit corporation organized under KRS Chapter 273, and not inconsistent with the provisions of KRS 154.28-015 to 154.28-090 and 141.400; and

(14) Include in any agreement the amounts deemed necessary by the authority to pay consultant, advisory, and legal fees, and other expenses necessary or incident to the preparation, adoption, implementation, and enforcement of the terms of those agreements, all fees and expenses to be the responsibility of the approved company.

Section 30. KRS 154.28-070 is amended to read as follows:

(1) No director, officer, or employee of the authority shall be interested, directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested, directly or indirectly, in any contract with the authority.

(2) Should a director, officer or employee of the authority have such an interest or be an officer or employee of or have an ownership interest in any such firm or corporation, then the director, officer or employee of the authority shall:

(a) Disclose the interest and the office, employment, or ownership in such firm or corporation;

(b) Refrain from participating in discussions relating to any contract of the firm or corporation with the authority; and

(c) Refrain from voting or otherwise taking action on any contract or proposed contract of the authority with the firm or corporation.

(3) If any contract or agreements shall be made in violation of the provisions of this section, it shall be null and void and no action shall be maintained against the authority.

Section 31. KRS 154.28-080 is amended to read as follows:

(1) The authority shall promulgate standards for the determination and approval of eligible companies and their economic development projects in accordance with KRS Chapter 13A.

(2) These standards shall give the greatest weight to the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to the residents of the Commonwealth; and the likelihood of the economic success of the economic development project.

(3) No economic development project which will result in the [~~voluntary~~] replacement of ***a*** manufacturing ***facility*** [~~facilities~~] existing within the Commonwealth shall be approved by the authority; however, the authority may approve an economic development project that***:***

(a) Rehabilitates a manufacturing facility***:***

1. Which has not been in operation for a period of ***ninety (90) or more consecutive days; or***

2. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction; or

(b) Replaces a manufacturing facility existing in the Commonwealth:

1. The title to which shall have been taken under the exercise of the power of eminent domain, or the

title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) [~~three (3) consecutive~~] months.

(4) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the application, the authority shall make inquiries and request materials of the applicant, including, but not limited to, written evidence that except for the receipt of inducements authorized by KRS 154.28-015 to 154.28-090 and 141.400, the eligible company will not locate its economic development project within the Commonwealth.

(5) After a diligent review of the relevant materials and completion of its inquiries, the authority, by resolution of its board of directors, may designate an eligible company to be an approved company and authorize the undertaking of its economic development project.

(6) All meetings of the board of directors of the authority shall be held in accordance with KRS 61.805 to 61.850. The board of directors of the authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

Section 32. KRS 154.28-090 is amended to read as follows:

(1) The authority, upon adoption of an authorizing resolution, may enter into, with any approved company, a financing agreement with respect to its economic development project. The terms and provisions of each agreement***, including the amount of approved costs,*** shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

(a) The term of an agreement***, which shall commence on the date of the agreement,*** shall not be longer than the earlier of the following:

1. The maturity of loans or other financing incurred in connection with the economic development project, except that the agreement may be terminated upon the earlier prepayment of loans or other financing incurred in connection with the economic development project; or

2. Ten (10) years from the date of the original agreement.

(b) In consideration for the execution ***and during the term*** of the agreement, the approved company shall be permitted a credit against Kentucky income tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the economic development project as determined by KRS 141.400.

(2) The agreement shall provide that:

(a) The Kentucky income tax credit, in any fiscal year ***of the approved company,*** shall not exceed the total debt service paid during the same fiscal year with respect to the loans or other financing incurred in connection with the economic development project; however, to the extent that annual debt service payments exceed the annual income tax credits in any year, the excess debt service payments may be recouped from excess tax credits in succeeding years.

(b) The income tax credited to the approved company shall be credited ***for*** [~~in~~] the fiscal year ***for*** [~~of the agreement in~~] which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed under KRS 141.042. Ninety (90) days after the filing of the tax return of the approved company, the Revenue Cabinet shall certify to the authority the income tax liability***,*** for the preceding ***fiscal*** year of the approved company ***for which the return was filed, of the approved company*** with respect to an economic development project receiving inducements under the provisions of KRS 154.28-015 to 154.28-090 and KRS 141.400, and the amount of any income tax credits taken pursuant to KRS 154.28-015 to 154.28-090 and KRS 141.400.

(c) The agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.

(d) An approved company shall require of any lender to an approved company funding the loans or other financing incurred in connection with the economic development project, written evidence of all annual debt service to the lender, which evidence shall be provided in writing to the authority within forty-five (45) days following the close of each fiscal year of the financing agreement.

(e) If an approved company fails to comply with its respective obligations under the financing agreement, the lender to an approved company fails to comply with the provisions of subsection (2)(d) of this section, or an approved company is declared in default under the loans or other financing incurred in connection with the economic development project, the authority, or any of its assignees, may, at its option:

1. Suspend the availability of the income tax credits;

2. Pursue any remedy provided under the financing agreement, including termination of the agreement; and

3. Pursue any other remedy at law to which it may appear entitled.

(3) All remedies provided in subsection (2)(e) of this section shall be deemed cumulative.

SECTION 33. A NEW SECTION OF SUBCHAPTER 28 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

If the authority adopts a preliminary resolution designating an eligible company as an approved company and preliminarily approving the project of the eligible company as an economic development project prior to the effective date of this Act, and the authority adopts a final resolution approving the eligible company as an approved company and the project of the eligible company as an economic development project, and the authority and the eligible company enter into a financing agreement no later than June 30, 1995, then the approved company thereafter shall be subject to KRS 154.28-010 to 154.28-090 as it existed prior to the effective date of this Act.

Section 34. KRS 61.878 is amended to read as follows:

(1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:

(a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by another statute;

(c) 1. ***Upon and after July 15, 1992,*** records confidentially disclosed to an agency ***or required by an agency to be disclosed to it***, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records***;***[~~, and~~]

2. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:

a. In conjunction with an application for ***or the administration of*** a loan ***or grant***;

b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;

c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or

d.[~~c.~~] For the grant or review of a license to do business.

3.[~~2.~~] The exemptions provided for in ***subparagraphs*** [~~subparagraph~~] 1. ***and 2.*** of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;

(d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;

(e) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;

(f) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination before the exam is given or if it is to be given again;

(g) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;

(h) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;

(i) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;

(j) All public records or information the disclosure of which is prohibited by federal law or regulation; and

(k) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.

(2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.

(3) No exemption in this section shall be construed to deny, abridge or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, layoffs, disciplinary actions, examination scores and preliminary and other supporting documentation. A public agency employee, including university employees, applicant or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.

(4) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.

(5) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.

Section 35. KRS 141.350 is amended to read as follows:

The amount deducted and withheld as tax under KRS 141.310 and KRS 141.315 during any calendar year upon the wages of any individual and the amount of credit described in KRS 154.22-070(2), 154.24-110[~~(2)(a)1.~~], or 154.26-100(2) shall be allowed as a credit to the recipient of the income against the tax imposed by KRS 141.020, for taxable years beginning in the calendar year. If more than one (1) taxable year begins in the calendar year, the amount shall be allowed as a credit against the tax for the last taxable year so beginning.

Section 36. It is the intent of the General Assembly that the amendments to Section 34 of this Act shall be retroactive to July 15, 1992.

The Committee Substitute to **HB 511** is as follows:

HB 511, AN ACT relating to financing of development generally.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 154.20-010 is amended to read as follows:

(1) There is created and established within the cabinet***, subject to the authority of the board,*** the Kentucky Economic Development Finance Authority ***as an agency, instrumentality, and political subdivision of the Commonwealth and a public body corporate and politic with*** [~~which shall have~~] all powers, duties, and responsibilities delegated to it by the board or as otherwise provided by law, including, all programs, powers, duties, rights, and obligations of the Kentucky Development Finance Authority and the Kentucky Rural Economic Development Authority.

(2) Any interest, right, or cause of action held in whole or in part by any person, corporation, partnership, government agency, or entity under any agreement, contract, lease, mortgage, guarantee, bond, note, refund bond, or other financial transaction or obligation, made, issued, or otherwise entered into by any of the authorities, programs, or funds specified in subsection (1) of this section or that may be delegated to the authority by the board, shall not be impaired or otherwise diminished.

(3) Any interest, right, or cause of action held in whole or in part by any of the authorities, programs, or funds specified in subsection (1) of this section shall not be impaired or otherwise diminished, but shall be assumed by the authority, for and on behalf of the cabinet.

(4) The authority shall consist of a committee of ***seven (7)*** [~~five (5)~~] persons***, including six (6) persons*** appointed by the board ***who shall be private citizens of the Commonwealth, and the secretary of the Finance and Administration Cabinet who shall serve ex officio***. Any person appointed to the committee shall have experience and expertise in ***business or*** finance.

(5) Two (2) members initially appointed to the committee shall have a term of one (1) year each, ***two (2) members initially appointed to the committee shall have a term of two (2) years each,*** and three (3) members initially appointed to the

committee shall have a term of ***three (3)*** [~~two (2)~~] years each, except that any person appointed to fill a vacancy shall serve only for the remainder of the unexpired term. All subsequent appointments shall be for a term of ***three (3)*** [~~two (2)~~] years.

(6) Any person appointed to the committee shall be eligible for reappointment***, including any member of the committee appointed prior to the effective date of this Act***.

(7) The members of the committee shall elect biennially from ***the committee's private citizen*** [~~their~~] membership the following officers: chairman, vice chairman, [~~and~~] secretary-treasurer***, and any assistant secretaries and assistant treasurers the committee deems necessary***.

(8) A majority of the members of the committee, determined by excluding any existing vacancies from the total number of members, shall constitute a quorum for the purposes of conducting its business and exercising its powers and for all other purposes.

(9)[~~(8)~~] The committee shall prepare bylaws and procedures applicable to the operations of the authority and submit them to the board to be promulgated as administrative regulations in accordance with KRS Chapter 13A.

(10)[~~(9)~~] Members of the committee shall be entitled to compensation for their services in an amount of one hundred dollars ($100) for each regular meeting of the committee and shall be entitled to reimbursement for all necessary expenses in connection with the performance of their duties.

(11)[~~(10)~~] A majority of the entire committee shall be required to conduct any business of the authority.

Section 2. KRS 154.20-130 is amended to read as follows:

(1) No member of the authority or officer or employee thereof shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the authority for any matter, cause***,*** or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such authority.

(2) Should a member, officer or employee of the authority have such an interest, then the member, officer or employee of the authority shall:

(a) Disclose the interest;

(b) Refrain from participating in discussions relating to any such contract or agreement with the authority; and

(c) Refrain from voting or otherwise taking action on any such contract or agreement of the authority.

(3) If any contract or agreement shall be made in violation of the provisions of this section the same shall be null and void and no action shall be maintained thereon against such authority.

Section 3. KRS 154.22-010 is amended to read as follows:

The following words and terms as used in KRS 154.22-010 to 154.22-070, unless the context clearly indicates a different meaning, shall have the following meanings:

(1) ***"Affiliate" means the following:***

(a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;

(b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;

(c) Two (2) corporations which are members of the same controlled group, which includes and is limited to:

1. One (1) or more claims of corporations connected through stock ownership with a common parent corporation if:

a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and

b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

(d) A grantor and a fiduciary of any trust;

(e) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(f) A fiduciary of a trust and a beneficiary of that trust;

(g) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(h) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(i) A corporation and a partnership if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership;

(j) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or

(k) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended.

(2) "Approved company" means any eligible company seeking to locate an economic development project in a qualified county, which eligible company is approved by the authority pursuant to KRS 154.22-010 to 154.22-070.

(3)[~~(2)~~] "Approved costs" means:

(a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;

(b) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;

(c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project which is not paid by the contractor or contractors or otherwise provided for;

(d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;

(e) All costs which shall be required to be paid under the terms of any contract or contracts for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and

(f) All other costs of a nature comparable to those described above.

(4)[~~(3)~~] "Assessment" means the job development assessment fee authorized by KRS 154.22-010 to 154.22-070.

(5)[~~(4)~~] "Authority" means the Kentucky Economic Development Finance Authority as created in KRS 154.20-010.

(6)[~~(5)~~] "Bonds" means the revenue bonds, notes, or other debt obligations of the authority authorized to be issued by the authority, eligible companies, or other state agency.

(7)[~~(6)~~] "Commonwealth" means the Commonwealth of Kentucky.

(8)[~~(7)~~] "Economic development project" means and includes***:***

(a) The acquisition of any real estate in a qualified county by [~~either~~] the authority***,*** [~~or~~] the approved company, ***or its affiliate; or***

(b) The fee ownership of real estate in a qualified county by the approved company or its affiliate.

With respect to (a) or (b) of this subsection, [~~and~~] the construction, installation, equipping, and rehabilitation of improvements, including fixtures and equipment, and facilities necessary or desirable for improvement of the real estate, including surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage, storm water retention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities on the real estate, for use and occupancy by the approved company or its affiliates for manufacturing purposes.

(9)[~~(8)~~] "Eligible company" means any corporation, partnership, sole proprietorship, or business trust engaged in manufacturing [~~which meets the standards promulgated by the authority pursuant to KRS 154.22-010 to 154.22-070~~].

(10)[~~(9)~~] "Financing agreement" means any agreement entered into, pursuant to KRS 154.22-010 to 154.22-070, on behalf of the authority or other lenders, or both, and an approved company with respect to an economic development project.

(11) "Inducements" means the assessment and the income tax credits allowed by KRS 154.22-060.

(12)[~~(10)~~] "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to it, together with the storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals.

(13)[~~(11)~~] "Qualified county" means any county certified as such by the authority pursuant to KRS 154.22-010 to 154.22-070.

(14) "Revenues" shall not be considered state funds.

(15)[~~(12)~~] "State agency" shall have the meaning assigned to the term in KRS 56.440(8).

[~~(13) "Revenues" shall not be considered state funds.~~]

Section 4. KRS 154.22-030 is amended to read as follows:

The Kentucky Economic Development Finance Authority shall have in addition to the powers provided in this chapter all the powers necessary or convenient to carry out and effectuate the purposes and provisions of KRS 154.22-010 to 154.22-070, including, but without limiting the generality of the foregoing, the power to:

(1) Provide and finance economic development projects pursuant to the provisions of KRS 154.22-010 to 154.22-070, and cooperate with qualified counties and eligible companies in order to promote, foster and support economic development within the qualified counties;

(2) Conduct hearings and inquiries, in the manner and by the methods as it deems desirable, including without limitation, appointment of special committees, for the purpose of gathering information with respect to qualified counties, eligible companies, and economic development projects, for the purpose of making any determinations necessary or desirable in the furtherance of KRS 154.22-010 to 154.22-070; and

(3) Negotiate the terms of***, including the amount of approved costs,*** and enter into financing agreements with approved companies, and in connection therewith to acquire, convey, sell, mortgage, finance, or otherwise dispose of any property, real or personal, loan bond proceeds, or grant Kentucky income tax incentives and permit the use of job development assessment fees, in connection with an economic development project, and to pay, or cause to be paid, in accordance with the provisions of a financing agreement, the approved costs of an economic development project from any funds available therefor.

Section 5. KRS 154.22-040 is amended to read as follows:

(1) Each year the authority shall under its rural economic development assistance program, on the basis of the final unemployment figures calculated by the Department of Employment Services within the Cabinet for Human Resources, determine which counties have had a countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth in the most recent five (5) consecutive calendar years and shall certify those counties as qualified counties. If the authority determines that a county which has previously been certified as a qualified county no longer has an unemployment rate above the state average, the authority shall decertify that county. The authority shall not finance any facilities in that county and an approved company shall not be eligible for the incentives offered by KRS 154.22-010 to 154.22-070 unless the financing agreements required herein are entered into by all parties ***prior to July 1 of the year following the calendar year in which the authority decertified that county*** [~~within one (1) year after the date of the decertification.~~

~~(2) Notwithstanding KRS 154.22-040(1), on a one-time basis, after July 14, 1992, the authority shall, on the basis of the final unemployment rates for calendar years 1987-1991 calculated by the Department of Employment Services within the Cabinet for Human Resources, determine which counties have a countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth in the most recent five (5) consecutive calendar years and shall certify those counties as qualified counties. Any county previously certified as a qualified county by the authority which no longer has an unemployment rate above the state average for the indicated period shall lose that certification and no longer be qualified. If a company is approved prior to July 14, 1992, the loss of certification as a qualified county by a county as the result of actions taken by the authority in accordance with the provisions of this subsection shall not be construed as prohibiting the approved company from being eligible for incentives provided under KRS 154.22-030 to 154.22-070, unless the required financing agreements are entered into by all parties within one (1) year after the date of the loss of certification by the county~~].

(2)[~~(3)~~] The authority shall establish the procedures and standards for the determination and approval of eligible companies and their economic development projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A. These standards shall give greatest weight to the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to residents of the Commonwealth; and the likelihood of the economic success of the economic development project. No economic development project which will result in the [~~voluntary~~] replacement of manufacturing facilities existing in the state shall be approved by the authority; however, the authority may approve an economic development project that***:***

(a) Rehabilitates a manufacturing facility***:***

1. Which has not been in operation for a period of ***ninety (90) or more consecutive days; or***

2. The title to which is vested in other than the eligible company or an affiliate of the eligible company

and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction; or

(b) Replaces a manufacturing facility existing in the Commonwealth:

1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) [~~three (3) or more consecutive~~] months.

(3) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the application, the authority shall request materials and make inquiries of the applicant as necessary or appropriate. After a diligent review of relevant materials and completion of its inquiries, the authority may by resolution of its governing committee designate an eligible company to be an approved company and authorize the undertaking of its economic development project in the qualified county.

Section 6. KRS 154.22-050 is amended to read as follows:

The authority may enter into, with any approved company, a financing agreement with respect to its economic development project. Subject to the inclusion of the mandatory provisions set forth below, the terms and provisions of each financing agreement shall be determined by negotiations between the authority and the approved company.

(1) If an eligible company, at the time of submission of its application to the authority to become an approved company, requests the authority in writing to issue bonds on its behalf, then each financing agreement used in connection with the issuance of bonds by the authority shall include the following provisions:

(a) The term of a financing agreement shall not be less than the last maturity of the bonds issued with respect to the economic development project, except that the financing agreement may terminate upon the earlier redemption of all of the bonds issued with respect to the economic development project and, if the authority owns the economic development project, the authority may grant to the approved company ***or its affiliate*** an option to purchase, for the consideration the authority may approve, the economic development project from the authority upon the termination of the financing agreement. Nothing in this subsection shall limit the extension of the term of a financing agreement if there is a refunding of the correlative bonds or otherwise; and

(b) The financing agreement shall specify that the annual obligations of the approved company pursuant to KRS 154.22-010 to 154.22-070 shall equal in each year the annual debt service for that year on the bonds issued with respect to the economic development project; and the approved company shall pay such obligation of the financing agreement to the trustee for bonds issued for the benefit of the approved company, at such time and in such amounts sufficient to amortize such bonds.

(c) 1. In consideration for financing agreement payment, the approved company may be permitted the following during the period of time ***not to exceed fifteen (15) years*** in which the financing agreement is in effect, ***which period of time shall commence for purposes of the following upon the date of the financing agreement***[~~not to exceed twenty-five (25) years~~].

a. A one hundred percent (100%) credit against the Kentucky income tax that otherwise would be owed in the year, as determined under KRS 141.347, to the Commonwealth by the approved company on the income of the approved company generated by or arising out of the economic development project, the credit not to exceed the total debt service paid under the respective financing agreement; plus

b. The aggregate assessment withheld by the approved company in each year.

2. The income tax credited to the approved company referred to herein shall be credited ***for*** [~~in~~] the fiscal year ***for*** [~~of the financing agreement in~~] which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042.

(d) 1. The financing agreement shall provide that the assessments, when added to the credit for the Kentucky income tax herein granted, shall not exceed the total financing agreement annual payment by the approved company in any year; however, to the extent that financing agreement annual payments exceed credits received and assessments collected in any year, the excess payment may be recouped from excess credits or assessment collections in succeeding years.

2. If ***in*** [~~during~~] any fiscal year of ***the approved company during which*** the financing agreement ***is in effect*** the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees equals the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of ***that*** [~~the~~] fiscal

year of the ***approved company, and the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year***[~~financing agreement~~].

3. If in any fiscal year of the approved company during which the financing agreement is in effect, the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the approved company shall pay the excess to the Commonwealth as income tax.

4. If in any fiscal year of the approved company during which the financing agreement is in effect the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.

(e) The financing agreement shall provide in substance that:

1. It may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to such effect; and

2. Upon default by the approved company in any obligations under the financing agreement or other documents evidencing, securing, or related to the approved company's obligations, the authority, or any of its assignees, shall have the right, at its option, to declare the financing agreement or other such documents in default; and

a. Accelerate and declare the total of all such payments due by the approved company and sell the economic development project at public, private, or judicial sale;

b. Pursue any remedy provided under the financing agreement or other such documents;

c. Pursue all other remedies available to it under the Kentucky Uniform Commercial Code;

d. Be entitled to the appointment of a receiver by the Circuit Court wherein any part of the economic development project is located; and

e. Pursue any other remedy at law to which it appears entitled.

3.[~~f.~~] All remedies provided in subsection (1)(e)2. of this section shall be deemed cumulative.

(2) If an eligible company, at the time of submission of its application to the authority to become an approved company, does not request the authority in writing to issue bonds on its behalf, then each financing agreement used in connection with loans or other financing (other than bonds issued by the authority for which subsection (1) of this section shall be used) shall include the following provisions:

(a) The term of a financing agreement***, which shall commence on the date of the financing agreement,*** shall not be longer than:

1. The maturity of any loan or other financing incurred in connection with the economic development project, except that the financing agreement may terminate upon the earlier prepayment of all loans or other financing incurred in connection with the economic development project; or

2. ***Fifteen (15)*** [~~Twenty-five (25)~~] years from the date of the original financing agreement.

3. Nothing in this subsection shall limit the extension of the term of a financing agreement if there is a refinancing of the loans or other financing. The authority shall not own an economic development project that is the subject of this form of financing agreement.

(b) 1. The approved company may be permitted the following during the ***term of*** [~~period of time in which~~] the financing agreement [~~is in effect~~]:

a. A one-hundred percent (100%) credit against the Kentucky income tax that otherwise would be owed in the year, as determined under KRS 141.347, to the Commonwealth by the approved company on the income of the approved company generated by or arising out of the economic development project, such credit not to exceed the total debt service paid with respect to the loans or other financing incurred in connection with the economic development project; plus

b. The aggregate assessment withheld by the approved company in each year.

2. The income tax credited to the approved company shall be credited ***for*** [~~in~~] the fiscal year ***for*** [~~of the~~

~~financing agreement in~~] which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042.

(c) 1. The financing agreement shall provide that the assessments, when added to the credit for the Kentucky income tax as provided in KRS 154.22-060, shall not exceed the total annual debt service payments of the approved company with respect to the loans or other financing incurred in connection with the economic development project in any year; however, to the extent that such annual debt service payments exceed credits received and assessments collected in any year, the excess payment may be recouped from excess credits or assessment collections in succeeding years.

2. If, *in* [~~during~~] any fiscal year of *the approved company during which* the financing agreement *is in effect*, the total of the income tax credit granted to the approved company, plus the assessment collected from the wages of the employees, equals the annual debt service payments with respect to the loans or other financing incurred in connection with the economic development project, and if all excess payments with respect to the loans or other financing incurred in connection with the economic development project accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of *that* [~~the~~] fiscal year of the *approved company and the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year*[~~financing agreement~~].

3. If in any fiscal year of the approved company during which the financing agreement is in effect the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the approved company shall pay the excess to the Commonwealth as income tax.

4. If in any fiscal year of the approved company during which the financing agreement is in effect the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees wages next succeeding the first date when the approved company collected excess assessments.

(d) The financing agreement shall provide in substance that it may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.

(e) The financing agreement shall provide that an approved company shall require of any lender to the approved company funding the loans or other financing incurred in connection with the economic development project written evidence to be provided to the authority of payments of all annual debt service to such lender. Such evidence shall be provided to the authority within forty-five (45) days after the end of each fiscal year of the financing agreement.

(f) The financing agreement shall provide that if an approved company fails to comply with its respective obligations under the financing agreement, or that the lender to an approved company fails to comply with its requirements set forth in subsection (2)(e) of this section, or is declared in default under the loans or other financing incurred in connection with the economic development project, then the authority, or any of its assignees, shall have the right, at its option, to:

1. Suspend the availability of the income tax credits and job development assessment fees to the approved company;

2. Pursue any remedy provided under the financing agreement, including termination thereof; and

3. Pursue any other remedy at law to which it appears entitled.

(3) All remedies provided in subsection (2)(f) of this section shall be deemed cumulative.

Section 7. KRS 154.22-055 is amended to read as follows:

(1) The authority may execute and deliver a financing agreement and consummate the transactions described in the agreement upon:

(a) The adoption of a resolution by the authority authorizing the *financing* [~~financial~~] agreement, as described in KRS 154.22-050(2), with respect to an approved company and loans for other financing in connection with an economic development project; and

(b) The publication of a summary of the adopted resolution in:

1. A newspaper authorized to publish official advertisements for the authority; and

2. A newspaper of general circulation in the qualified county in which the economic development project is to be located.

(2) The summary of the resolution as provided in subsection (1)(b) of this section shall include the following:

(a) The date the resolution was adopted by the authority;

(b) The title of the resolution;

(c) The maximum amount of loans or other financing, as described in KRS 154.22-050(2), incurred in connection with the economic development project; and

(d) The name of the approved company.

Section 8. KRS 154.22-060 is amended to read as follows:

(1) The approved company shall be entitled to a credit against the Kentucky income tax liability mandated by KRS Chapter 141, on any income that may result from the operation of the approved economic development project; the credit shall be equal to the total amount of the tax liability, ***and together with the aggregate assessments*** not to exceed the total debt service paid:

(a) Under the financing agreement in connection with the economic development project financed by bonds as described in KRS 154.22-050(1); or

(b) On loans or other financing, as described in KRS 154.22-050(2), incurred in connection with the economic development project, as described in KRS 154.22-050(2).

(2) Ninety (90) days after the filing of the tax return of the approved company, the Revenue Cabinet of the Commonwealth shall certify to the authority the Kentucky income tax liability for the preceding ***fiscal*** year ***of the approved company for which the return was filed*** of each approved company with respect to an economic development project financed through the issuance of bonds***,*** ~~[or]~~ loans or other financing incurred in connection with the economic development project and the amounts of any tax credits taken pursuant to KRS 154.22-010 to 154.22-070.

Section 9. KRS 154.22-070 is amended to read as follows:

(1) The approved company may require that each employee, ***subject to state tax imposed by KRS 141.020,*** as a condition of employment, agree to pay a job development assessment fee, not to exceed six percent (6%) of the gross wages of each employee whose job was created as a result of the economic development project, for the purpose of retiring:

(a) The bonds, as described in KRS 154.22-050(1), which fund the economic development project; or

(b) The loans or other financing as described in KRS 154.22-050(2), incurred in connection with the economic development project.

(2) Each employee so assessed shall be entitled to credits against Kentucky income and local occupational taxes as follows:

(a) Two-thirds (2/3) of the job development assessment fee withheld from wages during the calendar year shall be permitted as a credit of Kentucky income tax withheld as provided by KRS 141.310 and 141.350;

(b) One-third (1/3) of the job development assessment fee withheld from wages during the calendar year shall be permitted as a credit against any local occupational license fee incurred by the employee for the taxable year in the jurisdiction in which the economic development project is located. No credit, however, shall be allowed against any local occupational license fee imposed ***by*** or dedicated solely to a local board of education.

(3) If an approved company shall elect to impose the assessment as a condition of employment, it shall ***be authorized to*** deduct the assessment from each paycheck of each employee.

(4) Any approved company collecting an assessment as provided in subsection (1) of this section shall make its payroll books and records available to the authority at such reasonable times as the authority shall request and shall file with the authority documentation respecting the assessment as the authority may require.

(5) Any assessment of the wages of employees of an approved company in connection with their employment at an economic development project pursuant to subsection (1) of this section shall ***permanently*** lapse on the date:

(a) The bonds, as described in KRS 154.22-050(1), are retired; or

(b) Any loans or other financing, as described in KRS 154.22-050(2), incurred in connection with the economic development project mature or are prepaid in full.

SECTION 10. A NEW SECTION OF SUBCHAPTER 22 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) If the authority adopts a preliminary resolution designating an eligible company as an approved company and preliminary approving the project of the eligible company as an economic development project prior to the effective date of this Act, and the authority adopts a final resolution approving the eligible company as an approved company and the project of the eligible company as an economic development project, and the authority and the eligible company enter into a financing agreement no later than June 30, 1995, then the approved company thereafter shall be subject to KRS 154.22-010 to 154.22-070 as in effect prior to the effective date of this Act.

(2) Notwithstanding subsection (1) of this section, an approved company shall be subject to subsection (1)(d) and (2)(c) of KRS 154.22-050 commencing with the fiscal year of an approved company that begins after December 31, 1994.

Section 11. KRS 154.24-010 is amended to read as follows:

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings in KRS 154.24-010 to 154.24-150:

(1) "Agreement" means any agreement made pursuant to KRS 154.24-120, between the authority and an approved company with respect to an economic development project***;***[~~.~~]

(2) "Approved company" means any eligible company seeking to locate an economic development project from outside the Commonwealth into the Commonwealth, or undertaking an economic development project in the Commonwealth for which it is approved pursuant to KRS 154.24-090***;***[~~.~~]

(3) "Approved costs" means fifty percent (50%) of the total of the start-up costs, plus the annual rent for each elapsed year of the service and technology agreement;

(4) "Assessment" means the "service and technology job creation assessment fee" authorized by KRS 154.24-110;

(5) "Authority" means the "Kentucky Jobs Development Authority" created and established under KRS 154.24-030;

(6) "Commonwealth" means the Commonwealth of Kentucky;

(7) "Economic development project" or "project" means a service or technology activity conducted by an approved company;

(8) "Eligible company" means any corporation, partnership, sole proprietorship, or business trust engaged in service or technology and meeting the standards promulgated by the authority in accordance with KRS Chapter 13A;

(9) ***"In lieu of credits" means a local government appropriation to the extent permitted by law, or other form of local government grant or service benefit, directly related to the economic development project and in an amount equal to one percent (1%) of employees' gross wages, exclusive of any noncash benefits provided to an employee, or the provision by a local government of an in-kind contribution directly related to the economic development project and in an amount equal to one half (1/2) of the rent for the duration of the agreement;***

(10) "Inducements" means the income tax credits allowed and the assessment authorized by KRS 154.24-110, which are intended to induce companies engaged in service and technology industries to locate or expand in the Commonwealth;

(11)[~~(10)~~] "Person" means an individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity or government, whether federal, state, county, city, or otherwise, including without limitation, any instrumentality, division, political subdivision, district, court, agency, or department thereof;

(12)[~~(11)~~] "Relocation costs" means the identified expenditures by the company for moving costs, separation costs, and any other expenditures substantiated by the company which directly related to the move from an existing location outside of Kentucky to locations approved by the authority;

(13)[~~(12)~~] "Rent" means:

(a) The actual annual rent or leasing fee paid by an approved company to a bona fide entity negotiated at arms length for the use of a building by the approved company to conduct the approved activity for which the inducement has been granted; or

(b) The fair rental value on an annual basis in a building owned by the approved company of the space used by the approved company to conduct the approved activity for which the inducement has been granted as determined by the authority using criteria which is customary in the real estate industry for the type of building being used***. The fair rental value shall include an analysis of*** the cost of amortizing the cost of land and building over the period of time customary in the real estate industry for the type of building and for ***the land*** [~~grounds~~] being utilized***;***[~~, plus~~]

(c) Rent shall include the customary cost of occupancy including, but not limited to, property taxes, heating and air-conditioning, electricity, water, sewer, and insurance;

(14)[~~(13)~~] "Service or technology" means any activity involving the performance of work not otherwise classified by division, including such successor divisions as agriculture, forestry and fishing, mining, construction, and manufacturing, in accordance with the "Standard Industrial Classification Manual", as revised by the United States Office of Management and Budget from time to time, or any successor publication. [~~Notwithstanding the excluded classifications by divisions, those service and technology activities of~~] A company ***otherwise*** engaged in an ineligible activity may ***operate a service and technology activity in*** [~~be operated as~~] a separate division and, with the approval of the authority and subject to the record keeping requirements established by the authority***, the service and technology activity*** may be deemed an eligible activity; and

(15)[~~(14)~~] "Start-up costs" means the cost of furnishing and equipping the building for ordinary business functions, including computers, nonrecurring costs of fixed telecommunication equipment, furnishings, office equipment, and relocation costs as verified and approved by the authority in accordance with KRS 154.24-130.

Section 12. KRS 154.24-040 is amended to read as follows:

The authority, or its successor, shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of KRS 154.24-010 to 154.24-150, including, but not limited to, power and authority to:

(1) Provide and assist economic development projects pursuant to the provisions of KRS 154.24-010 to 154.24-150, and cooperate with eligible companies in order to promote, foster, and support economic development within the Commonwealth;

(2) Conduct hearings and inquiries, in the manner and by the methods as it deems desirable, including without limitation, appointment of special committees for the purpose of gathering information with respect to eligible companies and economic development projects for the purpose of making any determinations necessary or desirable in the furtherance of the purposes of KRS 154.24-010 to 154.24-150;

(3) Negotiate the terms of***, including the amount of approved costs,*** and enter into service and technology agreements with approved companies;

(4) Appoint an executive director, who shall be an officer of the authority, to administer the business of the authority as provided in KRS 154.24-010 to 154.24-150, and to delegate to the executive director the rights and powers of the authority required for the proper and desirable execution of the purpose of the authority;

(5) Modify the terms of any service and technology agreement of any kind to which it is a party;

(6) Include in any service and technology agreement the amounts deemed necessary by the authority to pay consultation, advisory, and legal fees, and other expenses necessary or incident to the preparation, adoption, implementation, and enforcement of the terms of the service and technology agreement; however, all fees and expenses incident thereto shall be the responsibility of the approved company;

(7) Promulgate administrative regulations in accordance with KRS Chapter 13A, respecting its programs, duties, and responsibilities as prescribed under the provisions of KRS 154.24-010 to 154.24-150***;***[~~.~~]

(8) Make, execute, and effectuate any agreement or other document with any person, necessary or appropriate to accomplish the purposes of KRS 154.24-010 to 154.24-150;

(9) Accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source, and to agree to, and to comply with, conditions incidental thereto;

(10) Sue and be sued in its own name, plead and be impleaded;

(11) Maintain an office in the city of Frankfort and at any other place or places as it may determine;

(12) Adopt an official seal and alter the same at pleasure;

(13) Adopt bylaws for the regulation of its affairs and the conduct of its business;

(14) Employ fiscal consultants, attorneys, appraisers, ***investment*** [~~investments~~] advisors and other consultants, agents, and employees required in the judgment of the authority, and to fix and pay their compensation from funds available to the authority;

(15) Invest any funds held by the authority or its agents, or any moneys not required for immediate disbursement, including investment income, in obligations authorized by KRS 386.020; and

(16) Exercise any or all of the general corporate powers of a nonprofit corporation organized under and not inconsistent with the laws of the Commonwealth.

Section 13. KRS 154.24-080 is amended to read as follows:

(1) No director, officer, or employee of the authority shall be interested, directly or indirectly, or shall be an officer or employee of, or have an ownership interest in, any firm or corporation interested, directly or indirectly, in any contract with the authority.

(2) Should a director, officer or employee of the authority have such an interest or be an officer or employee of or have an ownership interest in any such firm or corporation, then the director, officer or employee of the authority shall:

(a) Disclose the interest and the office, employment, or ownership in that firm or corporation;

(b) Refrain from participation in discussions relating to any contract of the firm or corporation with the authority; and

(c) Refrain from voting or otherwise taking action on any contract or proposed contract of the authority with the firm or corporation.

(3) If any contract or agreement shall be made in violation of the provisions of this section it shall be null and void and no action shall be maintained against the authority.

Section 14. KRS 154.24-090 is amended to read as follows:

Administrative regulations promulgated by the authority in accordance with KRS Chapter 13A, regarding the approval of eligible companies and economic development projects conducted by those companies shall include, but not be limited to, the following criteria:

(1) A determination by the authority that more than seventy-five percent (75%) of services provided by the eligible company from the proposed project shall be provided for persons located outside the Commonwealth during each year of the period during which it receives inducements as authorized in KRS 154.24-110;

(2) The economic development project shall result in the creation by the eligible company of a minimum of twenty-five (25) new ***full time*** jobs ***for Kentucky residents to be employed by the eligible company and to be*** held by persons subject to the personal income tax of the Commonwealth within ***one (1) year*** [~~eighteen (18) months~~] of the date of the final resolution authorizing the economic development project. [~~This period may be extended by~~] The authority ***may extend this one (1) year period*** upon ***the written application*** [~~its approval~~] of an [~~applicant by the~~] eligible company ***requesting*** [~~for~~] an extension;

(3) Written evidence that:

(a) Approval of the economic development project and the resulting inducements to be offered are essential to the creation of new jobs in the Commonwealth by an eligible company in connection with its economic development project; and

(b) No significant number of existing jobs in the Commonwealth will be lost, or adversely affected, due to the designation of an eligible company as an approved company, and to the approval of the ***eligible*** company's economic development project; and

(4) That the economic development project could reasonably and efficiently locate outside of the Commonwealth and, without the inducements offered by the authority, the ***eligible*** company would likely locate outside the state.

Section 15. KRS 154.24-100 is amended to read as follows:

(1) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the ***eligible*** company's application, the authority shall request materials and make all [~~necessary and appropriate~~] inquiries respecting the application ***the authority deems necessary***. After a diligent review of relevant materials and completion of [~~all~~] inquiries, the authority may, by resolution of the board of directors, preliminarily designate an eligible company as an approved company, preliminarily authorize the undertaking of the economic development project, and approve a [~~comprehensive~~] report as prescribed in subsection (2) of this section.

(2) A [~~comprehensive~~] report ***describing the economic development project*** as prescribed in subsection (1) of this section shall set out the following:

(a) The name, location, business, and standard industrial classification of the eligible company***, and if the standard industrial classification is indicative of other than a service or technology activity, then an explanation of the service or technology activity of the eligible company***;

(b) The nature [~~and extent~~] of the economic development project;

(c) The use and projected amounts of the inducements to be available to the eligible company by year; and

(d) Other information the authority may require[~~, but records of a confidential nature shall not be made available except under the provisions of KRS 61.870 to 61.884~~].

(3) After the adoption of the board's resolution preliminarily designating an eligible company as an approved company, preliminarily authorizing the economic development project, and approving the [~~comprehensive~~] report ***as prescribed in subsection (2) of this section***, an agent designated by the authority shall hold at least one (1) public hearing to solicit public comments regarding the preliminary designation of an eligible company as an approved company and the preliminary authorization of the company's economic development project. Notice of the public hearing shall be given pursuant to KRS Chapter 424.

(4) Unless the board, within ***one (1) year after the adoption of the resolution prescribed in subsection (1) of this section*** [~~sixty (60) days from the conclusion of the public hearing~~], adopts a final resolution designating the eligible company as an approved company, authorizing the ***economic development*** project, and executing a service and technology agreement between the ***eligible*** company and the authority, the approved company's request for designation and ***economic development*** project authorization shall be considered denied.

(5) The decision to grant ***an eligible*** [~~a~~] company the status of approved company shall be solely that of the authority, which the board shall base its decision upon consideration of all information provided.

Section 16. KRS 154.24-110 is amended to read as follows:

(1) The approved company shall be entitled to an income tax credit equal to one hundred percent (100%) of the income tax that would otherwise be due to the Commonwealth by the approved company attributable to the economic development project, as limited by the provisions of this section and KRS 154.24-130. The amount of the approved company's income that is attributable to the economic development project shall be determined under KRS 141.407.

(a) The income tax credit allowed to the approved company shall be subtracted from the approved cost balance in the fiscal year of the ***approved company for*** [~~agreement in~~] which the tax return of the approved company is filed; and

(b) Ninety (90) days after the filing of the income tax return of the approved company, the Revenue Cabinet shall certify to the authority the Kentucky income tax liability ~~[for the preceding year]~~ of the approved company with respect to an economic development project ***for the preceding fiscal year of the approved company for which the return was filed***, and the amounts of any tax credit allowed pursuant to KRS 141.407.

(2) The approved company may require each employee, subject to state tax imposed by KRS 141.020, as a condition of employment, to agree to pay a service and technology job creation assessment fee up to five percent (5%) of the gross wages ***exclusive of any noncash benefits provided to an employee*** for each employee whose job has been deemed by the authority to be created as a result of the economic development project.

(a) Each employee paying the assessment shall be entitled to ***a credit*** ~~[credits]~~ against his Kentucky income tax ***required to be withheld under KRS 141.310 equal to four-fifths (4/5) of the assessment;*** ~~[and local occupational tax, as follows:]~~

(b) If the assessment has been approved by the local jurisdiction as provided in KRS 154.24-150, each employee paying the assessment also shall be entitled, in the local

~~[1. Four-fifths (4/5) of the assessment withheld from wages during the calendar year shall be permitted as a credit against the Kentucky income tax which would otherwise have been withheld as provided by KRS 141.310;~~

~~2. One-fifth (1/5) of the assessment withheld from wages during the calendar year shall be permitted as a credit against any local occupational license fee incurred by the employee for the tax year in the]~~ jurisdiction in which the economic development project is located***, to a credit against his local occupational license fee in the form of a simultaneous adjustment of his local occupational license fee withholding equal to one-fifth (1/5) of the assessment***. If more than one (1) local tax is incurred, the one-fifth (1/5) assessment shall be prorated proportionately among the taxes ***unless one (1) local jurisdiction agrees to forego the receipt of these taxes in an amount equal to the one-fifth (1/5) assessment, in which case no proration need be made***; ~~[and~~

~~3. Employees paying the assessment shall not be subject to income tax withholding as required by KRS 141.310, and shall have any occupational license fee reduced by one-fifth (1/5) of the assessment, if the reduction has been approved by the local jurisdiction as provided in KRS 154.24-150; and]~~

(c)~~[(b)]~~If an approved company elects to impose the assessment as a condition of employment, it shall be authorized to deduct the assessment from each payment of wages to the employee;

(d)~~[(c)]~~No credit, or portion thereof, shall be allowed against any occupational license fee imposed ***by*** or dedicated solely ***to*** ~~[by]~~ the board of education in a local jurisdiction;

(e)~~[(d)]~~The approved company collecting an assessment shall make its payroll, books, and records available to the authority when the authority shall request, and shall file with the authority documentation pertaining to the assessment as the authority may require; and

(f)~~[(e)]~~ Any assessment of the wages of employees of an approved company in connection with their employment at an economic development project shall ***permanently*** cease at the expiration of the agreement.

Section 17. KRS 154.24-120 is amended to read as follows:

Before any approved company is granted inducements as prescribed in KRS 154.24-010 to 154.24-150, a service and technology agreement with respect to the company's economic development project shall be entered into between the authority and the approved company. The terms and provisions of the agreement***, including the amount of approved costs,*** shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

(1) The term of an agreement shall not be longer than ten (10) years from the activation date established by the approved company. The activation date shall be any time within a ***one (1)*** ~~[two (2)]~~ year period after ***the date of final*** approval of the agreement by the authority. In order to implement the activation date, the approved company shall notify the authority, the Kentucky Revenue Cabinet, the employees, and the affected local jurisdiction, if any, of the ***activation*** date on which implementation of the inducements authorized in the agreement shall occur.

(2) The agreement shall include:

(a) A description of the authorized inducements to be used by the approved company;

(b) A provision that, if the total number of full-time ***employees who are residents of the Commonwealth and who are subject to the Kentucky income tax is less than*** ~~[employee falls below]~~ twenty-five (25), ***or in the case of an existing Kentucky business the approved company fails to maintain the increase of at least twenty-five (25) full-time employees who are residents of the Commonwealth and who are subject to the Kentucky income tax,*** the authorized inducements shall be suspended until the number of full-time ***employees who are residents of the Commonwealth and who are subject to the Kentucky income tax equals*** ~~[employees equal]~~ or ***exceeds*** ~~[exceed]~~ twenty-five (25); ***or in the case of an existing Kentucky business until the maintenance requirement of subsection (4) of KRS 154.24-140 is satisfied;*** ~~[and]~~

(c) ***A provision that, if seventy-five percent (75%) or less of services provided by the approved company from the economic development project should be provided to persons located outside of the Commonwealth during any fiscal year of the approved company as prescribed in KRS 154.24-090, the authorized inducements shall be suspended until the percentage of these services again exceeds seventy-five percent (75%) for a full fiscal year of the approved company; and***

(d) A provision that neither income tax credits nor assessments are assignable without written consent by the authority.

Section 18. KRS 154.24-130 is amended to read as follows:

(1) Before the end of the first year following the activation date, the authority shall, using data supplied by the approved company, verify and determine the total start-up costs for the approved company's economic development project. The initial approved costs shall be fifty percent (50%) of the start-up cost.

(2) Each year, during the ten (10) year life span of the agreement, fifty percent (50%) of the annualized rental payments shall be added to the unrecouped balance of approved costs.

(3) Each year, the inducement earned ***and any in lieu of credits received*** shall be subtracted from the approved costs.

(4) If, ***in*** ~~[during]~~ any fiscal year of the ***approved company during which the*** agreement ***is in effect***, the accumulated inducements equal the ***unrecouped*** remaining balance of the approved costs ***then expended***, the assessments collected from the wages of the employees shall cease for the remainder of that fiscal year ***of the approved company***, and the approved company shall resume normal personal income tax and occupational license fee withholdings from the ***employees'*** ~~[employees]~~ wages for the remainder of that ***fiscal*** year.

(5) If ***in*** ~~[during]~~ any fiscal year of the ***approved company during which the*** agreement ***is in effect***, the total of the income tax credit granted to the approved company ***plus the assessment collected from the wages of the employees*** exceeds the remaining balance of the approved costs ***then expended***, the approved company shall pay the excess to the Commonwealth as income tax.

(6) If in any fiscal year of the approved company during which the agreement is in effect the assessment collected from the wages of the employees exceeds the unrecouped remaining balance of the approved costs then expended, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.

Section 19. KRS 154.24-140 is amended to read as follows:

(1) If an eligible company operates an existing service and technology business in Kentucky, and wishes to expand that business within the Commonwealth, the eligible company may submit an application to the authority to become an approved company and eligible for the inducements offered in KRS 154.24-010 to 154.24-150.

(2) If an existing business becomes an approved company, the authority shall determine a base level of employment and a base level of state income tax liability of the approved company for determining eligible credits in remaining years of the approved company's project period. The base level shall be determined by taking into consideration any seasonal fluctuations or aberrations of employment levels over a preceding three (3) year period. ***Notwithstanding the determination of a base level of employment, no employee of the existing business who is an employee of such business prior to the date of the preliminary resolution of the authority as prescribed in KRS 154.24-100 shall be subject to assessment.***

(3) The authority shall identify, by name, all of the existing employees engaged in the service and technology activity, and these employees shall be exempt from the assessment. If any of these employees cease working in the activity, another employee shall be added to the base level of employment, based on the earliest date of entry into the work force, and he shall be exempt from the assessment. The authority may negotiate with the approved company a different method of determining the base level of employment which would yield a more equitable result for the approved company, the Commonwealth, local jurisdictions, and the employees.

(4) To become eligible for inducements, the approved company shall create and maintain ***above the base level of employment*** an increase of at least twenty-five (25) ***full-time*** employees ***who are residents of the Commonwealth and who are subject to the Kentucky income tax*** ~~[above the base level of employment]~~.

(5) The approved company shall continue to pay to the Commonwealth, on an annualized basis during the term of the agreement, the base level of income tax, adjusted on an annual basis to reflect changes in the consumers price index. Any excess income tax owed may be taken as a credit.

(6) If any approved company expands because of an increase in business or because of the commencement of a new line of business, it shall be eligible, at the discretion of the authority, to negotiate a separate and additional agreement to cover the expanded business under the same conditions as authorized for expansion in this section.

Section 20. KRS 154.24-150 is amended to read as follows:

(1) Before any agreement as prescribed in KRS 154.24-120 shall become effective, the legislative body of any local jurisdiction which may lose revenue as a result of the inducements offered pursuant to KRS 154.24-010 to 154.24-150 ***and which assesses a local occupational license fee*** shall approve by official action the granting of ***inducements*** [~~inducement~~] to the approved company. ***If a local jurisdiction which satisfies the requirements of the previous sentence of this subsection does not approve the granting of the inducements or does not elect to provide in lieu of credits as described in subsection (2) of this section, then an approved company shall not be permitted to impose assessments against the wages of its employees.***

(2) ***Subject to the prior written approval of the authority of any proposed in lieu of credits*** [~~In lieu of a credit against the local occupational license fee~~], the local government may elect, by vote of its legislative body, to provide for ***in lieu of credits for the approved company and its economic development project*** [~~the benefit of the approved company, a benefit of service deemed to be equal to one percent (1%) of the employees' wages which would have been subject to the local occupational license fee, or may provide an in kind contribution equal to one half (1/2) of the rent for the duration of the agreement. For purposes of this subsection, benefits and in kind contributions shall be services and programs deemed eligible by the local jurisdiction's governing body~~].

(3) If the local government elects to provide ***in lieu of credits as described in subsection (2) of this section*** [~~an incentive other than a credit against its local occupational license fee~~], the assessment authorized by KRS 154.24-110 shall be four percent (4%), one hundred percent (100%) of which shall be permitted as a credit against Kentucky income tax withheld pursuant to KRS 141.350.

(4) If a local jurisdiction in which the economic development project is to be located does not assess a local occupational license fee and does not elect to provide in lieu of credits as described in subsection (2) of this section, then the approved company may require that each employee subject to state tax imposed by KRS 141.020, as a condition of employment, agree to pay a service and technology job creation assessment fee up to five percent (5%) of the gross wages as prescribed in subsection (2) of KRS 154.24-110, provided that each employee paying the assessment shall only be entitled to credits against his Kentucky income tax as prescribed in subsection (2)(a) of KRS 154.24-110.

(5) If a local jurisdiction in which the economic development project is to be located, approves the inducements in accordance with subsection (1) of this section, assesses less than a one percent (1%) local occupational license fee, and does not elect to provide in lieu of credits as described in subsection (2) of this section, then the approved company may require that each employee subject to state tax imposed by KRS 141.020, as a condition of employment, agree to pay a service and technology job creation assessment fee up to five percent (5%) of the gross wages as prescribed in KRS 154.24-110(2), provided that each employee paying the assessment shall only be entitled to credits against his Kentucky income tax as prescribed in subsection (2)(a) of KRS 154.24-110 and to credits against his local occupational license fee to the extent of the local occupational license fee collected by the local jurisdiction.

(6) If a local jurisdiction in which the economic development project is to be located does not assess a local occupational license fee and elects to provide in lieu of credits as described in subsection (2) of this section, then the assessment shall be in accordance with subsection (3) of this section.

Section 21. KRS 154.26-010 is amended to read as follows:

As used in KRS 154.26-015 to 154.26-100, unless the context clearly indicates otherwise:

(1) "Agreement" means ***a revitalization*** [~~an~~] agreement entered into, pursuant to KRS 154.26-090, on behalf of the authority and an approved company with respect to an economic revitalization project;

(2) ***"Appropriation agreement" means an agreement entered into, pursuant to KRS 154.26-090(1)(d)2.b., among the approved company, the authority, and local governmental entities with respect to appropriations by these local governmental entities for the benefit of the approved company.***

(3) "Approved company" means any eligible company approved by the authority pursuant to KRS 154.26-080 requiring an economic revitalization project;

(4)[~~(3)~~] "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

(c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(e) All costs required for the installation of utilities, including, but not limited to, water, sewer, sewer treatment, gas, electricity, communications, and railroads, and including off-site construction of the facilities paid for by the approved company; and

(f) All other costs comparable with those described above;

(5)[~~(4)~~] "Assessment" means the job revitalization assessment fee authorized by KRS 154.26-100;

(6)[~~(5)~~] "Authority" means the Kentucky Industrial Revitalization Authority created by KRS 154.26-020;

(7)[~~(6)~~] "Board" means the board of directors of the [~~Kentucky Rural Economic Development~~] authority, or its successor;

(8)[~~(7)~~] "Commonwealth" means the Commonwealth of Kentucky;

(9)[~~(8)~~] "Economic revitalization project" or "project" means the acquisition, construction, equipping, and rehabilitation of machinery and equipment, constituting fixtures or otherwise, and with respect thereto, the construction, rehabilitation, and installation of improvements of facilities necessary or desirable for the acquisition, construction, installation, and rehabilitation of the machinery and equipment, including surveys; installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are utilized to improve the economic situation of the approved company to allow the approved company to remain in operation and retain or create jobs;

(10)[~~(9)~~] "Eligible company" means any corporation, partnership, sole proprietorship, or business trust, employing or intending to employ ***full-time*** a minimum of twenty-five (25) persons engaged in manufacturing at the same facility, whether owned or leased, located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval by the authority of an economic revitalization project, including facilities where manufacturing has been temporarily suspended and which meets the standards promulgated by the authority pursuant to KRS 154.26-080;

(11)[~~(10)~~] "Inducements" means the Kentucky income tax credit and the job revitalization assessment fee as prescribed in KRS 154.26-090 and 154.26-100;

(12)[~~(11)~~] "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing that results in a change in the condition of the property and any related activity or function, together with the storage, warehousing, distribution, and related office facilities; and

(13)[~~(12)~~] "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.010, or any board, commission, institution, or division exercising any function of the state which is not an independent municipal corporation or political subdivision.

Section 22. KRS 154.26-020 is amended to read as follows:

(1) The Kentucky Industrial Revitalization Authority is created and established as an agency, and instrumentality, and political subdivision of the Commonwealth and a public body corporate and politic with powers and authority to perform essential governmental and public functions and purposes to improve and otherwise promote the general welfare and material well-being of the people of the Commonwealth by promoting, supporting, and approving projects.

(2) The authority shall be governed by a board of directors consisting of the board of directors of the Kentucky [~~Rural~~] Economic Development ***Finance*** Authority, or its successor, as prescribed in KRS ***154.20-010*** [~~152.264~~].

(3) The board of directors shall comply with the provisions of KRS ***154.20-010*** [~~152.264~~] in regard to its operations.

Section 23. KRS 154.26-070 is amended to read as follows:

(1) No director, officer, or employee of the authority shall be interested, directly or indirectly, or shall be an officer or employee, or have an ownership interest in any firm or corporation interested, directly or indirectly, in any contract with the authority.

(2) Should a director, officer or employee of the authority have such an interest or be an officer or employee of or have an ownership interest in any such firm or corporation, then the director, officer or employee of the authority shall:

- ***(a) Disclose the interest and the office, employment, or ownership in the firm or corporation;***
- ***(b) Refrain from participating in discussions relating to any contract of the firm or corporation with the authority; and***
- ***(c) Refrain from voting or otherwise taking action on any contract or proposed contract of the authority with the firm or corporation.***

(3) If any contract or agreement shall be made in violation of the provisions of this section, it shall be null and void and no action shall be maintained against the authority.

Section 24. KRS 154.26-080 is amended to read as follows:

(1) The authority shall establish standards for the determination and approval of eligible companies and their projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.

(2) These standards shall give greatest weight to the need for the project; the new capital investment in the project that will result in financial stability for the manufacturing facility; and the retention or expansion of the greatest number of employees at the manufacturing facility.

(3) With respect to each eligible company making an application to the authority for inducements, and with respect to the project described in the application, the authority shall make inquiries and request materials of the applicant, including, but not limited to, written evidence that except ***for*** a substantial investment in the project, assisted by the inducements authorized by KRS 154.26-015 to 154.26-100, the eligible company will close its manufacturing facility, permanently lay off its employees, and cease operations.

(4) The eligible company shall, in a manner acceptable to the authority, detail the condition of the facility, including, but not limited to, financial, efficiency, and productivity matters; explain in detail why the company intends to close the facility; and set out alternatives that are available to the company.

(5) The authority shall engage the services of a competent consulting firm or technical resource to analyze the data made available by the company, and to collect and analyze additional information necessary to determine that, in ***the*** ~~[its]~~ independent judgment ***of the consultant***, the company will close the facility absent ***a substantial investment in the project, assisted by the inducements authorized by KRS 154.26-015 to 154.26-100*** ~~[intervention by the authority]~~. The company shall pay the cost of this evaluation.

(6) The company shall cooperate with the consultant and provide all of the data which could reasonably be required by the consultant to make a fair assessment of the company's intentions to close the facility.

(7) The authority shall review the report of the consultant and other information which has been made available to it ***in order to assist the authority in determining*** ~~[to determine]~~ whether the company intends to close the facility for valid reasons. The authority shall determine the potential of the proposed revitalization project to make the facility stable, productive, and competitive in its market.

(8) The authority shall hold a public hearing to solicit public comment from any person, group, or interested party regarding the proposed project.

(9) After the public hearing, the authority, by resolution of its board of directors, may declare the jobs then existing at the facility to be lost; may approve the eligible company's application for a project; and may grant to the eligible company the status of an approved company. The decision reached by the authority shall be final and no appeal shall be granted.

(10) All meetings of the board of directors of the authority shall be held in accordance with KRS 61.805 to 61.850. The board of directors of the authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

Section 25. KRS 154.26-090 is amended to read as follows:

(1) The authority, upon adoption of an authorizing resolution, may enter into, with any approved company, ***an*** ~~[a revitalization]~~ agreement with respect to its project. The terms and provisions of each ~~[revitalization]~~ agreement***, including the amount of approved costs,*** shall be determined by negotiations between the authority and the approved company, except that each ~~[revitalization]~~ agreement shall include the following provisions:

  (a) The agreement shall set a date by which the approved company will have completed the project. Within three (3) months of the completion date, the ***approved*** company shall document the actual cost of the project in a manner acceptable to the authority. The authority may employ an independent consultant or utilize technical resources to verify the cost of the project. The approved company shall reimburse the authority for the cost of the consultant;

  (b) In consideration of the execution of the agreement, the approved company may be permitted during the time ***not to exceed ten (10) years during*** ~~[in]~~ which the agreement is in effect, which ***time*** shall ***commence on the date of the agreement for purposes of the inducements*** ~~[not exceed ten (10) years, the following]~~:

    1. A credit against the Kentucky income tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the ***economic revitalization*** project as determined under KRS 141.403; plus

    2. The aggregate ~~[job revitalization]~~ assessment withheld by the approved company in each year;

  (c) The income tax credit allowed to the approved company shall be equal to the lesser of the total amount of the tax liability or fifty percent (50%) of the approved cost that has not yet been recovered***, which fifty percent (50%) shall be reduced by any recovery through the collection of assessments and appropriations made under any appropriation agreement***. The credit shall be allowed ***for*** ~~[in]~~ each fiscal year of the ***approved company during the term of the*** ~~[revitalization]~~ agreement ***and for*** ~~[in]~~ which a tax return of the approved company is filed until the entire fifty percent (50%) of the approved cost has been received ***through a combination of credits, assessments, if assessments are elected to be imposed, and appropriations made under any appropriation***

agreement. The approved company shall not be required to pay estimated income tax payments as prescribed under KRS 141.044 or 141.305 on income from the economic revitalization project. Ninety (90) days after the filing of the tax return of the approved company, the Revenue Cabinet of the Commonwealth shall certify to the authority ***for the preceding fiscal year of an approved company for which a return was filed with respect to an economic revitalization project of the approved company*** the state income tax liability [~~for the preceding year~~] of the approved company [~~with respect to a project~~] receiving inducements under KRS 154.26-015 to 154.26-100 and the amount of any tax credits taken pursuant to this section;

(d) The agreement shall provide that:

1. The term shall not be longer than the earlier of:

a. The date on which the approved company has received ***inducements*** [~~Kentucky income tax credits~~] or withholds assessments equal to fifty percent (50%) of the approved costs of its ***economic revitalization*** project; or

b. Ten (10) years from the date of the execution of the agreement.

2. Prior to [~~final~~] execution of the agreement, the ***eligible*** company shall secure from all local governmental authorities responsible for collecting local occupational license fees one (1) of the following:

a. A resolution or order of the local governmental entities acknowledging and consenting to the termination or partial termination of the receipt of local occupational license fees paid by the approved company on behalf of its employees to the local government entities resulting from the execution of the agreement; or

b. In lieu of the credit against the local occupational license fee, an ***appropriation*** agreement with ***the authority and*** the local governmental entities by which the local governmental entities will appropriate funds in an amount equal to the amount of the credit of the local occupational license fee for the benefit of the approved company in a manner consistent with the applicable state laws.

If more than one (1) local occupational license fee is imposed upon the employees of the approved company, [~~the portion of~~] the assessment ***imposed upon the employees shall be*** credited against the local occupational license fee ***and*** shall be apportioned to each local occupational license fee according to each local occupational license fee's proportion to the total of all local occupational license fees ***for such employees***. No credit, or portion thereof shall be allowed against any local occupational license fee imposed ***by*** or dedicated solely to a local board of education.

3. If in any fiscal year of the approved company during which the agreement is in effect the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees exceeds fifty percent (50%) of the approved costs then expended, the approved company shall pay the excess to the Commonwealth as income tax.

4. If in any fiscal year of the approved company during which the agreement is in effect the assessment collected from the wages of the employees exceeds fifty percent (50%) of the approved costs then expended, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.

(2) If [~~, prior to the execution of the assessment agreement,~~] the approved company elects to utilize the [~~job revitalization~~] assessment [~~fee~~] as prescribed in KRS 154.26-100, a vote of the employees shall be taken by the approved company to approve or disapprove the withholding of the assessment. The vote shall be conducted in a manner approved by the authority.

(3) ***If the approved company elects to utilize the assessment, neither the appropriation agreement, if it is so used, nor*** he agreement shall [~~not~~] be executed unless the assessment is approved by a majority of the employees voting. ***If the approved company elects not to utilize the assessment, no employee vote shall be required for the execution of the agreement.***

(4) A majority vote of the employees of the approved company voting in favor of the assessment shall authorize the approved company to invoke the assessment on all employees of the approved company.

(5) [~~Each employee shall sign a written authorization in a form acceptable to the authority by which the employer is authorized to deduct the assessment from the employee's wages.~~

~~(6)~~] Notwithstanding the provisions of this section, no approved company shall assess the wages of an employee who is party to an individual employment contract with the approved company, or the wages of an employee whose wages will fall below applicable federal or state minimum wage standards if the job revitalization assessment fee is imposed.

(6)[~~(7)~~] ***Neither the appropriation agreement nor*** the agreement shall [~~not~~] be transferable or assignable by the approved company without the expressed written consent of the authority.

Section 26. KRS 154.26-100 is amended to read as follows:

(1) The approved company may require that each employee subject to the income tax imposed by KRS 141.020, whose job was preserved or created as a result of the project, as a condition of employment or the retention of employment, agree to pay ***an*** [~~a job revitalization~~] assessment [~~fee~~], not to exceed, during any fiscal year of the approved company, six percent (6%) of the gross wages of each employee subject to the income tax imposed by KRS 141.020 whose job was retained or created as a result of the project. However, if the ***appropriation*** agreement [~~under KRS 154.26-090(1)(d)2.b.~~] is consummated, the [~~job revitalization~~] assessment [~~fee~~] shall be five percent (5%) of each employee's gross wages subject to the income tax imposed by KRS 141.020.

(2) Each assessed employee shall be entitled to a credit against his Kentucky income tax required to be withheld under KRS 141.310 equal to two-thirds (2/3) of the [~~job revitalization~~] assessment [~~fee~~]; or if the ***appropriation*** agreement [~~set forth in KRS 154.26-090(1)(d)2.b.~~] is consummated, the credit shall be equal to four-fifths (4/5) of the [~~job revitalization~~] assessment [~~fee~~].

(3) Each assessed employee also shall be entitled to a credit against his local occupational license fee in the form of a simultaneous adjustment of his local occupational license fee withholding equal to one-sixth (1/6) of the [~~job revitalization~~] assessment [~~fee~~], unless the ***appropriation*** agreement [~~set forth in KRS 154.26-090(1)(d)2.b.~~] is consummated.

(4) If an approved company shall elect to impose the assessment [~~fee~~] as a condition of employment or the retention of employment, it shall deduct the assessment from each paycheck of each employee subject to subsections (2) and (3) of this section.

(5) Any approved company collecting an assessment as provided in subsection (1) of this section shall make its payroll books and records available to the authority at ***such*** reasonable times ***as*** the authority shall request, and shall file with the authority the documentation respecting the assessment the authority may require.

(6) Any assessment of the wages of the employees of an approved company pursuant to subsection (1) of this section shall ***permanently*** lapse upon expiration or termination of the agreement.

Section 27. KRS 154.28-010 is amended to read as follows:

As used in KRS 154.28-010 to 154.28-090 and 141.400, unless the context clearly indicates otherwise:

(1) ***"Affiliate" means the following:***

(a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors and lineal descendants of an individual;

(b) An individual and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;

(c) Two (2) corporations which are members of the same controlled group, which includes and is limited to:

1. One (1) or more claims of corporations connected through stock ownership with a common parent corporation if:

a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and

b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing such voting power or value, stock owned directly by the other corporations; or

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

(d) A grantor and a fiduciary of any trust;

(e) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(f) A fiduciary of a trust and a beneficiary of that trust;

(g) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(h) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of

which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(i) A corporation and a partnership if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership;

(j) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or

(k) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation: S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended.

(2) "Agreement" means an agreement entered into, pursuant to KRS 154.28-090, on behalf of the authority and an approved company with respect to an economic development project;

(3)[~~(2)~~] "Approved company" means any eligible company, approved by the authority pursuant to KRS 154.28-080, requiring an economic development project;

(4)[~~(3)~~] "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, rehabilitation, and installation of an economic development project;

(b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, rehabilitation, and installation of an economic project which is not paid by the vendor, supplier, deliverymen, contractors, or otherwise else provided;

(c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation, and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, rehabilitation, and installation of an economic development project;

(d) All costs which shall be required to be paid under the terms of any contract for the acquisition, construction, rehabilitation, and installation of an economic development project;

(e) All costs which shall be required for the installation of utilities such as water, sewer, sewer treatment, gas, electricity, communications, railroads, and similar facilities, and including offsite construction of the facilities paid for by the approved company; and

(f) All other costs comparable to those described above;

(5)[~~(4)~~] "Authority" means the Kentucky Industrial Development Authority created by KRS 154.28-020;

(6)[~~(5)~~] "Commonwealth" means the Commonwealth of Kentucky;

(7)[~~(6)~~] "Economic development project" or "project" means and includes***:***

(a) The acquisition of any real estate ***by the approved company or its affiliate; or***

(b) The fee ownership of real estate by the approved company or its affiliate; and

(c) With respect to (a) or (b) of this subsection, the construction and installation of improvements and facilities necessary or desirable for improvement of the real estate, including: surveys, site tests, and inspections; subsurface site work and excavation; removal of structures, roadways, cemeteries, and other site obstructions; filling, grading, provision of drainage, and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; offsite construction of utility extensions to the boundaries of the real estate; and the acquisition and installation of manufacturing facilities on the real estate for the use of the approved company or its affiliates for manufacturing purposes;

(8)[~~(7)~~] "Eligible company" means any corporation, partnership, sole proprietorship, or trust engaged in manufacturing [~~which meets the standards promulgated by the authority pursuant to KRS Chapter 13A~~];

(9)[~~(8)~~] "Inducement" means the Kentucky income tax credit as set forth in KRS 154.28-090;

(10)[~~(9)~~] "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property, and any activity functionally related to it, together with storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals; and

(11)[~~(10)~~] "State agency" shall have the meaning assigned to the term in KRS 56.440(8).

Section 28. KRS 154.28-020 is amended to read as follows:

(1) The Kentucky Industrial Development Authority is created and established as an agency, instrumentality, and political subdivision of the Commonwealth and a public body corporate and politic with powers and authority to perform essential

governmental and public functions and purposes in improving and otherwise promoting the general welfare and material well-being of the people of the Commonwealth by promoting, supporting, and approving economic development projects.

(2) The authority shall be governed by a board of directors which shall consist of the board of directors of the Kentucky ***Economic Development Finance*** [~~Rural Economic Development~~] Authority, or its successor, as prescribed in KRS ***154.20-010*** [~~152.264~~].

(3) The board of directors shall comply with the provisions of KRS ***154.20-010*** [~~152.264~~] in regard to its operations.

Section 29. KRS 154.28-030 is amended to read as follows:

The authority shall have all the powers necessary or convenient to carry out the purposes and provisions of KRS 154.28-015 to 154.28-090 and 141.400, including, but not limited to:

(1) Provide for economic development projects pursuant to the provisions of KRS 154.28-015 to 154.28-090 and 141.400, and to cooperate with eligible companies in order to promote, foster, and support economic development within the Commonwealth;

(2) Conduct hearings and inquiries, in the manner and by methods as it deems desirable, including, but not limited to, the appointing of special committees to gather information with respect to eligible companies and economic ***development*** projects for the purpose of making any determinations necessary or desirable in the furtherance of KRS 154.28-015 to 154.28-090 and 141.400;

(3) Appoint an executive director, who shall be an officer of the authority, to administer the business of the authority as provided in KRS 154.28-015 to 154.28-090 and 141.400, and to delegate to him the rights and powers of the authority required for the proper and desirable execution of the purposes of the authority;

(4) Consent, if it deems necessary or desirable in the fulfillment of its purposes, to the modification of the terms of an agreement of any kind to which the authority is a party;

(5) Promulgate administrative regulations in accordance with KRS Chapter 13A, respecting its programs and purposes;

(6) Make, execute, and give effect to any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, organization, or entity, necessary or appropriate to accomplish the purposes of KRS 154.28-015 to 154.28-090 and 141.400;

(7) Accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source and to agree to, and to comply with, conditions attached thereto;

(8) Sue and be sued in its own name, plead and be impleaded;

(9) Maintain an office in the city of Frankfort and at any other place or places as it may determine;

(10) Adopt an official seal and alter it at its pleasure;

(11) Adopt bylaws for the regulation of its affairs and the conduct of its business;

(12) Employ fiscal consultants, attorneys, appraisers, investment advisors, trustees, other consultants, agents, and employees, and to fix and pay their compensation from funds available to the authority;

(13) Exercise any or all of the general corporate powers of a nonprofit corporation organized under KRS Chapter 273, and not inconsistent with the provisions of KRS 154.28-015 to 154.28-090 and 141.400; and

(14) Include in any agreement the amounts deemed necessary by the authority to pay consultant, advisory, and legal fees, and other expenses necessary or incident to the preparation, adoption, implementation, and enforcement of the terms of those agreements, all fees and expenses to be the responsibility of the approved company.

Section 30. KRS 154.28-070 is amended to read as follows:

(1) No director, officer, or employee of the authority shall be interested, directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested, directly or indirectly, in any contract with the authority.

(2) Should a director, officer or employee of the authority have such an interest or be an officer or employee of or have an ownership interest in any such firm or corporation, then the director, officer or employee of the authority shall:

(a) Disclose the interest and the office, employment, or ownership in such firm or corporation;

(b) Refrain from participating in discussions relating to any contract of the firm or corporation with the authority; and

(c) Refrain from voting or otherwise taking action on any contract or proposed contract of the authority with the firm or corporation.

(3) If any contract or agreements shall be made in violation of the provisions of this section, it shall be null and void and no action shall be maintained against the authority.

Section 31. KRS 154.28-080 is amended to read as follows:

(1) The authority shall promulgate standards for the determination and approval of eligible companies and their economic development projects in accordance with KRS Chapter 13A.

(2) These standards shall give the greatest weight to the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to the residents of the Commonwealth; and the likelihood of the economic success of the economic development project.

(3) No economic development project which will result in the [~~voluntary~~] replacement of ***a*** manufacturing ***facility*** [~~facilities~~] existing within the Commonwealth shall be approved by the authority; however, the authority may approve an economic development project that***:***

(a) Rehabilitates a manufacturing facility***:***

1. Which has not been in operation for a period of ***ninety (90) or more consecutive days; or***

2. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction; or

(b) Replaces a manufacturing facility existing in the Commonwealth:

1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) [~~three (3) consecutive~~] months.

(4) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the application, the authority shall make inquiries and request materials of the applicant, including, but not limited to, written evidence that except for the receipt of inducements authorized by KRS 154.28-015 to 154.28-090 and 141.400, the eligible company will not locate its economic development project within the Commonwealth.

(5) After a diligent review of the relevant materials and completion of its inquiries, the authority, by resolution of its board of directors, may designate an eligible company to be an approved company and authorize the undertaking of its economic development project.

(6) All meetings of the board of directors of the authority shall be held in accordance with KRS 61.805 to 61.850. The board of directors of the authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

Section 32. KRS 154.28-090 is amended to read as follows:

(1) The authority, upon adoption of an authorizing resolution, may enter into, with any approved company, a financing agreement with respect to its economic development project. The terms and provisions of each agreement***, including the amount of approved costs,*** shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

(a) The term of an agreement***, which shall commence on the date of the agreement,*** shall not be longer than the earlier of the following:

1. The maturity of loans or other financing incurred in connection with the economic development project, except that the agreement may be terminated upon the earlier prepayment of loans or other financing incurred in connection with the economic development project; or

2. Ten (10) years from the date of the original agreement.

(b) In consideration for the execution ***and during the term*** of the agreement, the approved company shall be permitted a credit against Kentucky income tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the economic development project as determined by KRS 141.400.

(2) The agreement shall provide that:

(a) The Kentucky income tax credit, in any fiscal year ***of the approved company***, shall not exceed the total debt service paid during the same fiscal year with respect to the loans or other financing incurred in connection with the economic development project; however, to the extent that annual debt service payments exceed the annual income tax credits in any year, the excess debt service payments may be recouped from excess tax credits in succeeding years.

(b) The income tax credited to the approved company shall be credited ***for*** [~~in~~] the fiscal year ***for*** [~~of the agreement in~~] which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed under KRS 141.042. Ninety (90) days after the filing of the tax return of the approved company, the Revenue Cabinet shall certify to the authority the income tax liability***,*** for the preceding ***fiscal*** year of the approved company ***for which the return was filed, of the approved company*** with respect to an economic development project receiving inducements under the provisions of KRS 154.28-015 to

154.28-090 and KRS 141.400, and the amount of any income tax credits taken pursuant to KRS 154.28-015 to 154.28-090 and KRS 141.400.

(c) The agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.

(d) An approved company shall require of any lender to an approved company funding the loans or other financing incurred in connection with the economic development project, written evidence of all annual debt service to the lender, which evidence shall be provided in writing to the authority within forty-five (45) days following the close of each fiscal year of the financing agreement.

(e) If an approved company fails to comply with its respective obligations under the financing agreement, the lender to an approved company fails to comply with the provisions of subsection (2)(d) of this section, or an approved company is declared in default under the loans or other financing incurred in connection with the economic development project, the authority, or any of its assignees, may, at its option:

1. Suspend the availability of the income tax credits;

2. Pursue any remedy provided under the financing agreement, including termination of the agreement; and

3. Pursue any other remedy at law to which it may appear entitled.

(3) All remedies provided in subsection (2)(e) of this section shall be deemed cumulative.

SECTION 33. A NEW SECTION OF SUBCHAPTER 28 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

If the authority adopts a preliminary resolution designating an eligible company as an approved company and preliminarily approving the project of the eligible company as an economic development project prior to the effective date of this Act, and the authority adopts a final resolution approving the eligible company as an approved company and the project of the eligible company as an economic development project, and the authority and the eligible company enter into a financing agreement no later than June 30, 1995, then the approved company thereafter shall be subject to KRS 154.28-010 to 154.28-090 as it existed prior to the effective date of this Act.

Section 34. KRS 61.878 is amended to read as follows:

(1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:

(a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by another statute;

(c) 1. ***Upon and after July 15, 1992,*** records confidentially disclosed to an agency ***or required by an agency to be disclosed to it***, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records***;***[~~, and~~]

2. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:

a. In conjunction with an application for ***or the administration of*** a loan ***or grant***;

b. ***In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;***

c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or

d.[~~c.~~] For the grant or review of a license to do business.

3.[~~2.~~] The exemptions provided for in ***subparagraphs*** [~~subparagraph~~] 1. ***and 2.*** of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;

(d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;

(e) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;

(f) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination before the exam is given or if it is to be given again;

(g) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;

(h) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;

(i) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;

(j) All public records or information the disclosure of which is prohibited by federal law or regulation; and

(k) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.

(2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.

(3) No exemption in this section shall be construed to deny, abridge or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, layoffs, disciplinary actions, examination scores and preliminary and other supporting documentation. A public agency employee, including university employees, applicant or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.

(4) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.

(5) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.

Section 35. KRS 141.350 is amended to read as follows:

The amount deducted and withheld as tax under KRS 141.310 and KRS 141.315 during any calendar year upon the wages of any individual and the amount of credit described in KRS 154.22-070(2), 154.24-110[~~(2)(a)1.~~], or 154.26-100(2) shall be allowed as a credit to the recipient of the income against the tax imposed by KRS 141.020, for taxable years beginning in the calendar year. If more than one (1) taxable year begins in the calendar year, the amount shall be allowed as a credit against the tax for the last taxable year so beginning.

SECTION 36. A NEW SECTION OF KRS CHAPTER 11A IS CREATED TO READ AS FOLLOWS:

Nothing in KRS 11A.001 to 11A.110 shall prohibit or restrict the acceptance by an officer or employee of the Cabinet for Economic Development of anything of economic value as a gift or gratuity, if the gift or gratuity:

(1) Was not solicited by the officer or employee;

(2) Was accepted by the officer or employee in the performance of his or her official duties and in compliance with guidelines to be established by the Kentucky Economic Development Partnership which shall include a requirement that tangible property, other than food and beverages consumed on the premises, shall be registered with the Kentucky Economic Development Partnership and shall be turned over to the Cabinet for Economic Development within thirty (30) days of receipt; and

(3) Was not accepted under circumstances which would create a violation of KRS Chapter 521.

SECTION 37. A NEW SECTION OF KRS 11A.201 TO 11A.246 IS CREATED TO READ AS FOLLOWS:

(1) For purposes of KRS 11A.201 to 11A.246, the term "executive agency lobbyist" does not include a person acting to

promote, oppose, or otherwise influence the outcome of a decision of the Cabinet for Economic Development or any board or authority within or attached to that cabinet relating to the issuance or award of a bond, grant, lease, loan, assessment, incentive, inducement, or tax credit pursuant to KRS 42.4588, 103.210, Chapter 154, or Chapter 224A, or otherwise relating to any other component of an economic incentive package.

(2) Notwithstanding subsection (1), before any board or authority within or attached to the Cabinet for Economic Development takes final action on any contract or agreement by which any bond, grant, lease, loan, assessment, incentive, inducement, or tax credit is awarded, the beneficiary of an economic incentive package shall file with the approving board or authority a disclosure statement which shall contain:

(a) The identity of the beneficiary of an economic incentive package and any person employed to act on its behalf in its dealings with the Cabinet for Economic Development or any board or authority within or attached to that cabinet regarding the matters to which the contract or agreement refers; and

(b) The details of any financial transaction as defined in KRS 11A.201(5) between the beneficiary or any other person listed as an employee or agent of the beneficiary as required by paragraph (a) of this subsection and any agent, officer, or employee of the Cabinet for Economic Development or member of any board or authority within or attached to that cabinet.

(3) No beneficiary of an economic incentive package as referred to in this section shall engage any person to influence decisions of the Cabinet for Economic Development or the approving board or authority for compensation that is contingent in any way on the outcome of the decisions of the cabinet or the approving board or authority regarding contracts or agreements specified in subsection (2) of this section, and no person shall accept any engagement to influence these decisions or conduct lobbying activities related to these decisions for compensation that is contingent in any way on the outcome of the decisions of the cabinet or the approving board or authority regarding these contracts or agreements.

(4) Subsection (3) of this section does not prohibit, and shall not be construed to prohibit, any person from compensating that person's sales employees pursuant to any incentive compensation plan, such as commission sales, if the incentive compensation plan is the same plan used to compensate similarly situated sales employees who are not engaged by the beneficiary of an economic incentive package in activities and functions referred to in this section.

Section 38. It is the intent of the General Assembly that the amendments to Section 34 of this Act shall be retroactive to July 15, 1992.

The Committee on Economic Development reported **HB 512** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 512, AN ACT relating to riverport authorities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 65.510 is amended to read as follows:

As used in KRS 65.510 to 65.650, unless the context otherwise requires:

(1) "Riverport authority" or "authority" means an authority established as provided in KRS 65.510 to 65.650;

(2) "Riverport facilities" includes land, wharves, landings, buildings, equipment, and other improvements and appurtenances necessary or proper for the establishment, maintenance, operation, and expansion of riverports;

(3) "Governmental unit" means a city or a county;

(4) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof; ~~[and]~~

(5) "Industrial park" includes land which is held, owned, or optioned for present or future industrial or commercial development***; and***

(6) "Economic environs" means the political boundaries of the governmental units establishing a riverport authority.

Consent Calendar

HB 436, **HB 452** and **HB 426** taken from the Consent Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Calendar

HB 487, **SB 22**, **HB 177**, **HB 427**, **SB 78** and **HB 380** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Representative Stumbo moved that the rules be suspended to make an announcement. Agreed.

Representative Stumbo stated that **HB 388, HB 389**, and **HB 390** will not be heard in the meeting of the Committee on Judiciary for February 17, 1994.

Orders of the Day

HB 275, with Committee Amendment and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lee moved the adoption of Committee Amendment No. 1 to **HB 275**. Agreed.

Representative Lee moved that **HB 275**, as amended, be passed.

Representative Farrow moved the adoption of Floor Amendment No. 1 to **HB 275**. Rejected.

Representative Lee moved that **HB 275**, as amended, be passed.

On the roll call the vote was: Yeas 85, Nays 1. (See February 16, 1994 roll call on **HB 275** - Appendix)

HB 275, as amended, was passed and the title agreed to.

Representative Lee moved that the vote by which **HB 275**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 229, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Gedling moved that **HB 229** be passed.

On the roll call the vote was: Yeas 89, Nays 4. (See February 16 , 1994 roll call on **HB 229** - Appendix)

HB 229 was passed and the title agreed to.

Representative Gedling moved that the vote by which **HB 229** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 447 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Little moved that **HB 447** be passed.

On the roll call the vote was: Yeas 83, Nays 0. (See February 16 , 1994 roll call on **HB 447** - Appendix)

HB 447 was passed and the title agreed to.

Representative Little moved that the vote by which **HB 447** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 232, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative L. Clark moved the adoption of the Committee Substitute to **HB 232**. Agreed.

Representative Kerr moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 232**. Agreed.

Representative L. Clark moved that **HB 232**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 91, Nays 2. (See February 16, 1994 roll call on **HB 232** - Appendix)

HB 232, by way of Committee Substitute as amended, was passed and the title agreed to.

Representative L. Clark moved that the vote by which **HB 232**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendment

Floor Amendment No. 3 to the Committee Substitute to **HB 115**, by Representative Riner:

On page 6, line 21, by deleting all of the line following "(4)" and all of page 6, lines 22 to 27, and all of page 7, lines 1 to 4, and inserting in lieu thereof the following: "***The Education Professional Standards Board shall permanently revoke the certificate of any certified employee who is convicted of or pleads guilty to a felony proscribed by KRS Chapter 510, 529, or 531, or KRS 530.020, 530.064, or 530.065, if the offense is based on conduct involving the certified employee and a child under twelve (12) years of age.***"; and

On page 14, line 1, by inserting after "***the board.***" the following: "***The board shall permanently revoke the license of any physician who is convicted of or pleads guilty to a felony proscribed by KRS Chapter 510, 529, or 531, or KRS 530.020, 530.064, or 530.065, if the offense is based on conduct involving the physician and a child under twelve (12) years of age.***"; and

On page 20, line 11, by inserting after "***the board.***" the following: "***The board shall permanently revoke the license of any nurse who is convicted of or pleads guilty to a felony proscribed by KRS Chapter 510, 529, or 531, or KRS 530.020, 530.064, or 530.065, if the offense is based on conduct involving the nurse and a child under twelve (12) years of age.***"; and

On page 28, line 11, by inserting after "***the board.***" the following: "***The board shall permanently revoke the license or certificate of any licensee or certificate holder who is convicted of or pleads guilty to a felony proscribed by KRS Chapter 510, 529, or 531, or KRS 530.020, 530.064, or 530.065, if the offense is based on conduct involving the licensee or certificate holder and a child under twelve (12) years of age.***"; and

On page 31, line 20, by inserting after "***the board.***" the following: "***The board shall permanently revoke the license or certificate of any social worker who is convicted of or pleads guilty to a felony proscribed by KRS Chapter 510, 529, or 531, or KRS 530.020, 530.064, or 530.065, if the offense is based on conduct involving the social worker and a child under twelve (12) years of age.***"

Orders of the Day (Continued)

HB 357 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Moberly moved that **HB 357** be passed.

On the roll call the vote was: Yeas 91, Nays 0. (See February 16 , 1994 roll call on **HB 357** - Appendix)

HB 357 was passed and the title agreed to.

Representative Moberly moved that the vote by which **HB 357** was passed be reconsidered and said motion be placed on the table. Agreed.

HCR 17 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative R. Smith moved that **HCR 17** be adopted.

On the roll call the vote was: Yeas 78, Nays 7. (See February 16 , 1994 roll call on **HCR 17** - Appendix)

HCR 17 was adopted.

Representative R. Smith moved that the vote by which **HCR 17** was adopted be reconsidered and said motion be placed on the table. Agreed.

HJR 13, with Senate Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Amendment No. 1 to **HJR 13** is as follows:

On page 1, in the second line of the second "WHEREAS" clause after "Patty Loveless," and before "and" insert "Hylo Brown".

Representative Collins moved that the House concur in Senate Amendment No. 1 to **HJR 13**. Agreed.

Representative Collins moved that **HJR 13**, as amended by the Senate, be adopted.

On the roll call the vote was: Yeas 91, Nays 0. (See February 16, 1994 roll call on **HJR 13** - Appendix)

HJR 13, as amended by the Senate, was adopted.

Representative Collins moved that the vote by which **HJR 13**, as amended by the Senate, was adopted be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Representative Stumbo moved that **HR 46** be placed in the Orders of the Day for February 17, 1994. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 586, by Representatives Palumbo and Cyrus: AN ACT relating to individual income tax and declaring an emergency.

HB 587, by Representative Riggs: AN ACT relating to crimes and punishments.

HB 588, by Representatives Bentley, Stumbo, Moberly and Stacy: AN ACT relating to the reorganization of the Education Professional Standards Board.

HB 589, by Representative LeMaster: AN ACT relating to persons under disability.

HB 590, by Representative Mason: AN ACT relating to volunteers for abused, neglected, and dependent children.

HB 591, by Representative Little: AN ACT relating to permitting and reclamation of oil and gas facility sites.

HCR 49, by Representatives Turner and L. Clark: A CONCURRENT RESOLUTION declaring Monroe County the "Marble Capital of the Commonwealth".

Motions, Petitions and Communications (Continued)

Representative Bentley moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Bentley moved that he be recorded as voting "yea" on **HB 275**. Agreed.

Representative Harper moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Harper moved that he be recorded as voting "nay" on **HB 287**. Agreed.

Representative Harper moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Harper moved that he be recorded as voting "yea" on **HB 34, HB 45, HB 91, HB 97, HB 206, HB 297, HB 316, HB 318, HB 319, HB 320, HB 321** and **HB 322**. Agreed.

Representative Trapp moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Trapp moved that he be recorded as voting "yea" on **HB 447**. Agreed.

Representative Stacy moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Stacy moved that he be recorded as voting "yea" on **HB 447**. Agreed.

Representative Deskins moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Deskins moved that he be recorded as voting "yea" on **HB 231, HB 407, HB 328, HB 329** and **HJR 23**. Agreed.

Representative Ballard moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Ballard moved that he be recorded as voting "yea" on **HJR 13**. Agreed.

Representative B. Smith moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative B. Smith moved that he be recorded as voting "yea" on **HB 97**. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 127**, Representative Lile; **HB 204, HB 205, HB 272**, Representative Graham; **HB 579**, Representative Gray.

Representative Richards moved the adoption of the following **Legislative Citation No. 68**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and commends Congressman William H. Natcher and wishes him a rapid and full recovery and continued years of honorable service in the Congress of the United States. Whereas, Congressman William H. Natcher has diligently represented the Commonwealth of Kentucky in the United States House of Representatives since 1953; and Whereas, Congressman William H. Natcher's distinguished career has culminated in his selection as Chairman of the House Appropriations Committee; and Whereas; Congressman William H.

Natcher has not missed a roll call vote since his election to Congress. The House of Representatives of the General Assembly of the Commonwealth of Kentucky commends Congressman William H. Natcher for his outstanding service and extends its thanks for his leadership and guidance.

Announcements

The Clerk announced the following meetings:

Health and Welfare, one-half hour upon adjournment, Room 149

Labor and Industry, 8:00 a.m., February 17, 1994, Room 125

Budget Review Subcommittee on Economic Development, 10:00 a.m., February 17, 1994

Budge Review Subcommittee on Education, 10:00 a.m., February 17, 1994

Committee on Rules, upon adjournment, Speaker's Office

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Thursday, February 17, 1994.

On the roll call the vote was **Yeas 87**--Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bryant, Buis, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Collins, Crenshaw, Curd, Cyrus, Damron, Deskins, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Jensen, Johnson, Kerr, Lear, Lee, Lewis, Lindsay, Maggard, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, R. Smith, Stacy, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 3**--Heleringer, LeMaster, Lile.

The motion to adjourn was adopted.

THURSDAY, FEBRUARY 17, 1994

THIRTIETH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend Bob Jones, Retired, First Baptist Church, Lawrenceburg.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Harper and Keith.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of February 16, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 37**. Message received on **HB 166** and **HB 215**: The Senate has passed **HB 166**, with Senate Committee Amendment attached thereto, and **HB 215** with Senate Committee Amendments attached thereto, and respectfully requests concurrence of this Honorable Body. (Time: 2:05 p.m.)

Introduction of Bills and Resolutions

HB 592, by Representatives Fox, Yates and Stumbo: AN ACT relating to hunting and fishing licenses.

HB 593, by Representatives Mullinix, Mason and Turner: AN ACT relating to candidate nomination papers.

HB 594, by Representative Johnson: AN ACT relating to civil actions.

HB 595, by Representative Nelson: AN ACT relating to insurance.

HB 596, by Representative Nelson: AN ACT relating to revenue and taxation.

HB 597, by Representative Nesler: AN ACT relating to retirement.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolution:

Agriculture and Small Business: **SB 138, SB 154**

Appropriations and Revenue: **HB 586**

Business Organizations and Professions: **SB 150, HB 584**

Cities: **HB 583**

Education: **SB 112, HB 588**

Health and Welfare: **HB 581**

Judiciary: **HB 587, HB 589, HB 590**

Natural Resources and Environment: **HB 591**

State Government: **HCR 49, SB 159, SB 160, SB 161, SB 167**

Transportation: **SB 142, HB 582, HB 585**

Report of Committees

The Committee on Rules reported the following Consent Bills have been posted for passage in the Regular Orders of the Day, February 18, 1994: **HB 426, HB 436**

The Committee on Rules reported that **HB 177, HB 427** and **HB 487** have been posted for passage in the Orders of the Day for February 18, 1994.

The Committee on Rules reported that the following Bill has been recommitted:

State Government: **SB 78**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Tourism Development and Energy: **HB 538, HB 409**

Report of Committees (Continued)

The Committee on Judiciary reported **HB 9, HB 114,** with Committee Substitute attached thereto, **HB 138,** with Committee Amendment attached thereto, **HB 276,** with Committee Substitute attached thereto, **HB 278, HB 345** and **HB 396** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 9, AN ACT relating to liens.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 376.010 is amended to read as follows:

(1) Any person who performs labor or furnishes materials, for the erection, altering or repairing of a house or other structure or for any fixture or machinery therein, for the excavation of cellars, cisterns, vaults, wells or for the improvement in any manner of real property including the furnishing of agricultural lime, fertilizer, concrete pipe or drainage tile, crushed rock, gravel for roads or driveways, and materials used in the construction or maintenance of fences, by contract with, or by the written consent of, the owner, contractor, subcontractor, architect or authorized agent, shall have a lien thereon, and upon the land upon which the improvements were made or on any interest the owner has therein, to secure the amount thereof with interest as provided in KRS 360.040 and costs. The lien on the land or improvements shall be superior to any mortgage or encumbrance created subsequent to the beginning of the labor or the furnishing of the materials, and the lien, if asserted as hereinafter provided, shall relate back and take effect from the time of the commencement of the labor or the furnishing of the materials. The lien shall not be for a greater amount in the aggregate than the contract price of the original contractor, and should the aggregate amount of the liens exceed the price agreed upon between the original contractor and the owner there shall be a pro rata distribution of the original contract price among the lienholders.

(2) The lien shall not take precedence over a mortgage or other contract lien or bona fide conveyance for value without notice, duly recorded or lodged for record according to law, unless the person claiming the prior lien shall, before the recording of the mortgage or other contract lien or conveyance, file in the office of the county clerk of the county wherein he has furnished or expects to furnish labor or materials, a statement showing that he has furnished or expects to furnish labor or materials, and the amount in full thereof. The lien shall not, as against the holder of a mortgage or other contract lien or conveyance, exceed the amount of the lien claimed or expected to be claimed as set forth in the statement. The statement shall, in other respects, be in the form prescribed by KRS 376.080.

(3) No person who has not contracted directly with the owner or his agent shall acquire a lien under this section unless he notifies in writing the owner of the property to be held liable or his authorized agent, within seventy-five (75) days on claims amounting to less than $1,000 and one hundred twenty (120) days on claims in excess of $1,000 after the last item of material or labor is furnished, of his intention to hold the property liable and the amount for which he will claim a lien. It shall be sufficient to prove that the notice was mailed to the last known address of the owner of the property upon which the lien is claimed, or to his duly authorized agent within the county in which the property to be held liable is located.

(4) No person who has not contracted directly with the owner or his authorized agent shall acquire a lien under this section on an owner-occupied single or double family dwelling, the appurtenances or additions thereto, or upon other improvements for agricultural or personal use to the real property or real property contiguous thereto and held by the same owner, upon which the owner-occupant's dwelling is located, unless he notifies in writing the owner of the property to be held liable or his authorized agent not more than forty-five (45) days after the last item of material or labor is furnished, of the delivery of the material or performance of labor and of his intention to hold the property liable and the amount for which he will claim a lien. It shall be sufficient to prove that the notice was mailed to the last known address

of the owner of the property upon which the lien is claimed, or to his duly authorized agent. This notice is in lieu of the notice provided for in subsection (3). Notwithstanding the foregoing provisions of this subsection, the lien provided for under this section shall not be applicable to the extent that an owner-occupant of a single or double family dwelling or owner of other property as described in this subsection has, prior to receipt of the notice provided for in this subsection, paid the contractor, subcontractor, architect or authorized agent for work performed or materials furnished prior to such payment. The contractor or subcontractor cannot be the authorized agent under this subsection. This subsection shall apply to the construction of single or double family homes constructed pursuant to a construction contract with a property owner and intended for use as the property owner's dwelling.

(5) For purposes of this section, "labor" includes but is not limited to, all ***supplies and*** work done by teams, trucks, machinery, and mechanical equipment, whether the owner furnishes a driver or operator or not.

(6) "Supplies" includes small tools and equipment reasonably necessary in performing the work required to be done, including picks, shovels, sledge hammers, axes, pulleys, wire cables, ropes, and other similar items costing not more than fifty dollars ($50) per item, and tires and tubes furnished for use on vehicles engaged in the performance of the work;

(7) "Supplies" also includes the cost of labor, materials, and repair parts supplied or furnished for keeping all machinery and equipment used in the performance of the work in good operating condition; and, shall include the agreed or reasonable rental price of equipment and machinery used in performing the work to be done:

(a) The lien for rental equipment or machinery shall not be more than the aggregate sum of six (6) months' rental, and the aggregate amount of such rental shall not exceed sixty percent (60%) of the agreed value of the machinery or equipment; and

(b) The liens for supplies as defined in this subsection are subordinate to the liens for labor, material and supplies as defined in this section.

HB 114, AN ACT relating to sale of real property.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 381.190 is amended to read as follows:

No sale of real estate by a trustee, by virtue of a pledge or deed of trust to secure the payment of debts, shall be valid or pass the title of the property specified in the deed or pledge, unless the sale is ***pursuant to a power of sale clause*** [~~in pursuance to a judgment of court~~], or is made by an assignee under a voluntary deed of assignment, or unless the maker of the deed or pledge joins in a writing evidencing the sale.

Section 2. KRS 372.140 is amended to read as follows:

(1) ***Except as provided in Section 1 of this Act,*** any power of attorney to confess judgment or to suffer judgment to pass by default or otherwise, and any release of errors, given before an action is instituted, is void.

(2) No person shall appear for a defendant under any such power in any court in this state.

The Committee Substitute to **HB 114** is as follows:

HB 114, AN ACT relating to sale of real property.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 381.190 is amended to read as follows:

No sale of real estate by a trustee, by virtue of a pledge or deed of trust to secure the payment of debts, shall be valid or pass the title of the property specified in the deed or pledge, unless the sale is ***pursuant to a power of sale clause*** [~~in pursuance to a judgment of court~~], or is made by an assignee under a voluntary deed of assignment, or unless the maker of the deed or pledge joins in a writing evidencing the sale

SECTION 2. A NEW SECTION OF KRS CHAPTER 382 IS CREATED TO READ AS FOLLOWS:

(1) In Kentucky, a deed of trust for a single family or multifamily property shall not be valid unless the deed of trust is printed on a form created pursuant to subsection (2), (3), or (4) of this section.

(2) The Kentucky deed of trust form for a single family or multifamily property shall be identical to the deed of trust form created by the Federal National Mortgage Association and Federal Home Loan Corporation and used by those federal agencies to establish eligibility to sell a loan, secured by a single family or multifamily property located in Kentucky, to either of those federal agencies. The two (2) federal agencies' form in effect on August 1 of any year shall be used as the Kentucky deed of trust form in the following year.

(3) If the two (2) federal agencies have not created a form in effect on August 1 of any year, the Department of Financial Institutions shall create a form by December 10 of that year for use in the following year.

(4) If the two (2) federal agencies change their form, the new form shall be valid as well as a form created pursuant to subsection (2) or (3) of this section.

Section 3. KRS 426.530 is amended to read as follows:

(1) If real property sold in pursuance of a judgment***,*** [~~or~~] order of a court, other than an execution, ***or power of sale clause in a pledge or deed of trust,*** does not bring two-thirds (2/3) of its appraised value, the defendant and his representatives may redeem it within a year from the day of sale, by paying the original purchase money and ten percent (10%) per annum interest thereon.

(2) The defendant shall pay the redemption money to the clerk of the court in which the judgment was rendered or the order of sale was made. Upon payment by the defendant, the master commissioner shall convey the real property to the defendant.

(3) When the right of redemption exists, the purchaser shall receive an immediate writ of possession and a deed containing a lien in favor of the defendant, reflecting the defendant's right to redeem during the statutory period.

Section 4. KRS 372.140 is amended to read as follows:

(1) ***Except as provided in Section 1 of this Act,*** any power of attorney to confess judgment or to suffer judgment to pass by default or otherwise, and any release of errors, given before an action is instituted, is void.

(2) No person shall appear for a defendant under any such power in any court in this state.

Section 5. Sections 1, 3, and 4 of this Act shall take effect on January 1, 1995.

HB 138, AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 439.3401 is amended to read as follows:

(1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim, or serious physical injury to a victim.

[~~(2)~~] A violent offender who has been ***sentenced to imprisonment for life without benefit of probation or parole*** [~~convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five (25) years without parole), or a Class A felony and receives a life sentence,~~] or to death and his sentence is commuted to a life sentence shall not be released on parole***, probation, or conditional discharge or any other means*** [~~until he has served at least twelve (12) years in the penitentiary~~].

(2)[~~(3)~~] A violent offender [~~who has been convicted of a capital offense or Class A felony with a sentence of a term of years or Class B felony who is a violent offender~~] shall not be released on parole until he has served at least fifty percent (50%) of the sentence imposed.

(3)[~~(4)~~] This section shall not apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim. The provisions of this subsection shall not extend to rape in the first degree or sodomy in the first degree by the defendant.

(4)[~~(5)~~] This section shall apply only to those persons who commit offenses after July 15, 1986.

Section 2. KRS 532.025 is amended to read as follows:

(1) (a) Upon conviction of a defendant in cases where the death penalty may be imposed, a hearing shall be conducted. In such hearing, the judge shall hear additional evidence in extenuation, mitigation, and aggravation of punishment, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant, or the absence of any prior conviction and pleas; provided, however, that only such evidence in aggravation as the state has made known to the defendant prior to his trial shall be admissible. The judge shall also hear argument by the defendant or his counsel and the prosecuting attorney, as provided by law, regarding the punishment to be imposed. The prosecuting attorney shall open and the defendant shall conclude the argument. In cases in which the death penalty may be imposed, the judge when sitting without a jury shall follow the additional procedure provided in subsection (2) of this section. Upon the conclusion of the evidence and arguments, the judge shall impose the sentence or shall recess the trial for the purpose of taking the sentence within the limits prescribed by law. If the trial court is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered shall apply only to the issue of punishment;

(b) In all cases in which the death penalty may be imposed and which are tried by a jury, upon a return of a verdict of guilty by the jury, the court shall resume the trial and conduct a presentence hearing before the jury. Such hearing shall be conducted in the same manner as presentence hearings conducted before the judge as provided in paragraph (a) of this subsection, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant. Upon the conclusion of the evidence and arguments, the judge shall give the jury appropriate instructions, and the jury shall retire to determine whether any mitigating or aggravating circumstances, as defined in subsection (2) of this section, exist and to recommend a sentence for the defendant. Upon the findings of the jury, the judge shall fix a sentence within the limits prescribed by law.

(2) In all cases of offenses for which the death penalty may be authorized, the judge shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law and any of the following statutory aggravating or mitigating circumstances which may be supported by the evidence:

(a) Aggravating circumstances:

1. The offense of murder or kidnapping was committed by a person with a prior record of conviction for a capital offense, or the offense of murder was committed by a person who has a substantial history of serious assaultive criminal convictions;

2. The offense of murder or kidnapping was committed while the offender was engaged in the commission of arson in the first degree, robbery in the first degree, burglary in the first degree, rape in the first degree, or sodomy in the first degree;

3. The offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one (1) person in a public place by means of a destructive device, weapon, or other device which would normally be hazardous to the lives of more than one (1) person;

4. The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value, or for other profit;

5. The offense of murder was committed by a person who was a prisoner and the victim was a prison employee engaged at the time of the act in the performance of his duties;

6. The offender's act or acts of killing were intentional and resulted in multiple deaths; and

7. The offender's act of killing was intentional and the victim was a state or local public official or police officer, sheriff, or deputy sheriff engaged at the time of the act in the lawful performance of his duties;

(b) Mitigating circumstances:

1. The defendant has no significant history of prior criminal activity;

2. The capital offense was committed while the defendant was under the influence of extreme mental or emotional disturbance even though the influence of extreme mental or emotional disturbance is not sufficient to constitute a defense to the crime;

3. The victim was a participant in the defendant's criminal conduct or consented to the criminal act;

4. The capital offense was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct even though the circumstances which the defendant believed to provide a moral justification or extenuation for his conduct are not sufficient to constitute a defense to the crime;

5. The defendant was an accomplice in a capital offense committed by another person and his participation in the capital offense was relatively minor;

6. The defendant acted under duress or under the domination of another person even though the duress or the domination of another person is not sufficient to constitute a defense to the crime;

7. At the time of the capital offense, the capacity of the defendant to appreciate the criminality of his conduct to the requirements of law was impaired as a result of mental illness or retardation or intoxication even though the impairment of the capacity of the defendant to appreciate the criminality of his conduct or to conform the conduct to the requirements of law is insufficient to constitute a defense to the crime; and

8. The youth of the defendant at the time of the crime.

(3) The instructions as determined by the trial judge to be warranted by the evidence or as required by KRS 532.030(4) shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict be a recommendation of death, [~~or imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence,~~] shall designate in writing, signed by the foreman of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In nonjury cases, the judge shall make such designation. In all cases unless at least one (1) of the statutory aggravating circumstances enumerated in subsection (2) of this section is so found, the death penalty [~~or the sentence to imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall not be imposed~~].

Section 3. KRS 532.030 is amended to read as follows:

(1) When a person is convicted of a capital offense he shall have his punishment fixed at death, or at a term of imprisonment for life without benefit of probation or parole [~~until he has served a minimum of twenty-five (25) years of his sentence, or to a sentence of life,~~] or to a term of not less than twenty (20) years.

(2) When a person is convicted of a Class A felony he shall have his punishment fixed at imprisonment in accordance with

KRS 532.060.

(3) When a person is convicted of an offense other than a capital offense or Class A felony, he shall have his punishment fixed at:

(a) A term of imprisonment authorized by this chapter; or

(b) A fine authorized by KRS Chapter 534; or

(c) Both imprisonment and a fine unless precluded by the provisions of KRS Chapter 534.

(4) In all cases in which the death penalty may be authorized the judge shall instruct the jury in accordance with subsection (1) of this section. The instructions shall state, subject to the aggravating and mitigating limitations and requirements of KRS 532.025, that the jury may recommend upon a conviction for a capital offense a sentence of death, or a term of imprisonment for life without benefit of probation or parole ~~[until the defendant has served a minimum of twenty-five (25) years of his sentence, or a sentence of life,]~~ or to a term of not less than twenty (20) years.

Section 4. KRS 532.060 is amended to read as follows:

(1) A sentence of imprisonment for a felony shall be an indeterminate sentence, the maximum of which shall be fixed within the limits provided by subsection (2), and subject to modification by the trial judge pursuant to KRS 532.070.

(2) The authorized maximum terms of imprisonment for felonies are:

(a) For a Class A felony, ***imprisonment for life without benefit of probation or parole or a term of*** not less than twenty (20) years ~~[nor more than life imprisonment]~~;

(b) For a Class B felony, not less than ten (10) years nor more than twenty (20) years;

(c) For a Class C felony, not less than five (5) years nor more than ten (10) years; and

(d) For a Class D felony, not less than one (1) year nor more than five (5) years.

(3) The actual time of release within the maximum established by subsection (1), or as modified pursuant to KRS 532.070, shall be determined under procedure established elsewhere by law.

Section 5. KRS 532.080 is amended to read as follows:

(1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the sentence of imprisonment assessed under KRS 532.060 for the crime of which such person presently stands convicted, shall fix a sentence of imprisonment as authorized by subsection (5) or (6) of this section. When a defendant is charged with being a persistent felony offender, the determination of whether or not he is such an offender and the punishment to be imposed pursuant to subsection (5) or (6) of this section shall be determined in a separate proceeding from that proceeding which resulted in his last conviction. Such proceeding shall be conducted before the court sitting with the jury that found the defendant guilty of his most recent offense unless the court for good cause discharges that jury and impanels a new jury for that purpose.

(2) A persistent felony offender in the second degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of one (1) previous felony. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

(a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and

(b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and

(c) That the offender:

1. Completed service of the sentence imposed on the previous felony conviction within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

2. Was on probation, parole, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or

3. Was discharged from probation, parole, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or

5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

(3) A persistent felony offender in the first degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of two (2) or more felonies. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

(a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor;

and

(b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and

(c) That the offender:

1. Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which he now stands convicted; or

2. Was on probation, parole, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or

3. Was discharged from probation, parole, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or

5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

(4) For the purpose of determining whether a person has two (2) or more previous felony convictions, two (2) or more convictions of crime for which that person served concurrent or uninterrupted consecutive terms of imprisonment shall be deemed to be only one (1) conviction, unless one (1) of the convictions was for an offense committed while that person was imprisoned.

(5) A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted. A person who is found to be a persistent felony offender in the second degree shall not be eligible for probation, shock probation or conditional discharge.

(6) A person who is found to be a persistent felony offender in the first degree shall be sentenced to imprisonment as follows:

(a) If the offense for which he presently stands convicted is a Class A or Class B felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than twenty (20) years ~~[nor more than life imprisonment]~~; or

(b) If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years.

(7) A person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, nor for parole until having served a minimum term of incarceration of not less than ten (10) years.

Section 6. The amendments contained in Section 1 of this Act shall apply only to those persons who commit offenses after the effective date of this Act.

The Committee Amendment No. 1 to **HB 138** is as follows:

On page 1, line 13, following "offender" to add "***who has been sentenced to a term of years***."

HB 276, AN ACT relating to assisting a suicide.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 7 of this Act unless the context otherwise requires:

(1) "Licensed health care professional" means a physician and surgeon, podiatrist, osteopath, osteopathic physician and surgeon, physician assistant, nurse, dentist, or pharmacist.

(2) "Suicide" means the act or instance of taking one's own life voluntarily and intentionally.

SECTION 2. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) A person commits a class C felony when the person knowingly by force or duress causes another person to commit or to attempt to commit suicide.

(2) A person commits a class D felony when the person, with the purpose of assisting another person to commit or to attempt to commit suicide, knowingly either:

(a) Provides the physical means by which another person commits or attempts to commit suicide; or

(b) Participates in a physical act by which another person commits or attempts to commit suicide.

SECTION 3. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) A licensed health care professional who administers, prescribes, or dispenses medications or procedures to relieve another person's pain or discomfort, even if the medication or procedure may hasten or increase the risk of death, shall not be deemed to have violated Section 2 of this Act unless the medications or procedures are knowingly administered, prescribed, or dispensed to cause death.

(2) A licensed health care professional who withholds or withdraws a life-sustaining procedure in compliance with KRS 311.622 to 311.644 or KRS 311.970 to 311.976 shall not be deemed to have violated Section 2 of this Act.

SECTION 4. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

A cause of action for injunctive relief may be maintained against any person who is reasonably believed to be about to violate or who is in the course of violating Section 2 of this Act by any person who is:

(1) The spouse, parent, child, or sibling of the person who would commit suicide;

(2) Entitled to inherit from the person who would commit suicide;

(3) A health care provider of the person who would commit suicide; or

(4) A public official with appropriate jurisdiction to prosecute or enforce the laws of this Commonwealth.

SECTION 5. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

A cause of action for civil damages against any person who violates or who attempts to violate Section 2 of this Act may be maintained by any person given standing by Section 4 of this Act for compensatory damages and exemplary damages, whether or not the plaintiff consented to or had prior knowledge of the violation or attempt.

SECTION 6. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

Reasonable attorneys' fees shall be awarded to the prevailing plaintiff in a civil action brought pursuant to Section 4 or 5 of this Act.

SECTION 7. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

The licensing agency which issued a license or certification to a licensed health care professional who assists in a suicide in violation of Section 2 of this Act shall immediately revoke permanently the license or certification of that person upon receipt of:

(1) A copy of the record of the criminal conviction or plea of guilty for a felony in violation of Section 2 of this Act;

(2) A copy of the record of a judgment of contempt of court for violating an injunction issued pursuant to Section 4 of this Act; or

(3) A copy of the record of a judgment assessing damages in a suit brought pursuant to Section 5 of this Act.

The Committee Substitute to **HB 276** is as follows:

HB 276, AN ACT relating to assisting a suicide.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 7 of this Act unless the context otherwise requires:

(1) "Licensed health care professional" means a physician and surgeon, podiatrist, osteopath, osteopathic physician and surgeon, physician assistant, nurse, dentist, or pharmacist.

(2) "Suicide" means the act or instance of taking one's own life voluntarily and intentionally.

SECTION 2. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) A person commits a class C felony when the person knowingly by force or duress causes another person to commit or to attempt to commit suicide.

(2) A person commits a class D felony when the person, with the purpose of assisting another person to commit or to attempt to commit suicide, knowingly and intentionally either:

- ***(a) Provides the physical means by which another person commits or attempts to commit suicide; or***
- ***(b) Participates in a physical act by which another person commits or attempts to commit suicide.***

SECTION 3. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) A licensed health care professional who administers, prescribes, or dispenses medications or procedures to relieve another person's pain or discomfort, even if the medication or procedure may hasten or increase the risk of death, shall not be deemed to have violated Section 2 of this Act unless the medications or procedures are knowingly and intentionally administered, prescribed, or dispensed to cause death.

(2) A licensed health care professional who withholds or withdraws a life-sustaining procedure in compliance with KRS 311.622 to 311.644 or KRS 311.970 to 311.976 shall not be deemed to have violated Section 2 of this Act.

SECTION 4. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

A cause of action for injunctive relief may be maintained against any person who is reasonably believed to be about to violate or who is in the course of violating Section 2 of this Act by any person who is:

(1) The spouse, parent, child, or sibling of the person who would commit suicide;

(2) Entitled to inherit from the person who would commit suicide;

(3) A health care provider of the person who would commit suicide; or

(4) A public official with appropriate jurisdiction to prosecute or enforce the laws of this Commonwealth.

SECTION 5. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

A cause of action for civil damages against any person who violates or who attempts to violate Section 2 of this Act may be maintained by any person given standing by Section 4 of this Act for compensatory damages and exemplary damages, whether or not the plaintiff consented to or had prior knowledge of the violation or attempt.

SECTION 6. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

Reasonable attorneys' fees shall be awarded to the prevailing party in a civil action brought pursuant to Section 4 or 5 of this Act.

SECTION 7. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

The licensing agency which issued a license or certification to a licensed health care professional who assists in a suicide in violation of Section 2 of this Act shall constitute grounds for the revocation of the license or certification of that person upon receipt of:

(1) A copy of the record of the criminal conviction or plea of guilty for a felony in violation of Section 2 of this Act; or

(2) A copy of the record of a judgment of contempt of court for violating an injunction issued pursuant to Section 4 of this Act.

HB 278, AN ACT relating to guardians and conservators.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 387.025 is amended to read as follows:

(1) Any interested person or entity may petition the District Court for the appointment of a guardian or limited guardian for an unmarried minor.

(2) Any interested person or entity may petition the District Court for appointment of a conservator for a minor who owns real or personal property, or both, requiring management or protection or who has or may have business interests that may be jeopardized or prevented by minority, or who needs a conservator to settle or compromise claims.

(3) The petition for appointment shall set forth the following:
  (a) The name and address of the minor;
  (b) The date of birth of the minor;
  (c) The name and address of the minor's spouse, if any;
  (d) The names and addresses of the minor's parents, or if the minor has no living parent, the names and addresses of the minor's adult next of kin;
  (e) The name and address of the individual or facility having custody of the minor;
  (f) The facts and reasons supporting the need for a guardianship, limited guardianship, or conservatorship for the minor;
  (g) A description and approximation of the value of the minor's real and personal property and other financial resources, including government benefits, insurance entitlements, and anticipated yearly income;
  (h) The name and address of the petitioner;
  (i) The name and address of the petitioner's attorney, if any; and
  (j) The name and address of the person or entity desiring appointment as guardian, limited guardian, or conservator.

(4) The petition shall be accompanied by a verified application of the person or entity desiring appointment as guardian, limited guardian, or conservator. The application shall set forth the following:
  (a) Name, address, and age of the applicant;
  (b) The applicant's relationship to the minor, if any;
  (c) Whether or not the applicant has ever been convicted of a crime; ~~[and]~~

(d) The applicant's qualifications to serve as guardian, limited guardian, or conservator***; and***

(e) A statement by the applicant that, to his knowledge, there is no action in any other court of competent jurisdiction within the Commonwealth in which the primary custody of the minor has already been determined or is pending.

(5) A duplicate copy of the petition and application shall be mailed by the clerk to the secretary of the Revenue Cabinet. The District Court shall appoint a time for hearing the petition and application. Notice of the time and place of the hearing shall be given not less than five (5) days prior to the hearing to the minor, if the minor is more than fourteen (14) years of age, and to each of the persons or entities required to be named in the petition. Proof of notice shall be made in accordance with the provisions of KRS 395.016. Notice may be waived as provided in KRS 395.016.

HB 345, AN ACT relating to domestic relations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 403.250 is amended to read as follows:

(1) Except as otherwise provided in subsection (6) of KRS 403.180, the provisions of any decree respecting maintenance may be modified only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party, ~~[or]~~ the remarriage of the party receiving maintenance***, or the cohabitation of the party receiving maintenance with another person on a resident, continuing, conjugal basis***.

HB 396, AN ACT relating to enforcement of paternity judgments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 406.121 is amended to read as follows:

Judgments under this chapter may be for periodic payments which may vary in amount. The court may order payments to be made to the mother or to some person, corporation, or agency designated to administer them under the supervision of the court. Willful failure of the alleged father to perform the judgment of the court may be punished as a contempt of the court. The court may impose a punishment of not more than ***six (6) months*** ~~[thirty (30) days]~~ imprisonment in the county jail without the intervention of a jury. This provision shall not be deemed to limit or abrogate any other remedies which exist for the enforcement of judgments.

The Committee on Labor and Industry reported **HB 470,** with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 470, AN ACT relating to workers' compensation and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

PART 1

DEFINITIONS

Section 1. KRS 342.0011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Injury" means any work-related harmful change in the human organism, arising out of and in the course of employment, including damage to or loss of a prosthetic appliance, but does not include any communicable disease unless the risk of contracting ***the*** ~~[such]~~ disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease.

(2) "Occupational disease" means a disease arising out of and in the course of the employment.

(3) An occupational disease as defined in this section shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence.

(4) "Injurious exposure" as used in KRS 342.316 shall mean that exposure to occupational hazard which would,

independently of any other cause whatsoever, produce or cause the disease for which ***the*** claim is made.

(5) "Death" means death resulting from an injury or occupational disease.

(6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liability of employers under this chapter and includes a self-insurer ***and the Employers' Mutual Insurance Authority created by Section 38 of this Act***.

(7) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his employees covered by this chapter.

(8) "Department" means the Department of Workers' Claims in the Labor Cabinet.

(9) "Commissioner" means the commissioner of the Department of Workers' Claims [~~under the direction and supervision of the Workers' Compensation Board~~].

(10) "Board" means the Workers' Compensation Board.

(11) "Disability" means a decrease of wage earning capacity due to injury or loss of ability to compete to obtain the kind of work the employee is customarily able to do, in the area where he lives, taking into consideration his age, occupation, education, effect upon employee's general health of continuing in the kind of work he is customarily able to do, and impairment or disfigurement.

(12) "Income benefits" means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits.

(13) "Medical and related benefits" means payments made for medical, hospital, burial and other services as provided in this chapter, other than income benefits.

(14) "Compensation" means all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits.

(15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices.

(16) "Person" means any individual, partnership, firm, association, trust, joint venture, corporation, or legal representative thereof.

(17) "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel or similar advantages received from the employer, and gratuities received in the course of employment from others than the employer as evidenced by the employee's federal and state tax returns.

(18) "Agriculture" means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with ***the*** [~~such~~] farm operations. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market.

(19) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this chapter.

(20) "United States***,***" when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the territories of the United States.

(21) "Alien" means a person who is not a citizen, a national or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.

(22) "Insurance carrier" means every insurance carrier or insurance company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes ***the Employers' Mutual Insurance Authority and*** every group of self-insurers operating under the provisions of this chapter.

(23) (a) "Severance or processing of coal" means all activities performed in the Commonwealth at underground, auger***,*** and surface mining sites, all activities performed at tipple or processing plants that clean, break, size, or treat coal***,*** and all activities performed at coal loading facilities for trucks, railroads, and barges. Severance or processing of coal shall not include acts performed by a final consumer if ***the*** [~~such~~] acts are performed at the site of final consumption.

(b) "Engaged in severance or processing of coal" shall include all individuals, partnerships, corporations, joint ventures, associations, or any other business entity in the Commonwealth which has employees on its payroll who perform any of the acts stated in paragraph (a) of this subsection, regardless of whether ***the*** [~~such~~] acts are performed as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including***,*** but not limited to***,*** administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. [~~Provided~~] However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged in the severance or processing of coal bears to the total number of employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time.

(24) "Premium" for every group of self-insurers means any and all assessments levied on its members by ***the*** [~~such~~] group or contributed to it by the members thereof.

(25) ***(a) "Premiums received" for insurance carriers means direct written premium as reported in the annual statement to the Kentucky Department of Insurance, except that "premiums received" includes premiums charged off or deferred, and, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. For policies with provisions for deductibles with effective dates on or before December 31, 1993, for which the insurance carrier did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premiums received" includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy.***

(b) "Direct written premium" for insurance carriers means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.

(c) "Premium" for insurance carriers means all consideration, whether designated as premium or otherwise, for workers' compensation insurance paid to an insurance carrier or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. For policies with provisions for deductibles with effective dates on or before December 31, 1993, for which the insurance carrier did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.

(d) "Return premiums" for insurance carriers means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors.

(26) "Insurance policy" for an insurance carrier means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year.

(27) "Self-insurance year" for a group self-insurer means the annual period of certification of the group created pursuant to KRS 342.350(4).

(28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the projected value of the employer's workers' compensation claims for the next calendar year as calculated by the ***commissioner*** [~~Workers' Compensation Board~~] using generally accepted actuarial methods as follows:

(a) The base period shall be the earliest three (3) calendar years of the five (5) calendar years immediately preceding the calendar year for which the calculation is made. The ***commissioner*** [~~board~~] shall identify each claim of the employer which has an injury date or date of last injurious exposure to the cause of an occupational disease during each one (1) of the three (3) calendar years to be used as the base, and shall assign a value to each [~~such~~] claim. The value shall be the total of the indemnity benefits paid to date and projected to be paid, adjusted to current benefit levels, plus the medical benefits paid to date and projected to be paid for the life of the claim, plus the cost of medical and vocational rehabilitation paid to date and projected to be paid. Adjustment to current benefit levels shall be done by multiplying the weekly indemnity benefit for each claim by the number obtained by dividing the statewide average weekly wage which will be in effect for the year for which the premium is being calculated by the statewide average weekly wage in effect during the year in which the injury or date of the last exposure occurred. The total value of ***the*** [~~such~~] claims using the adjusted weekly benefit shall then be calculated by the ***commissioner*** [~~board~~]. Values for claims in which awards have been made or settlements reached because of findings of permanent partial or permanent total disability shall be calculated using the mortality and interest discount assumptions used in the latest available statistical plan of the advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The sum of all calculated values shall be computed for all claims in the base period.

(b) The ***commissioner*** [~~board~~] shall obtain the annual payroll for each of the three (3) years in the base period for each employer carrying his own risk from [~~board~~] records ***of the department*** and from the records of the Division of Unemployment Insurance. The ***commissioner*** [~~board~~] shall multiply each of the three (3) years of payroll by the number obtained by dividing the statewide average weekly wage which will be in effect for the year in which the premium is being calculated by the statewide average weekly wage in effect in each of the years of the base period.

(c) The ***commissioner*** [~~board~~] shall divide the total of the adjusted claim values for the three (3) year base period by the total adjusted payroll for the same three (3) year period. The value so calculated shall be multiplied by 1.12

and shall then be multiplied by the employer's most recent annualized payroll, calculated using [~~board~~] records ***of the department*** and ***the*** Division of Unemployment Insurance data which shall be made available for this purpose on a quarterly basis as reported, to obtain the premium for the next calendar year for assessment purposes under KRS 342.122.

(d) For November 1, 1987, through December 31, 1988, premium for each employer carrying his own risk shall be an amount calculated by the board pursuant to the provisions contained in this subsection and such premium shall be provided to each employer carrying his own risk and to the funding commission on or before January 1, 1988. Thereafter, the calculations set forth in this subsection shall be performed annually, at the time each employer applies or renews his application for certification to carry his own risk for the next twelve (12) month period and submits payroll and other data in support of the application. The employer and the funding commission shall be notified at the time of the certification or recertification of the premium calculated by the ***commissioner,*** [~~board~~] which shall form the employer's basis for assessments pursuant to KRS 342.122 for the calendar year beginning on January 1 following the date of certification or recertification.

(e) If an employer having fewer than five (5) years of doing business in this state applies to carry his own risk and is so certified, his premium for the purposes of KRS 342.122 shall be based on ***the*** [~~such~~] lesser number of years of experience as may be available including the two (2) most recent years if necessary to create a three (3) year base period. If the employer has less than two (2) years of operation in this state available for the premium calculation, then his premium shall be the greater of the value obtained by the calculation called for in this subsection or the amount of security required by the ***commissioner*** [~~board~~] pursuant to KRS 342.340(1).

(f) If an employer is certified to carry his own risk after having previously insured ***the*** [~~such~~] risk, his premium shall be calculated using values obtained from claims incurred while insured for as many of the years of the base period as may be necessary to create a full three (3) year base. After the employer is certified to carry his own risk and has paid all amounts due for assessments upon premiums paid while insured, he shall be assessed only upon the premium calculated under this subsection.

(g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated as set forth in this subsection, except that the value for each such employer's claims shall be the total of the indemnity benefits paid by the employer, adjusted to current benefit levels, plus the medical benefits paid.

(29)[~~(26)~~] "SIC code" as used in this chapter means the Standard Industrial Classification Code contained in the latest edition of the Standard Industrial Classification Manual published by the Federal Office of Management and Budget.

(30) "Investment interest" means any pecuniary or beneficial interest in a provider of medical services or treatment under this chapter, other than a provider in which that pecuniary or investment interest is obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System.

(31) "Authority" means the Employers' Mutual Insurance Authority.

(32) "Managed health care system" means a health care system that employs gatekeeper providers, performs utilization review, and does medical bill audits.

(33) "Ombudsman" means a representative of the Division of the Ombudsman within the Department of Workers' Claims.

PART 2

REORGANIZATION AND ADMINISTRATION

Section 2. KRS 336.015 is amended to read as follows:

(1) The secretary of labor shall have the duties, responsibilities, power, and authority relating to labor, wages and hours, occupational safety and health of employees, child labor, apprenticeship, ***workers' compensation,*** and all other matters [~~except workers' compensation~~] previously under the jurisdiction of the commissioner and Department of Labor.

(2) The Labor Cabinet shall consist of the Offices of the Secretary, General Counsel, Administrative Services, and Labor-Management Relations***; the Kentucky Workers' Compensation Funding Commission; the Workers' Compensation Board; the Occupational Safety and Health Review Commission;***[~~,~~] and the Departments of Workplace Standards, ***Workers' Compensation Coverage and Compliance,*** and [~~of~~] Workers' Claims. The ***commissioners*** [~~commissioner~~] of ***all departments*** [~~the Department of Workplace Standards~~] within the Labor Cabinet shall be under the direction and control of the secretary [~~of the Labor Cabinet~~].

[~~(3) The secretary may not appoint personnel necessary to perform the functions of the Department of Workers' Claims.~~]

Section 3. KRS 336.020 is amended to read as follows:

(1) The Department of Workplace Standards shall be headed by a commissioner, and shall be divided for administrative purposes into the Divisions of Employment Standards and Mediations,[~~;~~] Occupational Safety and Health Compliance, ***and***[~~;~~] Education and Training for Occupational Safety and Health[~~; and Special Fund~~].

(2) The Department of Workers' Claims shall be ***headed*** [~~administered~~] by a [~~Workers' Compensation Board, through a~~] commissioner ***and shall be divided for administrative purposes into the Divisions of Claims Processing and Appeals, Ombudsman, Rehabilitation, and Hearing Officers.***

(3) The Department of Workers' Compensation Coverage and Compliance is headed by a commissioner and shall be divided for administrative purposes into the Divisions of Insurance, Special Fund, Uninsured Employers' Fund, and Fraud Investigations.

Section 4. KRS 336.040 is amended to read as follows:

(1) The ***Labor Cabinet*** [~~department~~] shall exercise all administrative functions of the state concerned with employer-employee relationships, including ***the***[~~:~~

~~(a)~~] safety of workers; and

[~~(b) The~~] workers' compensation [~~Board~~].

(2) The department shall:

(a) Promote friendly and cooperative relations between employers and employees;

(b) Accumulate and publish industrial statistics and aid and encourage the development of new industries and the expansion of existing industries in Kentucky;

(c) Encourage, promote, and develop fair practices both by employers and employees; discourage and eliminate as far as practicable all unfair practices by either; and enforce laws relating to unfair practices;

(d) Foster, promote, and develop the welfare of both wage earners and industries in Kentucky;

(e) Improve working and living conditions of employees***,*** and advance their opportunities for profitable employment; and

(f) Inquire into the causes of accidental injuries and occupational diseases arising out of and in the course of employment, and advance measures for the prevention of accidents and occupational diseases and for the improvement of sanitary conditions in places of employment.

Section 5. KRS 342.1228 is amended to read as follows:

The Kentucky Workers' Compensation Funding Commission shall not be subject to the Governor's power of reorganization under KRS Chapter 12***, including attachment or transfer to another organizational unit or administrative body other than the Labor Cabinet***. The Governor may, however, recommend changes in the organization of the commission to the General Assembly at any regular or special session of the General Assembly.

Section 6. KRS 342.1223 is amended to read as follows:

(1) The Kentucky Workers' Compensation Funding Commission is created as an agency of the Commonwealth for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122.

(2) The commission shall:

(a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS 342.122 and its other funds separate and apart from all "state funds" or "public funds," as defined in KRS Chapter 446;

(b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power over the funds collected pursuant to KRS 342.122, and may invest association funds through one (1) or more banks, trust companies, or other financial institutions with offices in Kentucky in good standing with the Department of Financial Institutions, in investments described in KRS Chapter 386. [~~Provided, however, the commission shall not invest any of the funds collected pursuant to KRS 342.122 in any corporation, company, partnership, or other business entity, or any bank, investment service firm, or other financial entity which directly or indirectly maintains operations or has financial dealings with the Republic of South Africa;~~]

(c) Report to the General Assembly at each regular session the actuarial soundness and adequacy of the funding mechanism for the special fund and other programs supported by ***the*** [~~such~~] mechanism, including detailed information on the investment of funds and yields thereon;

(d) Recommend to the General Assembly, not later than October 31 of the year prior to each regular legislative session, changes deemed necessary in the level of the assessments imposed in KRS 342.122;

(e) In conjunction with the Labor Cabinet, submit to the General Assembly, not later than October 31 of the year prior to each regular legislative session, a proposed budget for the biennium beginning July 1 following the regular session of the General Assembly;

(f) In conjunction with the Labor Cabinet, provide to the Interim Joint Committee on Appropriations and Revenue an annual budget and detailed quarterly financial reports;

(g) Conduct periodic audits***,*** independently or in cooperation with the Labor Cabinet or the Revenue Cabinet***,*** of all entities subject to the assessments imposed in KRS 342.122; and

(h) Report monthly to the ***committees*** [~~Committee~~] on Appropriations and Revenue ***and on Labor and Industry*** its monthly expenditures of restricted agency funds and the nature of ***the*** [~~such~~] expenditures.

(3) The commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes for which it was established***,*** including, but not limited to, the power:

  (a) To sue and be sued, complain, or defend, in its name;

  (b) To elect, appoint, or hire officers, agents, and employees, and define their duties and fix their compensation within the limits of its budget approved by the General Assembly;

  (c) To contract for investment counseling, legal, actuarial, auditing, and other professional services in accordance with the provisions relating to personal service contracts contained in KRS Chapter 45A;

  (d) To appoint, hire, and contract with banks, trust companies, and other entities to serve as depositories and custodians of its investment receipts and other funds;

  (e) To take any and all other actions consistent with the purposes of the commission and the provisions of this chapter; and

  (f) To make and promulgate administrative regulations.

(4) Notwithstanding the provisions of KRS Chapter 342 to the contrary, the Kentucky Workers' Compensation Funding Commission shall utilize the investment expertise and advice of the Office of Financial Management and Economic Analysis rather than entering into a consulting contract for investment counseling. The fees charged by financial institutions for managing the investments of the funds of the funding commission shall be paid from the investment earnings of ***the*** [~~such~~] funds.

(5) The commission shall be attached to the ***Labor*** [~~Revenue~~] Cabinet for administrative purposes only.

Section 7. KRS 342.760 is amended to read as follows:

(1) There is hereby authorized in the Labor Cabinet an uninsured employers' fund for the purpose of making payments in accordance with the provisions of subsection (4) of this section. The secretary of the Labor Cabinet shall be the custodian of the fund and all moneys and securities in the fund shall be held in trust by the secretary of the Labor Cabinet and shall not be considered a part of the general funds of the state.

(2) The secretary of the Labor Cabinet is authorized to disburse moneys from the fund only upon written order of the ***hearing officer*** [~~administrative law judge~~] or the board.

(3) All amounts collected as fines and penalties under this chapter shall be paid into the uninsured employers' fund.

(4) The uninsured employers' fund shall be responsible for the payment of compensation when there has been default in the payment of compensation due to the failure of an employer to secure payment of compensation as provided by this chapter. ***The*** [~~Such~~] employer shall be liable for payment into the fund of the amounts authorized to be paid therefrom under the authority of this subsection and for the purposes of enforcing this liability the Labor Cabinet, for the benefit of the fund, shall be subrogated to all the rights of the person receiving such compensation from the fund.

(5) In furtherance of this purpose, the ***commissioner of the Department of Workers' Compensation Coverage and Compliance*** [~~Attorney General~~] shall appoint a member or members of his staff or special counsel to represent the fund in all proceedings brought to enforce claims against or on behalf of the fund. Necessary expenses for this purpose including salaries of said staff or special counsel shall be borne by the fund. The Labor Cabinet shall be responsible for the administration of the uninsured employers' fund and shall be charged with the conservation of the assets of the fund.

[~~(6) On December 29, 1987, the liabilities of the uninsured employers' fund and its assets remaining in the State Treasury shall be transferred to the uninsured employers' fund created within the Labor Cabinet pursuant to this section.~~]

Section 8. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of ***the*** [~~such~~] department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

  1. The Governor.

  2. Lieutenant Governor.

  3. Department of State.

    (a) Secretary of State.

    (b) Board of Elections.

    (c) Registry of Election Finance.
  4. Department of Law.
    (a) Attorney General.
  5. Department of the Treasury.
    (a) Treasurer.
  6. Department of Agriculture.
    (a) Commissioner of Agriculture.
    (b) Kentucky Council on Agriculture.
  7. Superintendent of Public Instruction.
  8. Auditor of Public Accounts.
  9. Railroad Commission.

II. Program cabinets headed by appointed officers:
  1. Justice Cabinet:
    (a) Department of State Police.
    (b) Department of Criminal Justice Training.
    (c) Office of Administration.
    (d) Department of Corrections.
    (e) Parole Board.
    (f) Kentucky State Corrections Commission.
  2. Education and Humanities Cabinet:
    (a) Department of Education.
      (1) State Board for Elementary and Secondary Education.
      (2) Education Professional Standards Board.
    (b) Department for Libraries and Archives.
    (c) Kentucky Arts Council.
    (d) Kentucky Educational Television.
    (e) Kentucky Historical Society.
    (f) Kentucky Teachers' Retirement System Board of Trustees.
  3. Natural Resources and Environmental Protection Cabinet:
    (a) Environmental Quality Commission.
    (b) Kentucky Nature Preserves Commission.
    (c) Department for Environmental Protection.
    (d) Department for Natural Resources.
    (e) Department for Surface Mining Reclamation and Enforcement.
    (f) Department of Law.
    (g) Office of Communications and Community Affairs.
  4. Transportation Cabinet:
    (a) Department of Highways.
    (b) Department of Vehicle Regulation.
    (c) Department of Administrative Services.
    (d) Department of Fiscal Management.
    (e) Department of Rural and Municipal Aid.
    (f) Office of Aeronautics.
    (g) Office of General Counsel.
    (h) Office of Public Relations.
    (i) Office of Personnel Management.
    (j) Office of Minority Affairs.

5. Cabinet for Economic Development:
    (a) Department for Existing Business and Industry.
    (b) Tobacco Research Board.
    (c) Kentucky Development Finance Authority.
    (d) Office of Business and Technology.
    (e) Office of Industrial Development.
6. Public Protection and Regulation Cabinet:
    (a) Public Service Commission.
    (b) Department of Insurance.
    (c) Department of Housing, Buildings and Construction.
    (d) Department of Financial Institutions.
    (e) Department of Mines and Minerals.
    (f) Department of Public Advocacy.
    (g) Department of Alcoholic Beverage Control.
    (h) Kentucky Racing Commission.
    (i) Board of Claims.
    (j) Crime Victims Compensation Board.
    (k) Kentucky Board of Tax Appeals.
    (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
    (a) Department for Health Services.
    (b) Department for Employment Services.
    (c) Department for Social Insurance.
    (d) Department for Social Services.
    (e) Department for Medicaid Services.
    (f) Department for Mental Health and Mental Retardation Services.
    (g) Unemployment Insurance Commission.
    (h) Commission for Handicapped Children.
    (i) Public Assistance Appeals Board.
    (j) Office of Administrative Services.
    (k) Office of Communications.
    (l) Office of General Counsel.
    (m) Office of Inspector General.
    (n) Office of Policy and Budget.
    (o) Office of the Ombudsman.
8. Finance and Administration Cabinet:
    (a) Office of Legal and Legislative Services.
    (b) Office of Management and Fiscal Affairs.
    (c) Office of Historic Properties.
    (d) Office of Financial Management and Economic Analysis.
    (e) Office of Risk Management.
    (f) Department for Administration.
    (g) Department of Facilities Management.
    (h) Department of Information Systems.
    (i) State Property and Buildings Commission.
    (j) Kentucky Pollution Abatement Authority.
    (k) Kentucky Savings Bond Authority.
    (l) Deferred Compensation Systems.

(m) Office of Equal Employment Opportunity Contract Compliance.
(n) Capital Plaza Authority.
(o) County Officials Compensation Board.
(p) Financial Disclosure Review Commission.
(q) Kentucky Employees Retirement Systems.
(r) Commonwealth Credit Union.
(s) State Investment Commission.
(t) Kentucky Housing Corporation.
(u) Governmental Services Center.
(v) Kentucky Local Correctional Facilities Construction Authority.
(w) Kentucky Turnpike Authority.
(x) Historic Properties Advisory Commission.

9. Labor Cabinet:

(a) ***Department of Workers' Compensation Coverage and Compliance.***
(b) Department of Workplace Standards.
(c)[~~(b)~~]Department of Workers' Claims.
(d)[~~(c)~~]Kentucky Labor-Management Advisory Council.
(e)[~~(d)~~]Occupational Safety and Health Standards Board.
(f)[~~(e)~~] Prevailing Wage Review Board.
(g)[~~(f)~~] Workers' Compensation Board.
[~~(g) Kentucky Employees Insurance Association.~~]
(h) Apprenticeship and Training Council.
(i) State Labor Relations Board.
(j) Kentucky Occupational Safety and Health Review Commission.
(k) Office of Administrative Services.
(l) Office of Labor Management Relations.
(m) Office of General Counsel.
(n) Workers' Compensation Funding Commission.
(o) Employers' Mutual Insurance Authority.

10. Revenue Cabinet:

(a) Department of Property Taxation.
(b) Department of Tax Compliance.
(c) Department of Administrative Services.

11. Tourism Cabinet:

(a) Department of Travel Development.
(b) Department of Parks.
(c) Department of Fish and Wildlife Resources.
(d) Kentucky Horse Park Commission.
(e) State Fair Board.
(f) Office of Administrative Services.
(g) Office of Film Promotion.
(h) Office of General Counsel.

12. Cabinet for Workforce Development:

(a) Department for Adult and Technical Education.
(b) Department of Vocational Rehabilitation.
(c) Department for the Blind.
(d) State Board for Adult and Technical Education.
(e) Governor's Council on Vocational Education.

(f) Governor's Commission on Literacy.

(g) The State Board for Proprietary Education.

(h) The GED Foundation.

(i) The Kentucky Occupational Information Coordinating Committee.

(j) The Kentucky Job Training Coordinating Council.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.
2. Department of Personnel.
3. Council on Higher Education.
4. Department of Local Government.
5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.

SECTION 9. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

On or before September 1, 1994, the Governor, by an executive order issued pursuant to KRS 12.028, shall transfer the functions, responsibilities, staff, and budget of the Department of Insurance relating to workers' compensation rates and workers' compensation insurance carriers to the Department of Workers' Compensation Coverage and Compliance in the Labor Cabinet.

PART 3

WORKERS' COMPENSATION BOARD AND ALJS

(HEARING OFFICERS)

Section 10. KRS 342.213 is amended to read as follows:

(1) Except as provided in subsection (3) of this section the Governor shall make all appointments to the board***, subject to the consent of the Senate in accordance with KRS 11.160,*** by choosing one (1) of three (3) names presented to him by the Workers' Compensation Board Nominating Commission.

(2) The Workers' Compensation Board Nominating Commission shall consist of seven (7) members appointed by the Governor as follows:

(a) Two (2) members shall be attorneys experienced in the practice of workers' compensation, one (1) of whom customarily represents claimants, and one (1) of whom customarily represents employers. Both shall serve terms of two (2) years, but their successors shall be appointed to terms of four (4) years.

(b) 1. One (1) member of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of three (3) years; and

2. Two (2) members of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of four (4) years.

3. Thereafter, as each term expires, the vacancy so created shall be filled by an appointee from the same political party for a term of four (4) years.

(c) Appointments to fill the unexpired term of a member shall be for the remainder of the term. ***Annually, the Governor shall appoint a chairman of the nominating commission.***

(3) The ***nominating commission shall meet as often as necessary to perform its responsibilities, and the members shall be reimbursed by the Workers' Compensation Funding Commission for necessary expenses in the manner and amounts prescribed for state employees by KRS 45.101 and the administrative regulations promulgated under the authority of that statute***[~~initial appointments to the board created pursuant to KRS 342.215 shall be made by the Governor from a list of nine (9) names submitted by the nominating commission on the first Monday in January, 1988~~].

(4) The nominating commission shall present to the Governor its list of three (3) candidates for appointment to the board no later than thirty (30) days prior to the expiration of a board member's term. For the purpose of filling vacancies on the board which occur for reasons other than an expiration of term, the nominating commission shall present a list of names to the Governor no later than ninety (90) days after a vacancy occurs.

(5) If the Governor fails to appoint a member of the board within thirty (30) days following receipt of a list of names from the nominating commission, the previous appointee may remain in the position until the ninetieth day following the date the nominating commission provided the Governor with its list of names, at which time he shall vacate the position.

Section 11. KRS 342.215 is amended to read as follows:

(1) The Workers' Compensation Board is hereby created and established. The board[~~, through the commissioner, shall exercise complete authority over the administration of the Department of Workers' Claims and~~] shall rule on appeals of decisions rendered by ***hearing officers*** [~~administrative law judges~~] under this chapter. ***The board shall rule on an appeal of a decision of a hearing officer no later than ninety (90) days following the date on which the last appeal brief was filed.***

(2) The Workers' Compensation Board shall consist of three (3) members appointed by the Governor. Each member shall hold no other public office and shall devote his full time to the duties of his office.

(3) [~~Of the members first appointed under this section, one (1) shall serve a term of two (2) years; one (1) a term of three (3) years; and one (1) a term of four (4) years, as designated by the Governor at the time of the appointments. Thereafter,~~] Each term ***of a board member*** shall run for four (4) years from the date of expiration of the term for which the member's predecessor was appointed, except that a person appointed to fill a vacancy prior to the expiration of a term shall be appointed for the remainder of the term. ***The Governor shall not appoint a member of the board to fill the unexpired term of another board member, nor shall the Governor reappoint a member of the board who has resigned or has been removed from his position prior to the expiration of his term.*** [~~Each member of the board shall hold office until his successor is appointed and qualifies.~~] The members of the board shall have the qualifications required of appeals court judges, except for residence in a district, and shall receive the same salary and shall be subject to the same standards of conduct. The Governor shall designate a member of the board to serve as chairman. Any vacancy in the chairmanship shall be filled by the Governor. The Governor may at any time remove any member for cause after furnishing him with a written copy of the charges against him and giving him a public hearing if he requests it.

(4) A decision concurred in by any two (2) of the three (3) members shall constitute a decision of the board.

(5) [~~The terms of all members of the Workers' Compensation Board who are in office prior to January 4, 1988, shall automatically expire one hundred eighty (180) days following January 4, 1988. In addition to rendering decisions, awards and orders, the members shall assist in training the newly appointed full time members of the Workers' Compensation Board created pursuant to this chapter and the newly employed administrative law judges.~~

~~(6)~~] Members of the Workers' Compensation Board and the ***hearing officers*** [~~administrative law judges~~] shall be members of the Kentucky Employees Retirement System.

Section 12. KRS 342.228 is amended to read as follows:

(1) The Department of Workers' Claims shall be responsible for administering claims and ***the*** [~~ensuring compliance with the insurance, self-insurance and~~] rehabilitation provisions in this chapter. The department shall be headed by a commissioner hired by the ***secretary of labor***[~~board, who shall be responsible for overseeing the administration of claims and the administration of the insurance, self-insurance and rehabilitation provisions of this chapter~~].

(2) The commissioner shall be an attorney and shall have demonstrated knowledge and experience in the area of workers' compensation, public administration, and administrative law.

Section 13. KRS 342.230 is amended to read as follows:

(1) [~~Upon the recommendation of~~] The commissioner, [~~the board,~~] within the limits of appropriations therefor ***and except as otherwise specifically provided in this chapter***, shall establish and fill any positions, including medical services and advice, necessary to carry on the ***department's*** [~~board's~~] work. [~~The employees of the Department of Workers' Claims, except the commissioner, administrative law judges and board members, shall be members of the classified service.~~]

(2) The ***secretary of labor*** [~~board~~] shall ***hire the*** [~~employ a~~] commissioner ***of the Department of Workers' Claim***. The commissioner shall have immediate supervision of the employees of the department, perform [~~such~~] duties [~~as are~~] assigned him, and have complete authority[~~, on behalf of the board,~~] to carry out all the administrative functions relating to the Department of Workers' Claims. The commissioner ***with the assistance of the board*** shall ***train and instruct the hearing officers on an on-going basis; assign cases and monitor the caseloads of the hearing officers and the Workers' Compensation Board to ensure timely disposition of cases;*** keep and be the custodian of the records of the board and the ***hearing officers;*** [~~administrative law judges, shall~~] annually report the activities of the board and ***hearing officers*** [~~administrative law judges~~] to the Governor***;***[~~,~~] and shall devote his full time to the duties of his office. [~~He shall receive a salary to be fixed by the board.~~]

(3) The board shall employ***,*** with the consent of the Senate ***in accordance with KRS 11.160,*** for a term of four (4) years***,*** not more than fifteen (15) ***hearing officers***[~~administrative law judges~~], each of whom shall have ***five (5) years' experience in the Commonwealth in the practice of workers' compensation law or a related field, or extensive knowledge of workers' compensation law***[~~the qualifications of a Circuit Judge, except residence in a district~~], and shall be paid the same salary ***as a circuit judge. Each hearing officer***[~~, shall be subject to removal during the term of employment for violation of the code of judicial ethics, and~~] may be employed for additional terms of four (4) years with the consent of the Senate ***in accordance with KRS 11.160. The board, at least thirty (30) days prior to the expiration of a term of a hearing officer, shall provide the name of the individual it intends to appoint to the position to the chairman of the Senate Labor and Industry Committee***. These

hearing officers ~~[administrative law judges]~~ shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by statute and shall render final decisions, orders, or awards. ***Hearing officers*** ~~[Administrative law judges]~~ may, in receiving evidence, make ~~[such]~~ rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case.

(4) ***To ensure that the hearing officers perform their responsibilities competently and issue decisions consistent with this chapter, the commissioner shall, at least twice annually, conduct training and education seminars in workers' compensation law, including relevant case law, trends, and developments; administrative law; and methods and procedures for writing well-reasoned, clear, correct, and concise opinions, orders, or awards.***

(5) ~~[The board may at any time remove the commissioner.]~~ The ***commissioner*** ~~[board]~~ may remove any ***hearing officer*** ~~[administrative law judge]~~ for violation of the code of judicial ethics ***or the code of ethics applicable to the executive branch of the Commonwealth, if one is in place. In addition, a hearing officer may be removed for the persistent or repeated failure to perform satisfactorily the specific duties assigned in this chapter, including the requirement of timely disposition of cases, review of attorney's fees, failure to attend training and continuing education programs required by the commission, and failure to write his own decisions and opinions***.

(6)~~[(5)]~~ Any vacancy in the term of ***a hearing officer, which occurs prior to the expiration of the term,*** ~~[an administrative law judge]~~ shall be filled by appointment of the board ***within sixty (60) days from the date the vacancy occurs***, with the consent of the Senate ***in accordance with KRS 11.160***, for the remainder of the term. ~~[In the event the Senate is not in session at the time of the appointment to fill the vacancy, the consent of the Senate shall be obtained during the time the Senate next convenes.]~~

(7) (a) Effective at midnight, December 31, 1997, the terms of hearing officers who were appointed to fill the five (5) hearing officer positions which were created in 1990 shall end. On January 1, 1998, the board shall make four (4) year appointments to fill these positions.

(b) Effective at midnight, December 31, 1995, the terms of hearing officers who were appointed to fill the ten (10) hearing officers positions which were created in 1987 shall end. On January 1, 1996, the board shall make four (4) year appointments to fill these positions.

(c) On January 1, 1996, and January 1, 1998, as provided in paragraphs (a) and (b) of this subsection, and every fourth year thereafter, hearing officers shall be appointed by the board for four (4) year terms and confirmed by the Senate in accordance with KRS 11.160. Confirmation hearings for hearing officers shall be completed by the end of the regular session every four (4) years thereafter beginning with the 1996 Regular Session. Vacancies shall be filled in accordance with subsection (6) of this section.

Section 14. KRS 342.275 is amended to read as follows:

In any claim in which settlement is not reached at the prehearing conference, the ***hearing officer*** ~~[administrative law judge]~~ shall hold a hearing on the matters at issue within sixty (60) days from the date of the prehearing conference in a location at or convenient to the place where the employee resides, ***except that the*** ~~[provided that such]~~ conference shall be held within the boundaries of the Commonwealth. The ***hearing officer*** ~~[administrative law judge]~~ may grant continuances according to criteria established in administrative regulations promulgated by the ***commissioner***~~[board]~~. The commissioner shall notify the parties at issue of the time and place of the hearing. The ***hearing officer*** ~~[administrative law judge]~~ shall render the award, order***,*** or decision within ***ninety (90) days following the final hearing of a case***~~[thirty (30) days after the case is submitted]~~. The award, order***,*** or decision, together with a statement of the findings of fact, rulings of law***,*** and any other matters pertinent to the question at issue shall be filed with the record of proceedings, and a copy of the award, order***,*** or decision shall immediately be sent to the parties in dispute.

PART 4

ALTERNATIVE DISPUTE RESOLUTION

SECTION 15. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) In accordance with administrative regulations promulgated by the commissioner, a collective bargaining agreement between an employer and a recognized or certified exclusive bargaining representative that contains the following provisions may be recognized as valid and binding:

(a) An alternative dispute resolution system to supplement, modify, or replace the provisions of this chapter that relate to the resolution of disputes, and which may include but is not limited to mediation and arbitration, the results of which may be binding upon the parties;

(b) The use of an agreed list of providers of medical treatment, which may be the exclusive source of all medical and related treatment provided under this chapter;

(c) The use of a limited list of physicians to conduct independent medical examinations;

(d) A light duty, modified job, or return-to-work program;

(e) A vocational rehabilitation or retraining program; and

(f) A twenty-four (24) hour health care coverage plan for medical benefits.

(2) A system of arbitration may provide that the decision of the arbiter is subject to review by a hearing officer.

(3) Notwithstanding the provisions in subsection (1) of this section, no agreement shall be recognized as valid and binding that diminishes an employee's right to benefits provided under this chapter. Also, no agreement shall be valid and binding unless it is agreed to by the employer's insurance carrier.

PART 5

MEDICAL PROVISIONS: MANAGED CARE, STATEMENT FOR SERVICES, OCCUPATIONAL MEDICINE CENTERS, ANTI-BALANCE BILLING, SELF-REFERRAL

Section 16. KRS 342.020 is amended to read as follows:

(1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. ***The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits. In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease.*** ~~[The employee may select the physician to treat his injury, and the hospital in which he shall be treated.]~~ The employer, or an insurer on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of ***the*** ~~[such]~~ services within thirty (30) days of receipt of a statement for services. The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter***,*** if appropriate***,*** as long as medical services are rendered. ***The commissioner may promulgate regulations establishing the form and content of a statement for services and procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of services may be resolved.***

(2) ***Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, medical services and treatment provided under this chapter shall not be subject to copayments or deductibles.***

(3) Employers may provide medical services through a managed health care system. The managed health care system shall file with the Department of Workers' Claims a plan for the rendition of health care services for work-related injuries and occupational diseases to be approved by the commissioner pursuant to administrative regulations promulgated by the commissioner.

(4) All managed health care systems rendering medical services under this chapter shall include the following features in plans for workers' compensation medical care:

(a) Copayments or deductibles shall not be required for medical services rendered in connection with a work-related injury or occupational disease;

(b) The employee shall be allowed choice of provider within the plan;

(c) The managed health care system shall provide an informal procedure for the expeditious resolution of disputes concerning rendition of medical services;

(d) The employee shall be allowed to obtain a second opinion, at the employer's expense, from an outside physician if a managed health care system physician recommends surgery;

(e) The employee may obtain medical services from providers outside the managed health care system, at the employer's expense, when treatment is unavailable through the managed health care system;

(f) The managed health care system shall establish procedures for utilization review of medical services to assure that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, cost ineffective, or harmful to the employee; and

(g) Statements for services shall be audited regularly to assure that charges are not duplicated and do not exceed those authorized in the applicable fee schedules.

(5) All medical services rendered pursuant to this chapter shall be under the supervision of a single treating physician or physicians group having the authority to make referrals, as reasonably necessary, to appropriate facilities and specialists. The employee may change the designation of treating physician one (1) time and thereafter must show reasonable cause to change physicians.

(6) When a compensable injury or occupational disease results in the amputation of an arm, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, the employer shall ~~[initially]~~ pay for, in addition to the other medical, surgical, and hospital treatment enumerated in subsection (1) and this subsection, a modern artificial member and, where required, proper braces ***as may reasonably be required at the time of the injury and thereafter during disability***.

(7)~~[(3)]~~ Upon motion of the employer, with sufficient notice to the employee for a response to be filed, if it is shown to the satisfaction of the ***hearing officer*** ~~[administrative law judge]~~ by affidavits or testimony that, because of the physician selected by the employee to treat his injury or disease, or because of the hospital selected by the employee in which he is being treated, that the employee is not receiving proper medical treatment and his recovery is being substantially affected or delayed; or that the funds for his medical expenses are being spent without reasonable benefit to the employee; or that because of the physician selected by the employee or because of the type of medical treatment being received by the employee that the employer will substantially be prejudiced in any compensation proceedings resulting from the employee's injury or disease; then the ***hearing officer*** ~~[administrative law judge]~~ may allow the employer to select a physician to treat the employee and the hospital or hospitals in which the employee is treated for his injury or disease. No action shall be brought against any employer subject to this chapter by any person to recover damages for malpractice or improper treatment received by any employee from any physician, hospital, or attendant thereof.

(8)~~[(4)]~~ An employee who reports an injury alleged to be work-related or files an application for adjustment of a claim shall execute a waiver and consent of any physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding any other provision in the Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, workers' compensation insurer, special fund, uninsured employers' fund, or the ***hearing officer***~~[administrative law judge]~~, provide the requesting party with any information or written material reasonably related to any injury ***or disease*** for which the employee claims compensation.

(9) When a provider of medical services or treatment, required by this chapter, makes referrals for medical services or treatment by this chapter, to a provider or entity in which the provider making the referral has an investment interest, the referring provider shall disclose that investment interest to the employee, the commissioner, and the employer's insurer or the party responsible for paying for the medical services or treatment, within thirty (30) days from the date the referral was made.

SECTION 17. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) If following a workplace injury or contraction of an occupational disease, any medical question is in controversy, the ombudsman or the hearing officer shall refer the employee to a certified occupational medicine center for the purpose of resolving the medical questions involved. The ombudsman or hearing officer shall specify the medical issues the center is to resolve which may include, but not necessarily be limited to, determining:

(a) A diagnosis of the employee's condition;

(b) The medical causation of the condition;

(c) Reasonableness of treatment or proposed treatment;

(d) Whether the employee has attained maximum medical improvement and, if so, any remaining permanent functional impairment using the American Medical Association's Guides to the Evaluation of Permanent Impairment, latest available edition, or other criteria adopted by the commissioner of the Department of Workers' Claims for use when the American Medical Association guides are not applicable; and

(e) Appropriate limitations and restrictions resulting from the injury or disease.

(2) The occupational medicine center may consider all medical information, including medical records, reports, and results of diagnostic tests, which it deems necessary to answer the medical questions posed by the ombudsman or hearing officer.

(3) The occupational medicine center shall report its findings to the referring ombudsman or hearing officer within ten (10) days of the date of the evaluation. All reports shall be made in writing on forms provided by the Department of Workers' Claims.

(4) Evaluations shall be performed by the occupational medicine center most convenient to the place where the employee resides, but the evaluation shall be performed only at a certified center located within the boundaries of the Commonwealth of Kentucky.

(5) The employee shall be prepaid the cost of transportation to and from the evaluation if public transportation is utilized. If the employee uses his own vehicle to travel to and from the examination, the employee shall be prepaid at the state mileage rate. The employee shall be reimbursed for the costs of meals, lodging, parking, and toll charges upon proof of these costs by written vouchers. The amounts prepaid to the employee, required by this subsection, shall be the same as and in accordance with state travel administrative regulations promulgated under the authority of KRS Chapter 45.

(6) Certified occupational medicine centers shall be compensated for their services pursuant to a schedule of fees established by the Department of Workers' Claims through the promulgation of administrative regulations. Except as provided in subsection (7) of this section, all fees and costs associated with the evaluations, including employee travel expenses, shall be paid by the employer.

(7) The findings of the occupational medicine center shall be rebuttably presumed to be correct on all disputed medical questions and shall be adopted by the ombudsman or hearing officer, unless challenged based upon the grounds specified in this subsection. If the employee was referred to the center by an ombudsman, the controverted matter shall be referred to a hearing officer for resolution. If the hearing officer determines, based upon substantial evidence of record, that the center's findings resulted from fraud, or willful and wanton misconduct, the findings shall be disregarded and the employee shall be referred to another certified occupational medicine center for evaluation and a written report of findings on all disputed medical questions. All costs associated with the subsequent evaluations shall be paid by the offending party, individual, or occupational medicine center, pursuant to orders of the hearing officer.

(8) On or before July 1, 1995, the Department of Workers' Claims shall promulgate administrative regulations necessary to implement all of the provisions of this section by January 1, 1996, including but not limited to, establishment of the following:

   (a) Criteria and procedures for the certification of the occupational medicine centers by the secretary of labor based upon the recommendations of the commissioner of the Department of Workers' Claims, but only centers which meet the following minimum requirements shall be eligible for certification by the secretary as a certified occupational medicine center:

      1. The facility shall have licensed physicians experienced in occupational medicine and the evaluation of functional impairment;

      2. At least fifty percent (50%) of the facility's practice shall be devoted to occupational medicine, orthopedics, psychiatry, or the evaluation of functional impairment;

      3. Any providers actually performing and certifying examinations shall, at least every three (3) years, successfully complete a formal functional disability evaluation course sponsored by the American Academy of Disability Evaluating Physicians or the American College of Occupational and Environmental Medicine;

      4. Facilities shall have registered physical therapists on staff or readily available who are qualified to perform functional capacity evaluations;

      5. All facilities shall be full-time facilities which are normally open for business at least four and one-half days (4.5) per week; and

      6. Facilities shall employ or have available a doctoral level clinical psychologist or a psychiatrist who is qualified to evaluate mental impairments;

   (b) A mechanism for strict oversight of the centers through the use of the labor and management oversight council located nearest to each center, including a procedure for possible revocation of certification for failing to adhere to all certification requirements and all evaluation criteria, engaging in fraudulent or willful and wanton misconduct, or for failing to issue reports within the statutorily-prescribed time limit;

   (c) Procedures for referral of employees to the centers;

   (d) Uniform medical evaluation criteria and procedures; and

   (e) Training requirements for all evaluators to ensure that the centers strictly adhere to uniform evaluation criteria and procedures.

Section 18. KRS 342.033 is amended to read as follows:

In a claim for benefits, no party may introduce direct testimony from more than ***one (1) physician*** ~~[three (3) physicians without prior consent from the administrative law judge. The motion requesting additional testimony shall clearly demonstrate the need for such additional testimony]~~. A party may introduce direct testimony from ***the*** ~~[a]~~ physician through a written medical report. ***The*** ~~[Such]~~ report shall become a part of the evidentiary record, subject to the right of an adverse party to object to the admissibility of ***the*** ~~[such]~~ report and to cross-examine the reporting physician. The ***commissioner*** ~~[board]~~ shall promulgate administrative regulations prescribing the format and content of written medical reports. ***The physician's testimony shall be limited to the issues of reasonableness and necessity of medical treatment or proposed treatment or the issues of fraud and willful and wanton misconduct with respect to an evaluation or the findings of an occupational medicine center.***

Section 19. KRS 342.035 is amended to read as follows:

(1) ***By December 1, 1994***~~[Within one hundred eighty (180) days following January 4, 1988]~~, and periodically thereafter, the ***commissioner*** ~~[board]~~ shall promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 shall be fair, current, and reasonable, and shall be limited to ~~[such]~~ charges ***that would be paid*** ~~[as are fair, current, and reasonable]~~ for similar treatment of injured persons ~~[of a~~

~~like standard of living~~] in the same community and where *the* [~~such~~] treatment is paid for by *private health care plans or governmental agencies*[~~the injured person himself~~]. In determining what fees are reasonable, the *commissioner* [~~board~~] may also consider the increased security of payment afforded by this chapter.

(2) *No provider of medical services or treatment required by this chapter, its agent, servant, employee, assignee, employer, or independent contractor acting on behalf of any medical provider, shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment of any charge, for services covered by a workers' compensation insurance plan for the treatment of a work-related injury or occupational disease, in excess of that provided by a schedule of fees, or cause the credit of any employee to be impaired by reason of the employee's failure or refusal to pay the excess charge. In addition to the penalty imposed in Section 63 of this Act for violations of this subsection, any individual who sustains damages by any act in violation of the provisions of this subsection shall have a civil cause of action in Circuit Court to enjoin further violations and to recover the actual damages sustained by the individual, together with the costs of the lawsuit, including a reasonable attorney's fee.*

(3) Where *these* [~~such~~] requirements are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting it. No compensation shall be payable for the death or disability of an employee if his death is caused, or if and insofar as his disability is aggravated, caused*,* or continued, by an unreasonable failure to submit to or follow any competent surgical treatment or medical aid or advice.

(4) The commissioner, shall by December 1, 1994, promulgate administrative regulations to adopt a schedule of fees for the purpose of regulating charges by medical providers and other health care professionals for testimony presented and medical reports furnished in the litigation of a claim by an injured employee against the employer.

(5) (a) To ensure compliance with subsections (1) and (4) of this section, the commissioner shall promulgate administrative regulations by December 31, 1994, which require each insurance carrier, group self-insurer, and self-insured employer to certify to the commissioner the program or plan it has adopted to ensure compliance.

(b) In addition, the commissioner shall periodically have an independent audit conducted by a qualified independent person, firm, company, or other entity hired by the commissioner, in accordance with the personal service contract provisions contained in KRS 45A.690 to 45A.725, to ensure that the requirements of subsections (1) and (4) of this section are being met. The independent person, firm, company, or other entity selected by the commissioner to conduct the audit shall protect the confidentiality of any information it receives during the audit, shall divulge information received during the audit only to the commissioner, and shall use the information for no other purpose than the audit required by this paragraph.

(c) If medical utilization review activities are conducted by an insurance carrier, group self-insurer, or self-insured employer pursuant to this section, these activities shall be performed by a private review agent which is licensed or certified as a private review agent by the Cabinet for Human Resources.

(d) On October 1, 1994, and thereafter as often as required, the commissioner shall report to the Labor and Industry Committee of the General Assembly the degree of compliance or lack of compliance with the provisions of this section and make recommendations thereon.

(e) The cost of implementing and carrying out the requirements of this subsection shall be paid by the Workers' Compensation Funding Commission.

(6) The commissioner may promulgate administrative regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter.

(7) For purposes of this chapter, any medical provider shall charge only its customary fee for photocopying requested documents. However, in no event shall a photocopying fee of a medical provider or photocopying service exceed fifty cents ($0.50) per page. In addition, there shall be no charge for reviewing any records of a medical provider, during regular business hours, by any party who is authorized to review the records and who requests a review pursuant to this chapter.

SECTION 20. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A:

(a) Establishing the form and content of a statement for services;

(b) Specifying the manner in which the employee may designate and change the designation of physicians;

(c) Requiring selection of gatekeeper physicians;

(d) Requiring reports from providers on the condition of the employee; and

(e) Establishing procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of medical services shall be resolved.

(2) Pending the effective date of administrative regulations promulgated by the commissioner, all administrative

regulations heretofore promulgated by the Workers' Compensation Board pertaining to these matters shall remain in effect, it being determined that those administrative regulations are within the statutory grant of authority and meet legislative intent.

Section 21. KRS 342.735 is amended to read as follows:

The ***commissioner*** ~~[board]~~ shall ***promulgate administrative*** ~~[establish rules and]~~ regulations to expedite the payment of temporary total disability and medical expense benefits. ***The commissioner may promulgate administrative regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter.***

PART 6

OMBUDSMAN

SECTION 22. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner shall establish the Division of the Ombudsman within the Department of Workers' Claims. The functions of the division shall include:

(a) Responding to inquiries and complaints relative to the workers' compensation program;

(b) Eliciting information from employees, employers, medical, vocational and rehabilitation personnel, carriers, and self-insurers concerning specific claims;

(c) Conducting informal conferences to facilitate resolution of disputes arising under this chapter;

(d) Expediting the restoration of the injured worker to employment;

(e) Assuring prompt rendition of benefits granted by this chapter;

(f) Implementing early referral of the employee for medical and vocational evaluations where required; and

(g) Other investigative and conciliation functions as the commissioner may direct.

(2) The division shall be staffed by personnel trained in mediation techniques, familiar with medical and vocational rehabilitation principles and knowledgeable of the provisions of this chapter and the Americans with Disabilities Act, 42 U.S.C. sec. 12101.

(3) The employee, employer, carrier, self-insured administrator, and medical providers shall promptly comply with reasonable information requests from an ombudsman.

(4) The ombudsman, upon the request of the employee, employer, carrier, or self-insured administrator, or on his own initiative, may refer the employee to a certified occupational medicine center.

(a) Upon receipt of the certified occupational medicine center's report, the ombudsman shall direct the parties to comply with the findings of the report. This shall include the ordering of medical benefits and temporary total disability income benefits or a return to work order as indicated in the certified occupational medicine center's report. If the employer fails to return the employee to work after proper order of the ombudsman, the ombudsman may direct the employer, carrier, or self-insured administrator to commence payment of temporary disability income benefits and medical expenses; if benefits are ordered as a result of an employer failing to return an employee to work the claim shall be referred by the ombudsman to a hearing officer for resolution under the procedures of KRS 342.230(3). If an employee refuses to return to work after an ombudsman orders a return, the ombudsman may order the employee's benefits ceased and refer the claim to a hearing officer for resolution under the procedures of KRS 342.230(3). However, no claim for benefits shall be made until the employee reaches maximum medical improvement as determined by a certified occupational medicine center unless there is a dispute pursuant to paragraph (c) of this subsection.

(b) The ombudsman may order rehabilitation services for an injured employee pursuant to KRS 342.710 if in accordance with the findings of the certified occupational medicine center.

(c) If the ombudsman determines that there is a dispute as to whether a work-related disability has occurred, or other nonmedical factual disputes exist, he shall refer the claim to a hearing officer for factual determination and appropriate orders.

(5) The ombudsman may approve an agreement between the employer and employee, if it meets the requirements for these agreements specified by the commissioner through administrative regulation.

(6) Matters brought before an ombudsman shall be processed in accordance with administrative regulations promulgated by the commissioner.

(7) In the event either party fails to comply with his orders, the ombudsman may make recommendations to a hearing officer that costs be assessed against the noncomplying party pursuant to KRS 342.310.

PART 7

TWENTY-FOUR HOUR COVERAGE

SECTION 23. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) By January 1, 1995, the commissioner of the Department of Workers' Compensation Coverage and Compliance shall promulgate administrative regulations pursuant to KRS Chapter 13A authorizing the establishment by March 1, 1995, of pilot projects for twenty-four (24) hour health coverage.

(a) A twenty-four (24) hour policy may cover general health care for purposes of general health insurance, auto insurance, workers' compensation, or health care normally covered by any line of insurance written in the Commonwealth;

(b) A twenty-four (24) hour coverage policy shall not contain deductibles or copayments for medical services or treatment for work-related injuries or diseases; and

(c) There shall be no transfer of liabilities or expenses between or among particular lines of insurance whose medical or health components have been combined into a twenty-four (24) hour coverage for health care.

(2) No policy for twenty-four (24) hour coverage shall become effective until it is reviewed and approved by the commissioner, in consultation with the commissioner of the Department of Insurance.

(3) Notwithstanding any other provision of the Kentucky Revised Statutes to the contrary, each insurer authorized or licensed to write insurance in the Commonwealth shall provide any information requested by the commissioner for the purpose of developing a twenty-four (24) hour health policy.

(4) The purchase of a twenty-four (24) hour health policy shall not constitute an exemption from statutory provisions which require other nonmedical insurance coverage. However, an insurance carrier shall reduce its premium for insurance coverage written without the medical or health care component. Notwithstanding the provisions of Subtitle 13 of KRS Chapter 304, the premium reduction required in this subsection shall be subject to the approval of the commissioner of the Department of Insurance.

(5) If an employer obtains a twenty-four (24) hour health insurance policy, pursuant to this section, to secure payment of compensation for medical care and treatment under this chapter, the employer shall also procure an insurance policy which shall provide indemnity benefits to ensure that the total coverage afforded by both the twenty-four (24) hour insurance policy and the policy providing indemnity benefits, shall provide the total compensation required by this chapter.

(6) The participants in a pilot project for twenty-four (24) hour health coverage shall comply with periodic reporting requirements of the commission.

(7) Each insurer authorized or licensed to write insurance in the Commonwealth shall cooperate with the commissioner and shall provide any information requested by the commissioner for the purpose of studying twenty-four (24) hour health policy.

(8) Each agency of state government shall cooperate with the commissioner if requested to provide information for the purposes of this section.

Section 24. KRS 342.375 is amended to read as follows:

Every policy or contract of workers' compensation insurance under this chapter, issued or delivered in this state, shall cover the entire liability of the employer for compensation to every one of his employees subject to this chapter, except as otherwise provided in KRS 342.345 *or in Section 23 of this Act*. However, if specifically authorized by the commissioner *of the Department of Workers' Compensation Coverage and Compliance*, a separate insurance policy may be issued for a specified plant or work location if the liability of *the* [~~such~~] employer under this chapter to all his other employees subject to this chapter is otherwise secured and provided that no employee transferred from one plant or work location to another within the employment of the same employer shall thereby lose any benefit rights accumulated under the average weekly wage concept.

PART 8

PERMANENT PARTIAL DISABILITY, RIB, TELEDYNE, AND REOPENING

Section 25. KRS 342.730 is amended to read as follows:

(1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:

(a) For total disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred *ten* percent *(110%)* [~~(100%)~~] of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during *that* [~~such~~] disability. *Nonwork-related disability shall not be considered in determining whether the employee is totally disabled for purposes of this subsection, unless the employee has filed and pursued in good faith a claim for social security disability benefits and the claim has been finally denied by the Social Security Administration appeals council. If the employee's social security disability claim is pending when his workers' compensation claim is decided, the hearing officer shall defer decision on the issue of duration of benefits until provided with proof of the ruling of the appeals council.*

(b) For permanent, partial disability, *when the employee is not returned to work at an average weekly wage at least equal to the employee's preinjury average weekly wage,* sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by his percentage of ***permanent functional impairment*** ~~[disability]~~ caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, ***or other criteria adopted by the commissioner for use when these guides are not applicable,*** or by his percentage of disability as determined under KRS 342.0011(11), whichever is greater, for a maximum period, from the date the disability arises, of four hundred twenty-five (425) weeks. ~~[Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section.]~~ Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

(c) If an injured employee is employed and the average weekly wage of the employee is at least equal to the employee's preinjury average weekly wage, the employee shall be paid income benefits of sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by his percentage of permanent functional impairment caused by the injury as determined by using the American Medical Association's Guides to the Evaluation of Permanent Impairment, latest available edition, or other criteria adopted by the commissioner for use when these guides are not applicable. The maximum period for payment of the income benefits shall be four hundred twenty-five (425) weeks from the date of the injury.

(d) If the injured employee, through no fault of his own, becomes unemployed and is unable to obtain comparable employment as a result of the injury, or fails to receive a wage increase as a result of the injury, or suffers a wage decrease as a result of the injury, the employee may move to reopen his claim pursuant to the requirements and limitations set forth in KRS 342.125 and receive income benefits based upon his disability as provided for in subsections (1)(a) or (1)(b) of this section, except if the reopening results in an award of permanent partial disability benefits, the income benefits shall be paid for a maximum period of four hundred twenty-five (425) weeks from the date the motion to reopen the claim is filed with the Department of Workers' Claims. Any income benefits previously awarded based upon the employee's permanent impairment or disability resulting from the injury shall be excluded from any income benefits awarded through the reopening of the claim. All income benefits awarded under this subsection shall be based upon the employee's average weekly wage and the state average weekly wage in effect on the date of the filing of the motion to reopen with the Department of Workers' Claims.

(e) Any temporary total disability period within the maximum period for permanent, partial disability benefits or functional impairment benefits shall extend the maximum four hundred twenty-five (425) week period, but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section.

(2) The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this chapter on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.

(3) When an employee, who has sustained disability compensable under this chapter, and who has filed, or could have timely filed, a valid claim in his lifetime, dies from causes other than the injury before the expiration of the compensable period specified, portions of the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his death, shall be paid, under an award made before or after ***the*** ~~[such]~~ death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this section and in the order named:

(a) To the widow or widower, if there is no child under the age of eighteen (18) or incapable of self-support, benefits at fifty percent (50%) of the rate specified in the award; or

(b) If there are both ~~[such]~~ a widow or widower and such a child or children, to ***the*** ~~[such]~~ widow or widower, forty-five percent (45%) of the benefits specified in the award, or forty percent (40%) of ***those*** ~~[such]~~ benefits if such a child or children are not living with the widow or widower; and, in addition thereto, fifteen percent (15%) of the benefits specified in the award to each child. Where there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided among all the children, share and share alike; or

(c) If there is no ~~[such]~~ widow or widower but such a child or children, then to ***the*** ~~[such]~~ child or children, fifty percent (50%) of the benefits specified in the award to one (1) child, and fifteen percent (15%) of ***those*** ~~[such]~~ benefits to a second child, to be shared equally. If there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided equally among all the children; or

(d) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed in paragraph (g) of subsection (1) of KRS 342.750, or to both, in ~~[such]~~ proportions ***that*** ~~[as]~~ the ***commissioner provides*** ~~[board may~~

~~provide]~~ by ***administrative*** regulation.

(e) To the widow or widower upon remarriage, up to two (2) years, benefits as specified in the award and proportioned under paragraphs (a) or (b) of this subsection, if ***the*** ~~[such]~~ proportioned benefits remain unpaid, to be paid in a lump sum.

(4) All benefits awarded under this chapter based upon the life expectancy of the employee shall be based on the life expectancies contained in the overall male or female mortality tables in the most recent available edition of the United States Decennial Life Tables. If the most recent edition of the United States Decennial Life Tables includes Kentucky tables, these tables shall be used. If it does not, the national tables shall be used.

(5) The commissioner shall provide by administrative regulation for the periodic reporting to the employer, carrier, special fund, or uninsured employers' fund, of all earnings of any nature by the injured employee entitled to or claiming benefits for permanent total disability. The employer, carrier, special fund, or uninsured employers' fund shall not be required to make any payment of benefits for permanent total disability for any period during which the employee willfully fails or refuses to report upon request by any of them in the manner prescribed by administrative regulation.

Section 26. KRS 342.732 is amended to read as follows:

(1) Notwithstanding any other provision of this chapter, income benefits and retraining incentive benefits for occupational pneumoconiosis resulting from exposure to coal dust shall be paid as follows:

(a) ***1.*** If the ***hearing officer*** ~~[administrative law judge]~~ finds that an employee has a radiographic classification of category 1/0, 1/1, or 1/2, based on the latest ILO International Classification of Radiographics, resulting from exposure to coal dust, which is validated by two (2) X-rays and reports of the X-rays which conform to the standards for X-rays contained in subsection (2) of KRS 342.316, he shall award a one (1) time only retraining incentive benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by fifty percent (50%) and shall be payable for a period not to exceed two hundred and eight (208) weeks ***Except as provided in subparagraph 2. below,***. the one (1) time only retraining incentive benefit awarded under this paragraph may be collected semimonthly as provided in KRS 342.040, by the employee while he continues to work in the mining industry. The retraining incentive benefit may be collected in a lump sum when the employee leaves his hazardous employment in the mining industry if the parties agree and the agreement is approved by the ***hearing officer*** ~~[administrative law judge. Based upon this examination, the administrative law judge may make appropriate findings and enter an award if indicated]~~.

2. The one (1) time only retraining incentive benefit may be collected semimonthly as provided in KRS 342.040 by the employee while he continues to work in the mining industry if that the employee is enrolled and actively participating in a bona fide state or federally approved, sponsored, or certified training or education program. In this event, the benefit shall be paid directly to the institution conducting the training or education program on a semimonthly basis, unless another payment method is approved by the commissioner. The benefit shall not be paid for a period in which the employee ceases to participate in the program.

(b) If the ***hearing officer*** ~~[administrative law judge]~~ finds that an employee has a radiographic classification of category 1/0, 1/1, or 1/2, based on the latest ILO International Classification of Radiographics, and respiratory impairment resulting from exposure to coal dust as evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the guides, to the evaluation of permanent impairment published by the American Medical Association, there shall be an irrebuttable presumption that the employee has an occupational disability rating of seventy-five percent (75%) resulting from exposure to coal dust and the ***hearing officer*** ~~[administrative law judge]~~ shall award an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage multiplied by the disability rating of seventy-five (75%) but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740. The award shall be payable for a period not to exceed four hundred and twenty-five (425) weeks.

(c) If the ***hearing officer*** ~~[administrative law judge]~~ finds that an employee has a radiographic classification of category 1/0, 1/1, or 1/2, based on the latest ILO International Classification of Radiographics, and respiratory impairment as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the Guides to the Evaluation of Permanent Impairment published by the American Medical Association, there shall be an irrebuttable presumption that the employee is totally disabled resulting from exposure to coal dust and the ***hearing officer*** ~~[administrative law judge]~~ shall award income benefits which shall be equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during ***the*** [~~such~~] disability.

(d) If the ***hearing officer*** [~~administrative law judge~~] finds that an employee has occupational pneumoconiosis with a radiographic classification of category 2/1, 2/2, 2/3, 3/2, 3/3, or progressive massive fibrosis, based on the latest ILO International Classification of Radiographics, there shall be an irrebuttable presumption that the employee is totally disabled resulting from exposure to coal dust and the ***hearing officer*** [~~administrative law judge~~] shall award income benefits equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the average weekly wage of the state as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during such disability.

(2) The presence of respiratory impairment resulting from exposure to coal dust shall be established by using the largest forced vital capacity (FVC) value or the largest forced expiratory volume in one second (FEV1) value determined from the totality of all such spirometric testing performed in compliance with accepted medical standards.

(3) When valid spirometric tests are not provided and a physician certifies to the ***hearing officer*** [~~administrative law judge~~] that spirometric testing is not medically indicated because of the permanent physical condition of the employee, the ***hearing officer*** [~~administrative law judge~~] shall make his decision on the basis of evidence admitted which establishes the existence of a diagnosis of occupational pneumoconiosis and respiratory impairment due to ***the*** [~~such~~] occupational pneumoconiosis. The evidence submitted by the employee shall include one (1) or more arterial blood gas studies performed in accordance with accepted medical standards. Income benefits shall not be awarded in the absence of valid spirometric tests if the claimant's PO2 arterial blood gas value is equal to or higher than one (1) standard deviation from the normal value obtained by the formula (103.5 - 0.42X), where X equals the claimant's age at the time of the arterial blood gas study.

Section 27. KRS 342.125 is amended to read as follows:

(1) Upon its own motion or upon the application of any party and a showing of change of ***condition*** [~~occupational disability~~], mistake or fraud***,*** or newly discovered evidence, the ***hearing officer*** [~~administrative law judge~~] may at any time reopen and review any award or order, except as provided in subsection ***(3)*** [~~(2)~~] of this section, ending, diminishing***,*** or increasing the compensation previously awarded, within the maximum and minimum provided in this chapter, or change or revoke his previous order, sending immediately to the parties a copy of his subsequent order or award. Reopening and review under this section shall be had upon notice to the parties and in the same manner as provided for an initial proceeding hereunder but shall not affect the previous order or award as to any sums already paid thereunder. The employer shall not suspend the payment of benefits during the pendency of any reopening procedures. ***An employee who is receiving income benefits for permanent functional impairment pursuant to subsection (1)(c) of Section 25 of this Act shall not be permitted to reopen his claim or award based upon a showing of a change of condition, unless he has become unemployed as a result of the worsening of his condition.***

(2) ***For injuries occurring on or after the effective date of this Act, upon the motion or application of the injured employee showing that the employee following his workplace injury and return to employment has become unemployed, through no fault of his own, and is unable to obtain comparable employment as a result of the injury, or has failed to receive a wage increase as a result of the injury, or has suffered a wage decrease as a result of the injury, the hearing officer may review any award or order and increase the compensation previously awarded within the maximum and minimum provided in this chapter. Applications or motions to reopen based upon the grounds set forth in this subsection must be made within two (2) years of the last payment of permanent impairment or permanent disability income benefits or within four hundred twenty-five (425) weeks from the date of injury, whichever is later, or any additional award of income benefits shall be barred. No reopening under this subsection shall be allowed when the employee has voluntarily removed himself from his employment through longevity retirement or through a voluntary change of occupations or jobs which results in a decrease in the employee's earnings.***

(3) (a) Upon the application of the affected employee, and a showing of progression of his previously diagnosed occupational pneumoconiosis resulting from exposure to coal dust and development of respiratory impairment due to ***that*** [~~such~~] pneumoconiosis, the ***hearing officer*** [~~administrative law judge~~] may review an award of a retraining incentive benefit because of ***the*** [~~such~~] diagnosis, and upon a finding of respiratory impairment due to ***that*** [~~such~~] pneumoconiosis shall make an award for benefits as provided in KRS 342.732. Such a reopening may also occur upon a showing of progression of respiratory impairment in a claim for which benefits were previously awarded under the provisions of KRS 342.732. An application for review under this subsection shall be made within one (1) year of the date the employee knew or reasonably should have known that a progression of his disease and development or progression of respiratory impairment have occurred. Review under this subsection shall include a review of all evidence admitted in all prior proceedings.

(b) Benefits awarded as a result of a review under this subsection shall be reduced by the amount of retraining incentive benefits previously awarded and, if applicable, also by the amount of income benefits previously awarded under KRS 342.732. The amount to be deducted shall be subtracted from the total amount awarded, and the remaining amount shall be divided by the number of weeks, for which the award was made, to arrive at the weekly benefit amount [~~which shall be apportioned in accordance with the provisions of KRS 342.316~~].

(4)[~~(3)~~] Where an agreement has become an award by approval of the ***ombudsman or hearing officer*** [~~administrative law judge~~], and a reopening and review of ***that*** [~~such an~~] award is initiated, no statement contained in the agreement, whether as to jurisdiction, liability of the employer, nature and extent of disability, or as to any other matter, shall be considered by the ***hearing officer*** [~~administrative law judge~~] as an admission against the interests of any party. The parties may raise any issue upon reopening and review of this type of award which could have been considered upon an original application for benefits.

PART 9

ATTORNEY'S FEES

Section 28. KRS 342.320 is amended to read as follows:

(1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of the ***hearing officer*** [~~administrative law judge~~] pursuant to the statutes and administrative regulations. In an original claim, no ***attorney's*** [~~attorney~~] fees shall be allowed or approved against any party not represented by ***an*** [~~said~~] attorney, nor shall any ***attorney's*** [~~attorney~~] fee be allowed or approved exceeding an amount equal to twenty percent (20%) of the first twenty-five thousand dollars ($25,000), fifteen percent (15%) of the next ten thousand dollars ($10,000)***,*** and five percent (5%) of the remainder of the amount recovered as actuarially determined on past and future benefits according to the life expectancies contained in the overall male or female mortality tables in the most recent available edition of the ***United States*** [~~U.S.~~] Decennial Life Tables and the Remarriage Tables of the Dutch Royal Insurance Institute. ***However, in no event shall the attorney's fee exceed ten thousand dollars ($10,000).*** If the most recent edition of the ***United States*** [~~U.S.~~] Decennial Life Tables includes Kentucky tables, those tables shall be used. If it does not, the national tables shall be used. [~~Provided, however,~~] The ***hearing officer*** [~~administrative law judge~~], in making an allowance of ***attorney's*** [~~attorney~~] fees, shall in each case examine the record to ascertain the extent of the services rendered, and fix a reasonable fee for the services rendered, not to exceed the maximum authorized by this section. The factors to be considered by the ***hearing officer*** [~~administrative law judge~~] in making the allowance of ***an attorney's*** [~~attorney~~] fees shall include, but not necessarily be limited to: nature, scope, and quality of the attorney's services; level of skill and competence required of the attorney in rendering the services; results achieved; experience and skill level of the attorney; and contingent nature of the case. In the order making the allowance of ***an attorney's*** [~~attorney~~] fees, the ***hearing officer*** [~~administrative law judge~~] shall set forth findings sufficient to support the amount approved. The ***hearing officer*** [~~administrative law judge~~] may reduce the attorney's fee to an amount commensurate with the services performed, or may deny or reduce an attorney's fee upon proof of solicitation of employment. Any award made to a claimant in a nonresisted claim as established under the provisions of KRS 342.316 shall result in an award of an ***attorney's*** [~~attorney~~] fee not exceeding seven hundred fifty dollars ($750).

(2) ***(a)*** No attorney's fee in any case involving benefits under this chapter shall be paid until the ***expenses incurred in preparing and processing the case are reviewed and until the*** fee is ***reviewed and*** approved by the ***hearing officer*** [~~administrative law judge~~], and any contract for the payment of attorney's fees otherwise than as provided in this section shall be void. The motion for approval of an ***attorney's*** [~~attorney~~] fee shall be submitted within thirty (30) days following finality of the last appealable order of the ***hearing officer*** [~~administrative law judge~~]. The ***attorney's*** [~~attorney~~] fee shall be paid in one (1) of the following ways:

[~~(a) The entire attorney's fee in a lump sum shall be paid directly to the attorney of record and the *hearing officer* administrative law judge shall order the payment of same, commuting sufficient of the final payments of compensation payable under the award to a lump sum for that purpose; or~~]

1.[~~(b)~~] The claimant may pay the attorney's fee out of his personal funds ***or from the proceeds of a lump sum settlement***; or

2.[~~(c)~~] The ***hearing officer*** [~~administrative law judge~~], upon request of the claimant, may order the payment of the attorney's fee in a lump sum directly to the attorney of record and deduct the attorney's fee from the weekly benefits payable to the claimant in equal installments over the duration of the award or until the attorney's fee has been paid***, commuting sufficient sums to pay the fee.***

(b) In the event of a lump-sum settlement or payment of an award by lump sum, the hearing officer, upon request of the claimant, may order the payment of the attorney's fee in a lump sum directly to the attorney of record and deduct the attorney's fee from the lump sum due to the claimant.

(3) The attorney shall explain to the claimant the methods by which this section provides for the payment of the attorney's fee, and the claimant shall select the method in which his attorney's fee[~~,~~] is to be paid. His selection and statement that he fully understands the method to be used shall be submitted ***by his attorney***, on a notarized form signed by the claimant, [~~by his attorney~~] at the time the motion for approval of the attorney's fee is submitted. The ***commissioner*** [~~board~~] shall develop the format and content of the form to be used pursuant to this section. The form to be used shall list on its face all options permitted in this section for the payment of ***an attorney's*** [~~attorney~~] fees and an explanation in

nontechnical language of each method.

(4) The General Assembly declares that by the enactment of subsection (2)(b) of KRS 342.316, it is the legislative intent to encourage settlement and prompt administrative handling of ***those*** [~~such~~] claims and thereby reduce expenses to claimants for compensation under the provisions of KRS 342.316, and the ***hearing officer*** [~~administrative law judge~~] shall give due regard to ***this*** [~~such~~] legislative intent in the handling of uncontested claims and the allowance of attorney's fees therein.

(5) The ***hearing officer*** [~~administrative law judge~~] shall approve any contract between attorney and client if the ***fees are reviewed and approved by the hearing officer pursuant to subsection (1) of this section and if the*** limits on fees enumerated below are followed:

(a) When the claim is uncontested under the provisions of KRS 342.316, the ***attorney's*** [~~attorney~~] fee shall not exceed an amount equal to seven hundred fifty dollars ($750).

(b) In all other claims, the fee of the attorney shall not exceed the amounts provided in subsection (1) of this section.

(6) (a) In a claim that has been reopened pursuant to the provisions of this chapter, an ***attorney's*** [~~attorney~~] fee may be awarded by the ***hearing officer*** [~~administrative law judge~~]. In awarding the ***attorney's*** [~~attorney~~] fee, the ***hearing officer*** [~~administrative law judge~~] shall consider the factors set forth in subsection (1) of this section.

(b) Thereafter, the ***hearing officer*** [~~administrative law judge~~] shall fix the ***attorney's*** [~~attorney~~] fee. No ***attorney's*** [~~attorney~~] fee shall be allowed or approved against any party not represented by ***that*** [~~said~~] attorney, nor shall any ***attorney's*** [~~attorney~~] fee be allowed or approved exceeding the amounts provided in subsection (1) of this section applicable to any additional amount recovered. If there is no additional amount recovered in a reopened claim, there shall be no ***attorney's*** [~~attorney~~] fee.

(7) (a) In addition to the review of attorney's fees required in this section, an attorney for an employer in a case shall provide an affidavit to the hearing officer at the conclusion of each case which includes the following:

1. The number of hours billed to the employer/carrier;

2. The hourly rate charged for handling, processing, or practicing the case;

3. The number of depositions and medical examinations with the cost of each;

4. Itemized amounts spent on telephone calls, photocopying, traveling, or other expenses;

5. The hourly rate charged for legal practice other than workers' compensation; and

6. The total amount billed to employer or carrier.

(b) The hearing officer shall review the affidavit required by paragraph (a) and apply the standards of review contained in this section that pertain to review of attorney's fees.

PART 10

SPECIAL FUND - SCOPE AND COVERAGE

Section 29. KRS 342.120 is amended to read as follows:

[~~(1)~~] There is created the Division of the Special Fund in the Department of ***Workers' Compensation Coverage and Compliance*** [~~Workplace Standards~~] which shall be responsible for the administration of the legal representation of the fund and the maintenance of records regarding the payment of claims by the fund. The Division of the Special Fund shall be headed by a director appointed by the commissioner, with the prior written approval of the governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration of the legal representation of the fund and the maintenance of records regarding the payment of claims by the fund.

[~~(2) A claimant may name the special fund as a party in the original application for benefits, or either party shall by motion not later than forty-five (45) days prior to the first scheduled prehearing conference, unless there is a showing of good cause, request the administrative law judge to and the administrative law judge shall, cause the special fund to be made a party to the proceedings if either or both of the following appears:~~

~~(a) The employee is disabled, whether from a compensable injury, occupational disease, pre-existing disease, or otherwise, and has received a subsequent compensable injury by accident, or has developed an occupational disease;~~

~~(b) The employee is found to have a dormant nondisabling disease or condition which was aroused or brought into disabling reality by reason of a subsequent compensable injury by accident or an occupational disease.~~

~~(3) All motions to join the special fund shall include proper allegations demonstrating the basis for joinder and certification of the fact that a copy of the motion and the entire case file has been forwarded to the special fund at the cost of the movant.~~

~~(4) Failure to move for joinder of the special fund within the time limit prescribed by this section, without a showing of good cause, shall bar any recovery against the special fund.~~

~~(5) When the special fund has been made a party, the administrative law judge may direct the procedures provided in KRS~~

~~342.121.~~

~~(6) If it is found that the employee is a person mentioned in paragraphs (a) or (b) of subsection (2) of this section and a subsequent compensable injury or occupational disease has resulted in additional permanent disability so that the degree of disability caused by the combined disabilities is greater than that which would have resulted from the subsequent injury or occupational disease alone, and the employee is entitled to receive compensation on the basis of the combined disabilities, the employer shall be liable for the payment of all income benefits until the benefits paid have reached a percentage of the full income benefits awarded by the administrative law judge which is equal to the percentage of disability which would have resulted from the latter injury or occupational disease had there been no pre-existing disability or dormant, but aroused disease or condition.~~

~~(7) The remaining compensation for which such resulting condition would entitle the employee, including any compensation for disability resulting from a dormant disease or condition aroused into disabling reality by the injury or occupational disease, but excluding all compensation which the provisions of this chapter would have afforded on account of prior disabling disease or injury had it been compensated thereunder, shall be paid out of the special fund provided for in KRS 342.122. Such remaining compensation shall be paid directly to the employee under such regulations as the secretary of finance and administration may provide for such purpose.~~

~~(8) In making the computation for the apportionment of benefits under this section, the administrative law judge shall determine the amount of the employee's weekly income benefits and apportion the award between the employer and special fund as follows:~~

~~(a) For benefits awarded under KRS 342.730(1)(b), the portions shall be based on the number of weeks stated therein;~~

~~(b) For all other benefits awarded under this chapter, except retraining incentive benefits awarded pursuant to KRS 342.732, the portions shall be based on the life expectancies contained in the overall male or female mortality tables in the most recent available edition of the U.S. Decennial Life Tables. If the most recent edition of the U.S. Decennial Life Tables includes Kentucky tables, these tables shall be used. If it does not, the national tables shall be used.~~]

Section 30. KRS 342.316 is amended to read as follows:

(1) (a) The employer liable for compensation for occupational disease shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease. During any period in which this section is applicable to a coal mine, an operator who acquired it or substantially all of its assets from a person who was its operator on and after January 1, 1973, shall be liable for, and secure the payment of, the benefits which would have been payable by the prior operator under this section with respect to miners previously employed in the mine if it had not been acquired by such later operator. At the same time, however, this subsection does not relieve the prior operator of any liability under this section. Also, it does not affect whatever rights the later operator might have against the prior operator. Said employer shall have the right to contribution from each previous employer, as determined in an independent civil action, wherein the employee was similarly exposed to the hazard of said occupational disease, in a sum equal to the ratio that each exposure employment time bears to the total exposure employment time, except as otherwise provided in paragraph (a) of subsection (10) of this section; and

(b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later, except that the time of the beginning of retraining incentive benefits awarded under KRS 342.732 shall be the date the award for ***those*** [~~such~~] benefits by the ***hearing officer*** [~~administrative law judge~~] becomes final.

(2) (a) The procedure with respect to the giving of notice and determination of claims in occupational disease cases and the compensation and medical benefits payable for disability or death due to ***the*** [~~such~~] disease shall be the same as in cases of accidental injury or death under the general provisions of this chapter, except that notice of claim shall be given to the employer as soon as practicable after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted ***the*** [~~such~~] disease, or a diagnosis of ***the*** [~~such~~] disease is first communicated to him, whichever shall first occur;

(b) Except as provided in paragraph (d) of this subsection, the procedure with respect to filing of claims shall be as follows:

1. a. The application shall set forth the complete work history of the applicant with a concise description of injurious exposure to a specific occupational disease, together with the name and addresses of the employer or employers with the approximate dates of employment. The application shall also include at least two (2) written medical reports supporting his claim. These medical reports shall be made on the basis of comprehensive clinical examinations performed in accordance with accepted medical standards and shall contain full and complete statements of all examinations performed and the results thereof. The reports shall be made by duly licensed physicians. [~~Within one hundred and eighty (180) days following October 26, 1987,~~] The

commissioner [~~board~~] shall promulgate administrative regulations which prescribe the format of the medical reports required ***by this section*** [~~herein~~] and the manner in which ***the*** [~~such~~] reports shall be completed.

b. For coal-related occupational pneumoconiosis claims, each clinical examination shall include chest X-ray examinations and spirometric tests.

c. For other compensable occupational pneumoconiosis claims, each clinical examination shall include X-ray examinations and appropriate pulmonary function tests.

2. To be admissible, medical evidence offered in any proceeding under this chapter for determining a claim for occupational pneumoconiosis resulting from exposure to coal dust, shall comply with accepted medical standards as follows:

a. Chest X-rays shall be of acceptable quality with respect to exposure and development and shall be indelibly labeled with the date of the X-ray and the name and Social Security number of the claimant. Physicians' reports of X-ray interpretations shall: identify the claimant by name and Social Security number; include the date of the X-ray and the date of the report; classify the X-ray interpretation using the latest ILO Classification and be accompanied by a completed copy of the latest ILO Classification report.

b. Spirometric testing shall be conducted in accordance with the standards recommended in the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association and the 1978 ATS epidemiology standardization project. The FVC or the FEV1 values shall represent the largest of such values obtained from three (3) acceptable forced expiratory volume maneuvers as corrected to BTPS (body temperature, ambient pressure and saturated with water vapor at these conditions) and the variance between the two (2) largest acceptable FVC values shall be either less than five percent (5%) of the largest FVC value or less than one hundred (100) milliliters, whichever is greater. The variance between the two (2) largest acceptable FEV1 values shall be either less than five percent (5%) of the largest FEV1 value or less than one hundred (100) milliliters, whichever is greater. Reports of spirometric testing shall include a description by the physician of the procedures utilized in conducting such spirometric testing and a copy of the spirometric chart and tracings from which spirometric values submitted as evidence were taken.

3. The board shall promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to effectuate the purposes of subsection (2)(b) of this section. The ***commissioner*** [~~board~~] shall periodically review the applicability of the spirometric test values contained in the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association and may by administrative regulation substitute other spirometric test values which are found to be more closely representative of the normal pulmonary function of the coal mining population.

(c) Except as provided in paragraph (d) of this subsection, the procedure with respect to the determination of claims shall be as follows:

1. Immediately upon receipt of said application for adjustment of claim, the commissioner shall notify the affected employer, the special fund and any other interested party of such claim and shall furnish them with a full and complete copy of the claim;

2. Upon receipt of notice of the claim***,*** the employer[~~, the special fund, and any other interested party shall have the right to have the claimant examined by competent medical experts, at their expense, including a reasonable sum for travel. Within thirty (30) days of any such examination, the claimant or his representative shall be furnished a copy of said medical report by the party requesting such report. Also, the employer, the special fund, or any other party to the claim~~] shall have the right to have the claimant evaluated by vocational experts or institutions, at ***the employer's*** [~~their~~] expense, including a reasonable sum for travel. Within thirty (30) days of any ***vocational*** [~~such~~] examination, the claimant or his representative, shall be furnished a copy of ***that*** [~~said~~] vocational report by the party requesting ***that*** [~~such~~] report; and

3. Within sixty (60) days of the receipt of the claim, the employer, [~~the special fund,~~] and any other interested party shall notify the ***commissioner*** [~~board~~] and the claimant whether or not the claim will be resisted. If the claim is not resisted, then ***a hearing officer*** [~~an administrative law judge~~] shall within ten (10) days enter an order and award for the claimant. If the claim is resisted, the ***hearing officer*** [~~administrative law judge~~] shall set a date for a prehearing conference and shall notify all parties thereof. In litigated claims the regular procedures prescribed by the ***commissioner*** [~~Workers' Compensation Board~~] shall be followed. Upon request of an interested party and a showing of good cause, the ***hearing officer*** [~~administrative law judge~~] may extend, one (1) time, the time period for filing a notice of resistance as prescribed in this subparagraph, ***but the*** [~~provided said~~] extension shall not exceed thirty

(30) days.

(d) For claims filed under subsection (1)(a) of KRS 342.732, the procedure shall be as follows:

1. For retraining incentive benefits under KRS 342.732, the claimant shall file two (2) X-rays and the reports thereof which shall conform to the standard for X-rays contained ***in this subsection*** [~~herein~~].
2. The commissioner shall notify the affected employer of ***the*** [~~such~~] claim and shall furnish him with a full and complete copy of the claim.
3. Within sixty (60) days of the receipt of the claim, the employer shall notify the commissioner and the claimant whether or not the claim will be resisted. If the claim is not resisted, ***a hearing officer*** [~~an administrative law judge~~] shall within ten (10) days enter an order and award for the claimant. If the claim is resisted, the ***hearing officer*** [~~administrative law judge~~] shall notify the affected employee thereof. In litigated claims, the regular procedures prescribed by the ***commissioner*** [~~Workers' Compensation Board~~] shall be followed.

(3) (a) The right to compensation under this chapter resulting from an occupational disease shall be forever barred unless a claim is filed with the ***commissioner*** [~~Workers' Compensation Board~~] within three (3) years after the last injurious exposure to the occupational hazard or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, whichever shall last occur; and if death results from the occupational disease within ***that*** [~~said~~] period, unless a claim therefor be filed with the ***commissioner*** [~~Workers' Compensation Board~~] within three (3) years after ***the*** [~~such~~] death; ***but*** [~~provided, however,~~] that notice of [~~such~~] claim shall be deemed waived in case of disability or death where the employer, or his insurance carrier, voluntarily makes payment therefor, or, if the incurrence of the disease or the death of the employee and its cause was known to the employer. [~~Provided,~~] However, [~~that~~] the right to compensation for any occupational disease shall be forever barred, unless a claim is filed with the ***commissioner*** [~~Workers' Compensation Board~~] within five (5) years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease or asbestos-related disease, a claim must be filed within twenty (20) years from the last injurious exposure to the occupational hazard.

(b) Income or retraining incentive benefits for the disease of pneumoconiosis resulting from exposure to coal dust or death therefrom shall not be payable unless the employee has been exposed to the hazards of such pneumoconiosis in the Commonwealth of Kentucky over a continuous period of not less than two (2) years during the ten (10) years immediately preceding the date of his last exposure to such hazard, or for any five (5) of the fifteen (15) years immediately preceding the date of such last exposure.

(4) The amount of compensation payable for disability due to occupational disease or for death from ***the*** [~~such~~] disease, and the time and manner of its payment, shall be as provided for under the general provisions of the Workers' Compensation Act, but***:***

(a) In no event ***shall the payment*** [~~to~~] exceed ***the*** [~~such~~] amounts ***that*** [~~as~~] were in effect at the time of the last injurious exposure***;***[~~, and provided further, that~~]

(b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later***;***[~~,~~] and

(c) [~~provided further, that~~] In case of death where the employee has been awarded compensation or made timely claim within the period provided for in this section, ***and*** an employee has suffered continuous disability to the date of his death occurring at any time within twenty (20) years from the date of disability, his dependents, if any, shall be awarded compensation for his death as provided for under the general provisions of the Workers' Compensation Act and in this section.

(5) If an autopsy has been performed, no testimony relative thereto shall be admitted unless the employer or his representative has available findings and reports of the pathologist or doctor who performed the autopsy examination.

(6) No compensation shall be payable for occupational disease if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable, falsely represented himself, in writing, as not having been previously disabled, laid off, or compensated in damages or otherwise, because of ***the occupational*** [~~such~~] disease, or failed or omitted truthfully to state to the best of his knowledge, in answer to written inquiry made by the employer, the place, duration***,*** and nature of previous employment, or, to the best of his knowledge, the previous state of his health.

(7) No compensation for death from occupational disease shall be payable to any person whose relationship to the deceased, which, under the provisions of this chapter would give right to compensation, arose, subsequent to the beginning of the first compensable disability, ***except*** [~~save~~] only ***for*** [~~to~~] after-born children of a marriage existing at the beginning of such disability.

(8) Whenever any claimant misconceives his remedy and files an application for adjustment of claim under the general provisions of this chapter and it is subsequently discovered, at any time before the final disposition of ***the*** [~~such~~] cause, that the claim for injury, disability***,*** or death which was the basis for ***his*** [~~such~~] application should properly have been made under the provisions of this section, then the application so filed may be amended in form or substance, or both, to

assert a claim for [~~such~~] injury, disability***,*** or death under the provisions of this section, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and [~~such~~] compensation may be awarded ***that*** [~~as~~] is warranted by the whole evidence pursuant to the provisions of this chapter. When [~~such~~] amendment ***of this type*** is submitted, further or additional evidence may be heard by the ***hearing officer*** [~~administrative law judge~~] when deemed necessary. Nothing this section contains shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice of time for filing of a claim, but notice of filing a claim, if given or done, shall be deemed to be a notice of filing of a claim under provisions of this chapter, if given or done within the time required ***by this subsection*** [~~herein~~].

(9) When an employee has an occupational disease that is covered by this chapter, the employer in whose employment he was last injuriously exposed to the hazard of the disease, and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier; except as otherwise provided ***in this chapter*** [~~herein~~].

(10) (a) Except as provided in paragraph (c) of this subsection, the employer liable for compensation for occupational diseases, other than silicosis or any other compensable pneumoconiosis, which developed to the point of disability only after an exposure of five (5) or more years, or for silicosis and any other compensable pneumoconiosis, shall be the employer in whose employment the employee was last exposed to the hazard of ***that*** [~~such~~] occupational disease. [~~In those cases where disability or death are not conclusively proven to be the result of such last exposure all compensation shall be paid out of the special fund for all claims filed prior to January 1, 1973; and seventy-five percent (75%) shall be paid by the special fund and twenty-five percent (25%) by the employer for all claims filed thereafter. In all other cases of occupational diseases, other than silicosis or any other compensable pneumoconiosis, which developed to the point of disability only after an exposure of five (5) or more years, or for silicosis and any other compensable pneumoconiosis, the compensation for disability or death due to such diseases shall be paid jointly by the employer and the special fund, and the employer shall be liable for sixty percent (60%) of the compensation due and the special fund shall be liable for forty percent (40%) of the compensation due. Provided, however, that when there is a joint award against the carrier or self-insured employer and the special fund under this section, all of the compensation awarded shall be paid pursuant to KRS 342.120 and under such regulations as the board may provide for such purpose; and~~

~~(b) In all claims for compensation partially payable by the special fund, the Director of the Division of the Special Fund shall be designated as codefendant.~~]

(b)[~~(c)~~]The employer in whose employment the employee was last exposed to the hazard of the disease shall alone be liable for payment of retraining incentive benefits awarded under KRS 342.732.

PART 11

SPECIAL FUND ASSESSMENTS, KWCFC, AND DEDUCTIBLE POLICIES

Section 31. KRS 342.122 is amended to read as follows:

(1) (a) For the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Division of Special Fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and, financing the expenditures for all programs in the Labor Cabinet, except the Division of Employment Standards and Mediation and the Office of Labor-Management Relations, as reflected in the enacted budget of the Commonwealth enacted by the General Assembly, a special fund assessment at the rate of sixteen and nine-tenths percent (16.9%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1990, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4) and there is hereby imposed on and after January 1, 1990, a special fund assessment at the rate of sixteen and nine-tenths percent (16.9%) against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.

(b) In addition to the assessment imposed in paragraph (a) of this subsection, an additional special fund assessment at the rate of forty-seven percent (47%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1990, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal. Likewise, on and after January 1, 1990, an additional assessment at the rate of forty-seven percent (47%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his own risk.

(c) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on such premiums.

(2) [~~On November 15, 1991, and~~] Each November 15, [~~thereafter,~~] the funding commission shall determine the amount of premiums reported and assessments imposed in subsection (1) of this section for ***the*** [~~such~~] past period as appropriate. If the funding commission determines that the special fund assessment rate imposed to produce seventy million dollars ($70,000,000) or the additional special fund assessment rate imposed to produce forty million dollars ($40,000,000) are likely to produce more or less than seventy million dollars ($70,000,000) or forty million dollars ($40,000,000) during

the next annual period, the commission shall, based upon such determination, calculate such adjustments to each rate as shall be necessary to provide seventy million dollars ($70,000,000) and forty million dollars ($40,000,000) respectively, during the next annual period beginning on January 1 of each year. On or before December 1 of each year, the commission shall notify each insurance company writing workers' compensation insurance in the Commonwealth, every group of self-insurers, and each employer carrying his own risk of the adjusted rates which shall become effective on January 1, of each year, unless modified by the General Assembly.

(3) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission.

(4) ***These*** ~~[Such]~~ assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments.

(5) The assessments ~~[herein]~~ imposed ***by this section*** may be collected by the insurance carrier from his insured***.***~~[, provided]~~ However, the insurance carrier shall not collect from the employer any amount exceeding the assessments imposed pursuant to this section. If the insurance carrier collects the assessment from an insured, ***the*** ~~[such]~~ assessment shall be collected at the same time and in the same proportion as the premium is collected. ***The assessment for an insurance policy providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible.*** Each statement from an insurance carrier presented to an insured reflecting premium and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments. No insurance carrier shall collect from an insured an amount in excess of the assessment percentages ***imposed by this chapter. The assessment for an insurance policy providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible*** ~~[in effect at the time the statement of the premium is sent to the insured]~~. ***The percentages imposed by this chapter for an insurance policy issued by an insurance company shall be those percentages in effect on the annual effective date of the policy, regardless of the date that the premium is actually received by the insurance company.***

(6) The funding commission, as part of the collection and auditing of the special fund assessments required ***by this section*** ~~[herein]~~, shall annually require each insurance carrier and each group self-insurer to provide a list of employers which it has insured or which are members and the amount collected from each ~~[such]~~ employer. Additionally, the funding commission shall require each entity paying a special fund assessment to report the SIC code for each employer and the amount of premium collected from each SIC code. An insurance carrier or group self-insurer may require its insureds or members to furnish the SIC code for each of their employees***.***~~[, provided]~~ However, the failure of any employer to furnish said codes shall not relieve the insurance carrier or group self-insurer from the obligation to furnish same to the funding commission. The Division of Unemployment Insurance is hereby directed to make available the SIC codes assigned in its records to specific employers to aid in the reporting and recording of the special fund assessment data.

(7) Each self-insured employer, group self-insurer or insurance carrier shall provide any information and submit any reports the Revenue Cabinet or the funding commission may require to effectuate the provisions of this section. In addition, the funding commission may enter reciprocal agreements with other governmental agencies for the exchange of information necessary to effectuate the provisions of this section.

(8) The special fund shall be required to maintain a central claim registry of all claims to which it is named a party, giving each such claim a unique claim number and thereafter recording the status of each claim on a current basis. ***The*** ~~[Such]~~ registry shall be established by January 26, 1988, for all claims on which payments were made since July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all claim files in the possession of the special fund.

(9) The fund heretofore designated as the subsequent claim fund is abolished and there is substituted therefor the special fund as ~~[herein]~~ set out ***by this section,*** and all moneys and properties owned by the subsequent claim fund are transferred to the special fund.

(10) Notwithstanding any other provision of this section or this chapter, or the Kentucky Revised Statutes, generally, the assessment rates for the special fund, as determined ***by this section*** ~~[herein]~~, which were in force and effect on January 1, 1990, shall continue in force and effect until December 1, 1991, and the total amount of funds collected pursuant to ***the*** ~~[such]~~ assessment rates shall not be limited to the provisions of this section.

Section 32. KRS 342.1221 is amended to read as follows:

Assessments levied pursuant to KRS 342.122 and unpaid on the date on which they are due and payable shall bear interest at the rate specified in KRS 131.183 plus a penalty of one and one-half percent (1.5%) per month ***or portion thereof without proration*** from the date ***on which the*** ~~[such]~~ assessment was due and payable.

Section 33. KRS 342.1222 is amended to read as follows:

(1) Every insurance carrier shall be entitled to a refund or credited with assessments paid on all canceled or returned premiums, including dividends paid or credited to policyholders***, if the assessments are returned by the insurance carrier to the policyholder in addition to the canceled or returned premium***.

(2) The assessments paid pursuant to the provisions of this chapter shall be refunded or credited in the manner provided in KRS 134.580, ***if effective January 1, 1994,*** [~~provided that~~] the claim for refund or credit is made by the insurance carrier within one (1) year ***from the transaction date of the activity that generated the refund*** [~~of the end of the policy year~~].

(3) A claim for refund or credit shall be made on a form prescribed by the funding commission and shall contain ***any*** [~~such~~] information ***that*** [~~as~~] the funding commission may require.

(4) No insurance carrier shall be entitled to a refund or credit of the assessments paid pursuant to the provisions of this chapter where the assessments have been collected from an employer as provided by KRS 342.122, unless the amount of assessments collected from the employer are refunded to him by the insurance carrier who paid the assessments to the funding commission.

Section 34. KRS 342.1227 is amended to read as follows:

Except as provided in Section 51 of this Act, funds which are under the jurisdiction of the commission shall not:

(1) Be loaned to the Commonwealth or any instrumentality or agency thereof;

(2) Be subject to transfer to the Commonwealth or any agency or instrumentality thereof, except for purposes specifically authorized by this chapter; ***or***

(3) Be expended for any other purpose than one authorized by this chapter.

PART 12

SELF-INSURANCE

Section 35. KRS 342.340 is amended to read as follows:

(1) Every employer under this chapter shall either insure and keep insured his liability for compensation hereunder in some corporation, association, or organization authorized to transact the business of workers' compensation insurance in this state or shall furnish to the ***commissioner of the Department of Workers' Compensation Coverage and Compliance*** [~~board~~] satisfactory proof of his financial ability to pay directly the compensation in the amount and manner and when due as provided for in this chapter. In the latter case***,*** the ***commissioner*** [~~board~~] shall require the deposit of an acceptable security, indemnity, or bond to secure, to ***the*** [~~such an~~] extent [~~as~~] the ***commissioner*** [~~board~~] directs, the payment of compensation liabilities as they are incurred.

(2) Every employer subject to this chapter shall file, or have filed on its behalf, with the ***department*** [~~Workers' Compensation Board~~], as often as may be necessary, evidence of its compliance with the provisions of this section and all others relating hereto. ***Any insurance carrier or group self-insurance association providing workers' compensation insurance coverage for a Kentucky location shall file on behalf of the employer, with the commissioner, evidence of the employer's compliance with this chapter. The filing shall be made within ten (10) days after the issuance of a policy, endorsement to a policy, or similar documentation of coverage.*** Every employer who has complied with the foregoing provision and has subsequently canceled its insurance or its membership in an approved group self-insurance association, as the case may be, shall immediately notify, or have notice given on its behalf to the ***department*** [~~Workers' Compensation Board~~] of ***the*** [~~such~~] cancellation, the date thereof, and the reasons therefor; and every insurance carrier or group self-insurance association shall in like manner notify the ***commissioner*** [~~Workers' Compensation Board~~] upon the cancellation, lapse, termination, expiration by reason of termination of policy period, or nonrenewal of any policy issued by it or termination of any membership agreement, whichever is applicable under the provisions of this chapter, except that the carrier or group self-insurance association need not set forth its reasons therefor unless requested by the ***commissioner*** [~~Workers' Compensation Board~~]. The above filings are to be made on the forms prescribed by the ***commissioner*** [~~board~~]. Termination of any policy of insurance issued under the provisions of this chapter shall take effect no greater than ten (10) days prior to the receipt of ***the*** [~~such~~] notification by the ***commissioner*** [~~Workers' Compensation Board~~] unless the employer has obtained other insurance and the ***commissioner*** [~~Workers' Compensation Board~~] is notified of that fact by the insurer assuming the risk. Upon determination that any employer under this chapter has failed to comply with these provisions, the ***commissioner*** [~~board~~] shall promptly notify interested government agencies of ***this*** [~~said~~] failure and, with particular reference to employers engaged in coal mining, the ***commissioner*** [~~board~~] shall promptly report any [~~such~~] failures to the Department of Mines and Minerals so that appropriate action may be undertaken pursuant to KRS 351.175.

Section 36. KRS 342.345 is amended to read as follows:

(1) Whenever an employer has complied with the provisions of KRS 342.340 relating to self-insurance, the ***commissioner of the Department of Workers' Compensation Coverage and Compliance*** [~~board~~] shall issue to ***the*** [~~such~~] employer a certificate which shall remain in force for a period fixed by the ***commissioner*** [~~board~~]. But the ***commissioner*** [~~board~~] may, upon at least ***ten (10)*** [~~sixty (60)~~] days' notice and a hearing to the employer, revoke ***or suspend*** the certificate upon satisfactory evidence ***that*** [~~for such~~] revocation ***or suspension is appropriate*** [~~having been presented~~]. ***If the commissioner revokes a certificate,*** the ***commissioner*** [~~board~~] may thereafter, upon petition of the employer and a hearing, grant a new certificate, but the employer shall not, as a matter of right, be entitled to a hearing for this purpose sooner than six (6) months *following an order of the commissioner revoking the employer's certificate* [~~after a previous revocation of his certificate~~].

(2) A self-insurer whose certificate to self-insure has been revoked is not relieved of its obligations for compensation to its employees for work-related injuries or occupational diseases that occur during the period of self-insurance. The required security shall be maintained with the commissioner or under the commissioner's control until each claim for workers' compensation benefits has been paid, been settled, or lapsed under this chapter.

PART 13

COMPETITIVE STATE FUND AND RESIDUAL MARKET MECHANISM

SECTION 37. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly finds and declares that:

(a) An adequate and available workers' compensation insurance market does not exist for employers in the Commonwealth;

(b) Approximately fifty percent (50%) of the private workers' compensation insurance market resides in the residual market mechanism for workers' compensation;

(c) The voluntary insurance market has declined to the point that employers in the Commonwealth, who lack the financial capability to cover their own risk, have few insurance options except the residual market mechanism through which to maintain their statutorily required workers' compensation coverage;

(d) A lack of an adequate market for workers' compensation insurance threatens the economic welfare of the Commonwealth and its ability to create and maintain jobs for the citizens of Kentucky;

(e) Employers in the Commonwealth and other states are required by law to provide workers' compensation coverage to their employees and, therefore, the General Assembly has a responsibility to ensure employers an available and adequate insurance mechanism through which employers may discharge their statutory duty regarding workers' compensation; and

(f) State funds have historically and traditionally been a viable participant in the workers' compensation insurance market, that workers' compensation state funds exist in twenty-five (25) states, and that at least seven (7) states have created competitive state funds since 1983.

(2) Therefore, it is the intent of the General Assembly in creating the Employers' Mutual Insurance Authority to establish a self-supporting competitive state fund for the purpose of providing both a market of last resort for employers in the Commonwealth and another competitive source of insurance in the voluntary market through which employers may secure and maintain their workers' compensation coverage required under this chapter.

SECTION 38. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The Employers' Mutual Insurance Authority is created as a nonprofit, independent, self-supporting de jure municipal corporation and political subdivision of the Commonwealth which shall be a public body corporate and politic to insure employers in the Commonwealth for workers' compensation, and employers' liability insurance incidental to and written in conjunction with workers' compensation. The authority shall function in a manner similar to a governing board for a domestic mutual insurance company and shall be subject to the provisions of Subtitle 24 and other provisions of KRS Chapter 304 applicable to domestic mutual insurance companies unless otherwise provided or exempted in Sections 37 to 57 of this Act.

(2) Except for initial funding for start-up, the authority shall be entirely self-supporting.

(3) The authority or its liabilities shall not be deemed to constitute a debt or a liability of the Commonwealth or a pledge of the faith and credit of the Commonwealth.

(4) On or before July 1, 1995, the authority shall begin to provide coverage and issue policies, as provided in subsection 1 of this Section, as an insurer in the voluntary market and as a residual market mechanism.

SECTION 39. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

As used in Sections 37 to 57 of this Act, unless the context otherwise requires:

(1) "Authority" means the Employers' Mutual Insurance authority.

(2) "Board" means the board of directors of the authority.

(3) "Manager" means the manager of the authority.

(4) "Policyholder" means an employer in the Commonwealth or an employer with an employee or employees in the Commonwealth who has secured and maintains workers' compensation coverage for his employees as required by this chapter.

SECTION 40. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The authority shall be governed by a board of directors. The board shall exercise complete jurisdiction over the authority.

(2) The board shall consist of seven (7) voting members and four (4) ex-officio nonvoting members who shall serve in an advisory capacity.

(3) On or before sixty (60) days after the effective date of Section 37 to 57 of this Act, the board shall be appointed by the Governor, subject to confirmation by the Senate as provided in Section 41 of this Act. The members of the board shall have the following qualifications:

(a) One (1) member shall have proven or demonstrated knowledge and experience in insurance underwriting principles, preferably in the area of workers' compensation;

(b) One (1) member shall have proven or demonstrated knowledge and experience in workplace safety in the majority of all categories or classifications of employment and industry in the Commonwealth;

(c) One (1) member shall be a nonmanagement employee of a prospective employer policyholder;

(d) Two (2) members shall represent employers with fewer than fifty (50) employees; and

(e) Two (2) members shall represent employers with more than fifty (50) employees.

(4) Any vacancy which occurs prior to the expiration of a term shall be filled by the Governor in the same manner as the initial appointment was made, and the new appointee shall serve only the remainder of the unexpired term.

(5) No person shall serve on the board who:

(a) Fails to meet or comply with the conflict of interest policies established by the Board and KRS 304.24-270;

(b) Is not bondable;

(c) Is an employee, attorney, or contractor of a competing insurer providing workers' compensation insurance in the Commonwealth; or

(d) Is not a resident of this Commonwealth.

(6) In making the appointments to the board, subject to Senate confirmation, the Governor shall ensure adequate representation from the major sectors of the economy and workforce in the Commonwealth.

SECTION 41. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The board shall elect a chair and other officers it deems necessary from its members. By September 1, 1994, the Governor shall make the initial appointments to the board, with three (3) members having terms to expire December 31, 1995, and four (4) members having terms to expire December 31, 1997. Subsequent members shall serve terms of four (4) years and shall serve until their successors are appointed and qualified.

(2) Senate confirmation of the Governor's appointees is required in accordance with the provisions of KRS 11.160. In the event a member is not confirmed by the Senate, the Governor, within thirty (30) days of the rejection, shall make another appointment. That member shall serve the remainder of the term in question and shall also be subject to confirmation should the term extend until the next regular session, or a special session which includes this subject on the call, whichever occurs earlier.

(3) Four (4) voting members shall constitute a quorum. The board shall meet at least quarterly.

(4) Each voting member shall be compensated five thousand dollars ($5,000) annually, except the chair, who shall be paid seven thousand five hundred dollars ($7,500). In addition, the voting members of the board shall be reimbursed for necessary travel and lodging expenses in accordance with administrative regulations promulgated by the Cabinet for Finance and Administration for state employees.

(5) The ex-officio nonvoting members of the board shall be: the secretary of the Finance and Administration Cabinet, the secretary of the Economic Development Cabinet, the commissioner of the Department of Personnel, and the commissioner of the Department of Insurance.

(6) A voting board member may be removed for cause by the board. Cause shall include, but not be limited to, incompetence or misconduct defined in policies or bylaws formulated by the board and adopted by the policyholders.

SECTION 42. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

The board of directors of the authority shall function in a manner similar to the governing body of a mutual insurance company established pursuant to Subtitle 24 of KRS Chapter 304, with all of the general corporate powers incidental thereto. The powers and duties of the board shall include, but not be limited to, the power to:

(1) Sue or be sued;

(2) Hire a manager to administer the authority;

(3) Adopt a corporate seal;

(4) Develop bylaws for the operation of the authority;

(5) Develop bylaws to establish the contingent liability of the policyholders for assessment purposes required in Section 48 of this Act;

(6) Examine and adopt an annual operating budget for the authority;

(7) Serve as investment trustees and fiduciaries of the authority in accordance with the provisions of KRS Chapter 386;

(8) Incur debt in its own name and enter into financing agreements with the Commonwealth, its own agencies, or with a commercial bank, excluding the authority to issue bonds;

(9) Develop broad policy for the long-term operation of the authority consistent with its mission and fiduciary responsibility;

(10) Adopt a procurement policy consistent with the provisions of KRS Chapter 45A;

(11) Develop and publish an annual report to policyholders, the Governor, the General Assembly, and interested parties that describes the financial condition of the authority, including a statement of expenses, income, and actuarial soundness.

(12) Subject to Subtitle 13 of KRS Chapter 304, determine and establish an actuarially-sound price for insurance offered by the authority, including any dividends or deviations;

(13) Pursuant to Section 48 of this Act, assess policyholders to cover its liabilities as provided in KRS 304.24-230; and

(14) Perform all other acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the authority, either in the administration or in connection with the business of the authority to fulfill the purpose of Sections 37 to 57 of this Act.

SECTION 43. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) Following a nationwide search, the board shall hire a manager who shall serve at the pleasure of the board. The manager shall be compensated at a level determined by the board, and may be removed by the board in the same manner prescribed in Section 41 of this Act for the removal of a member of the board.

(2) The manager shall have proven successful experience for a period of at least five (5) years as an executive at the general management level in insurance operations or in the management of a state fund for workers' compensation.

(3) The manager shall conduct the day-to-day operations of the authority for the purpose of carrying out the policies and procedures of the board. The specific duties of the manager shall include, but not be limited to:

(a) Administering all operations of the authority in accordance with the direction of the board;

(b) Recommending to the board an annual administrative budget covering the operations of the authority and, upon approval, submitting the administrative budget, financial status, and actuarial condition of the authority to the Governor and the General Assembly for their examination;

(c) Directing and controlling all expenditures of the approved budget;

(d) From time to time, upon the recommendation of an actuary, recommending to the board actuarially-sound rating plans, and the amount of dividends, if any, to be returned to policyholders;

(e) Investing the assets of the authority under the guidance of the board and in accordance with the provisions of Subtitle 7 of KRS Chapter 304;

(f) Formulating and administering a system of personnel administration and employee compensation that uses merit principles of personnel management, includes employee benefits and grievance procedures, and includes in-service training programs;

(g) Preparing and administering fiscal, payroll, accounting, data processing, and procurement procedures for the operation of the authority;

(h) Recommending to the board bylaws and uniform procedures for the management of the authority;

(i) Within the limitations of the budget, employing necessary staff personnel and consultants, including actuaries, attorneys, medical examiners, adjusters, investment counselors, accountants, and clerical and other assistants to accomplish the purpose of the authority; and

(j) Maintaining appropriate levels of property, casualty, and liability insurance as approved by the board to protect directors, officers, employees, and assets of the authority;

(4) The manager may:

(a) Reinsure any risk or part of any risk;

(b) Cause to be inspected and audited the payrolls of policyholders or employers applying to the authority for insurance;

(c) Establish procedures for adjusting claims in accordance with this chapter;

(d) Contract with physicians, surgeons, hospitals, and other health care providers for medical and surgical treatment provided by this chapter;

(e) Contract with qualified third-party entities to assist in the development and formulation of rates and rating plans; and

(f) Require policyholders to maintain an adequate deposit to provide security for periods of coverage for which

premiums have not been paid.

(5) The manager shall give an official bond in an amount and with sureties approved by the board. The premium for the bond shall be paid by the authority.

(6) The provisions of KRS Chapters 18A and 64 relating to salaries, salary limits, or benefits shall not apply to the board, the manager, or the staff of the authority.

SECTION 44. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The authority shall provide coverage for insurance, authorized in Section 38 of this Act, to any employer in the Commonwealth, including any who have not been able to secure coverage in the voluntary market, and who tender the required premium for coverage and comply with other conditions and qualifications for obtaining and maintaining coverage adopted by the authority to protect and ensure its actuarial soundness and solvency.

(2) The authority shall deny coverage to any employer who owes undisputed premiums to a previous workers' compensation carrier or to a workers' compensation residual market mechanism or who fails to comply with other conditions and qualifications for obtaining coverage.

SECTION 45. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The authority, through its board and manager, shall establish separate rating plans, rates, and underwriting standards for different classes of risks.

(2) The rating plans, rates, and underwriting standards developed for the categories of risk shall be based on generally accepted actuarial practices and procedures as set forth in the Statement of Principles Regarding Property and Casualty Ratemaking of the Casualty Actuarial Society, in accordance with the actuarial standards of practice and compliance guidelines of the Actuarial Standards Board.

(3) Multitiered premium or rating plans may be developed to provide coverage to insureds in the residual market mechanism established by the authority, and who would not otherwise meet the underwriting standards required by the authority.

(4) The manager shall develop statistical and other information as necessary to distinguish its writings in the voluntary market, and its writings as a residual market mechanism.

(5) The rates developed by the authority for its policyholders shall be based only on Kentucky loss experience data, except that other loss experience data may be utilized as a supplement to Kentucky data if supplemental or additional data are necessary to establish statistical credibility of an employment classification.

(6) Notwithstanding any provision of KRS Chapter 304 to the contrary, the surplus requirements for mutual insurance companies in the Commonwealth shall not apply to the authority until the authority has been in operation for thirty-six (36) months.

SECTION 46. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

On an annual basis, the board may declare a dividend in accordance with Subtitle 24 of KRS Chapter 304, and distribute the same in the form of premium discounts, dividends, or a combination of dividends and discounts, at its discretion, if:

(1) The funding obtained pursuant to Section 51 of this Act has been repaid in full;

(2) An independent actuarial report of the prior year's operations has been completed and reviewed by the board; and

(3) The authority has met all expenses for administration and claims for the prior year.

SECTION 47. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

On a quarterly basis, the manager shall prepare a report of assets and liabilities, which shall also include a statement of condition regarding the solvency of the authority when awarded claims to date, and estimated initial claims not reported, are taken into account. This report shall be a public record and shall be provided to the board, the Governor, and the Legislative Research Commission.

SECTION 48. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) In determining the solvency of the authority in regard to maintaining adequate reserves, the commissioner of insurance, the independent accountant engaged for the annual audit, and the board, in exercising its prudent stewardship, shall not utilize the practice of "discounting" the funds to reduce future liabilities by the amount of future anticipated investment income.

(2) The board shall submit an annual independently audited report in accordance with procedures governing annual reports adopted by the National Association of Insurance Commissioners within ninety (90) days of the close of the business year. The report shall be a public record and shall be delivered to the Governor, commissioner of insurance, and the cochairs of the Legislative Research Commission. It shall indicate the business done by the authority during the previous year, including a balance sheet showing assets and liabilities at the beginning and conclusion of that year. Additionally, a statement of solvency shall be prepared which shall include, at a minimum:

(a) A summary of the prior quarterly reports required in Section 47 of this Act;

(b) An actuarial projection of solvency status for at least ten (10) years in the future; and

(c) Any recommendations pertaining to the same.

(3) If the assets of the authority at any time are less than its liabilities, the board may, subject to the approval of the commissioner of insurance, levy an assessment on its policyholders and enforce payment of the assessment in the manner provided in Subtitle 24 of KRS Chapter 304.

SECTION 49. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

The board shall formulate and adopt an investment policy that safeguards the value of all assets and maximizes investment potential commensurate with risk and liquidity restrictions, and supervise the investment activities of the authority subject to the limitations on domestic insurance companies under KRS Chapter 304. Notwithstanding any provisions of the Kentucky Revised Statutes to the contrary, the authority may utilize the investment expertise and advice of the Office of Financial Management and Economic Analysis in the Cabinet for Finance and Administration. The authority shall also retain an independent investment counsel or managers whose selection shall be by a competitive bidding process as required under the procurement policy adopted by the board. The investment counsel or managers retained shall be subject to standards applicable to fiduciaries responsible for safeguarding assets of a corporation.

SECTION 50. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

The manager shall compile and maintain statistical and actuarial data related to the determination of proper premium rate levels, the incidence of work-related injuries, costs related to those injuries, including medical and indemnity, and other data necessary for the development of fair and equitable rates and rating plans.

SECTION 51. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The authority shall not receive any direct state general fund appropriation.

(2) Initial funding for the authority shall be determined by the Governor and the secretary of the Finance and Administration Cabinet. Financing methods may include, but not be limited to, a loan from an existing state agency or agencies to the authority. The maximum amount borrowed from all state agencies shall not exceed seven million dollars ($7,000,000), to be repaid over a period not to exceed ten (10) years from the original loan date. The Governor shall have the authority to provide or secure additional funding necessary to maintain, for the first thirty-six (36) months of its operation, the surplus the Governor deems proper. The funding may come from any funds which may be expended directly by the Governor or from nonstate-agency sources and, regardless of source, shall be a loan to the authority. The rate of interest to be applied to the loan shall be one percent (1%) higher than the average for the long-term investment folder of the lending agency on the anniversary date of the original loan. The interest rate shall be adjusted annually on the anniversary date of the original loan. To minimize cash requirements and interest obligations, the loan shall be executed as a line of credit against the lending agency, so that only those funds actually required for initial start-up operations, including the establishment of a surplus and reinsurance expenses, are drawn down on an "as needed" basis.

(3) Any executive branch agency of the Commonwealth and any public corporation created by the Commonwealth, any statute to the contrary notwithstanding, may lend money to the authority subject to the terms and conditions of this section, and any loan made pursuant to this section shall not be construed as a breach or violation of fiduciary duties contained in KRS Chapter 386.

(4) Funds collected by the authority shall not:

(a) Be loaned to the Commonwealth or any instrumentality or agency thereof;

(b) Be subject to transfer to the Commonwealth or any agency or instrumentality thereof, except for repayment of the loan authorized in subsection (2) and (3) of this section;

(c) Be expended for any other purposes than as authorized by Sections 37 to 57 of this Act.

SECTION 52. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) For marketing and sales purposes, the authority may utilize any or all of the following approaches:

(a) Direct sales through its own properly-licensed agents;

(b) Sales on a commission basis, using private, independent insurance agents; or

(c) Sales through contract with any statewide insurance agents' association.

(2) Only agents duly and legally licensed and in good standing in accordance with the provisions of KRS Chapter 304 shall be permitted to sell coverage provided by the authority.

(3) Commissions paid for marketing or sales by an insurance agent shall be determined by the manager, subject to the approval of the board.

SECTION 53. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The manager shall formulate, implement, and monitor a workplace safety program for all policyholders.

(2) The manager shall develop a written workplace accident and injury reduction plan that promotes safe working

conditions and which is based upon clearly stated goals and objectives. The manager or employees of the authority shall have reasonable access to the premises of any policyholder or applicant during regular working hours.

(3) The manager or board shall refuse to insure, or shall terminate the insurance of any policyholder who refuses to permit on-site examinations or who disregards or fails to comply with workplace safety goals and objectives required by the authority as conditions for obtaining and maintaining coverage.

SECTION 54. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

No member of the board, the manager, or any employee of the authority shall be held personally liable for any act performed or for any contract or other obligation entered into or undertaken in an official capacity, in connection with the administration, management, or conduct of the authority, its funds and other assets, its business, or other related affairs.

SECTION 55. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The board, manager and employees shall comply with the code of ethics applicable to the Executive Branch pursuant to KRS Chapter 11A.

(2) In addition to compliance with the code of ethics required in subsection (1) of this section, no member of the board shall have any direct or indirect interest in any undertaking that puts their personal interest in conflict with that of the authority. A personal interest shall include, but not be limited to, an interest in a major procurement.

SECTION 56. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any provision of KRS Chapter 304 to the contrary, the authority shall be exempt from participation, and shall not join, contribute financially to, nor be entitled to the protection of, any plan, pool, association, guarantee or insolvency fund authorized or required by KRS Chapter 304.

(2) Except as provided in subsection (1) of this section, the authority shall be subject to the same assessments applicable to workers' compensation premiums as domestic mutual insurance companies licensed to do business in the Commonwealth and governed by the provisions of Subtitle 24 of KRS Chapter 304.

(3) Notwithstanding the provisions of Subtitle 24 of KRS Chapter 304 or any other provisions of the Kentucky Revised Statutes to the contrary, the minimum number of directors and procedures required for incorporating a mutual insurance company, requirements relating to the name of a mutual insurance company, and any licensing requirements applicable to mutual insurance companies shall not apply to the authority.

(4) The authority shall be considered an insurer for purposes of KRS 342.122 and other provisions of this chapter.

(5) Notwithstanding any provision of KRS Chapter 304 to the contrary the authority shall not be subject to the provisions of Subtitle 33 or other provisions of KRS Chapter 304 that relate to the liquidation, rehabilitation, dissolution, or sale of any insurance company.

SECTION 57. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

The authority shall comply with KRS 61.805 and KRS 61.870 in regard to open meetings and the conduct of ordinary business, except that proceedings which would provide an unfair competitive advantage to private sector competitors providing workers' compensation coverage in the Commonwealth may be closed to the public.

SECTION 58. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Any workers' compensation residual market mechanism, in existence by virtue of this subtitle, on the effective date of this section shall cease to exist on September 1, 1995. It shall cease to exist in that it shall not write new policies or renew policies after September 1, 1995. The board of directors of the Employers' Mutual Insurance Authority, the commissioner of the Department of Workers' Compensation Coverage and Compliance, and the commissioner of the Department of Insurance shall develop a plan, which shall be reviewed by the Labor and Industry Committee and the Banking and Insurance Committee of the General Assembly, for the orderly and equitable phase-out of the workers' compensation residual market mechanism in effect on the effective date of this section. The plan developed shall include procedures for application and transfer of the insureds in the residual market to the Authority, who shall be subject to the qualifications and conditions of coverage required in Sections 37 to 57 of this Act.

SECTION 59. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The Attorney General and the Auditor of Public Accounts shall continuously monitor the operations of the authority.

(2) Either the Attorney General or the Auditor of Public Accounts, or both, may make any investigations, jointly or severally, of the operations, practices, management, or other matters relating to the authority as they deem necessary.

(3) The Attorney General and the Auditor of Public Accounts shall have:

- *(a) Full access to all records of the authority;*
- *(b) Full access to all financial transactions and investigations of the authority;*
- *(c) The right of subpoena; and*

(d) Full access to claims, records, and supporting data.

(4) If fraud, mismanagement, illegal activity, imprudent practices, or other deficiencies are found in the operations or other practices of the authority, the Attorney General or Auditor of Public Accounts, or both shall:

(a) Recommend internal corrective action;

(b) Institute a civil action or action for injunctive relief to compel corrective action;

(c) Institute criminal proceedings against any officer or employee of the authority or any other person, as defined in KRS 446.010, as may be necessary; or

(d) Any combination of the above listed actions or any other form of action reasonably calculated to assure efficient and honest operations of the authority and those involved with it.

Section 60. KRS 304.13-051 is amended to read as follows:

(1) In a competitive market, every insurer shall file with the commissioner rates and supplementary information to be used in this state for commercial risks as designated by the commissioner and for all personal risks. ***These*** [~~Such~~] rates and supplementary rate information shall be filed not later than fifteen (15) days after the date of first use of the rates, unless the commissioner finds after a hearing that an insurer's rates require closer supervision because of the insurer's financial condition. On such a finding, rates for both personal and commercial risks, supplementary rate information, and supporting information shall be filed with the commissioner at least thirty (30) days before the effective date of the rates. ***This*** [~~Such an~~] order shall expire no later than one (1) year after it is issued.

(2) In a noncompetitive market, every insurer shall file with the commissioner all rates for that market, supplementary rate information, and supporting information at least thirty (30) days before the proposed effective date of the rates. On application of the filer, the commissioner may authorize an earlier effective date.

(3) Any rate filing in effect at the time the commissioner determines that competition does not exist pursuant to KRS 304.13-041 shall be deemed to be effective until disapproved pursuant to the procedures and rating standards of this chapter.

(4) Every insurer shall file with the commissioner all rating manuals and underwriting rules that it uses in this state not later than fifteen (15) days after they become effective. ***These*** [~~Such~~] manuals, rules*,* and guidelines must be adhered to until amended. The commissioner may exempt an insurer from filing supporting information if it files by reference, with or without deviation, to a filing which is in effect for another insurer or an advisory organization.

(5) (a) No insurer shall place into effect any rates, manuals, or underwriting rules which it proposes to use pursuant to subsection (1) or (4) of this section if ***the*** [~~such~~] rates, manuals or underwriting rules will result in an increase or decrease of more than twenty-five percent (25%) from such insurer's then existing rates for any classification of risks in any of its rating territories within a twelve (12) month period of time.

(b) Any insurer which proposes to change its then existing rates, manuals*,* or underwriting rules so as to effectively increase or decrease the rates of any classification of risks within any rating territory more than twenty-five percent (25%) within a twelve (12) month period shall file all [~~such~~] rates and supplemental rating information which shall not become effective until approved by the commissioner.

(6) Rates and supplemental rating information for a residual market mechanism shall not become effective until approved by the commissioner.

(7) The commissioner shall review filings made in accordance with subsections (2), (5)(b) and (6) of this section as soon as reasonably possible after they have been made in order to determine whether they meet the applicable requirements of this chapter. Each filing shall be on file for a waiting period of thirty (30) days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed thirty (30) days if he gives written notice within such waiting period to the insurer which made the filing that additional time is needed for consideration of the filing. The commissioner may, when he deems it to be in the public interest, hold a public hearing on any filing before said filing becomes effective to determine whether the filing meets the requirements of this subtitle. In the event that a hearing is held under the provisions of this subsection, the waiting periods specified in this subsection shall not begin to run until thirty (30) days after the close of ***the*** [~~such~~] hearing. The burden of establishing that the filing under consideration meets the requirements of this subtitle is on the insurer which makes ***the*** [~~such~~] filing. A filing shall be deemed to meet the requirements of this subtitle unless disapproved by the commissioner within the waiting period or any extension thereof.

(8) Notwithstanding the provisions of subsection (7) of this section or any other section of this subtitle, the commissioner may approve or disapprove or modify a portion or part of a rate or rate filing without a public hearing.

PART 14

FRAUD, MISREPRESENTATION, AND PENALTIES

Section 61. KRS 342.165 is amended to read as follows:

(1) If an accident is caused in any degree by the intentional failure of the employer to comply with any specific statute or

lawful ***administrative*** regulation made thereunder, communicated to ***the*** [~~such~~] employer and relative to installation or maintenance of safety appliances or methods, the compensation for which the employer would otherwise have been liable under this chapter shall be increased fifteen percent (15%) in the amount of each payment. If an accident is caused in any degree by the intentional failure of the employee to use any safety appliance furnished by the employer or to obey any lawful and reasonable [~~rule,~~] order or ***administrative*** regulation of the ***commissioner*** [~~board~~] or the employer for the safety of employees or the public, the compensation for which the employer would otherwise have been liable under this chapter, shall be decreased fifteen percent (15%) in the amount of each payment.

(2) No compensation shall be payable for work-related injuries if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable falsely represents, in writing, his physical condition or medical history, if all of the following factors are present:

- ***(a) The employee has knowingly and willfully made a false representation as to his physical condition or medical history;***
- ***(b) The employer has relied upon the false representation, and this reliance was a substantial factor in the hiring;***
- ***(c) There is a causal connection between the false representation and the injury for which compensation has been claimed.***

Section 62. KRS 342.335 is amended to read as follows:

(1) No person shall knowingly file, or permit to be filed any false or fraudulent claim on his behalf to compensation or other benefits under this chapter, or by fraud, deceit***,*** or misrepresentation procure or cause to be made or receive any payments of compensation or other benefits under this chapter to which the recipient is not lawfully entitled, or conspire with, aid or abet another so to do. No person shall by deceit or misrepresentation or with intent to defraud cause or procure or conspire with, aid or abet another in so causing or procuring any person entitled to compensation or other benefits under this chapter to omit to claim title thereto or to accept the payment of a less sum than that to which he may be lawfully entitled to thereunder.

(2) Any person, as that term is defined in KRS 342.0011, who knowingly, as defined in KRS 501.020, makes any false representation for the purpose of or in the course of receiving or providing any service or benefit available under this chapter, shall be subject to the penalty imposed pursuant to KRS 342.990 for a violation of this subsection. In addition, if a person who violates the provisions of this subsection is also dependent upon a professional license to provide any service or benefit under this chapter, the commissioner shall refer the matter to the appropriate licensing body and recommend revocation of that person's license to work at his profession in the Commonwealth of Kentucky.

Section 63. KRS 342.990 is amended to read as follows:

(1) The commissioner[~~, on behalf of the Workers' Compensation Board,~~] shall initiate enforcement of civil and criminal penalties imposed in this section.

(2) When the commissioner receives information that he deems sufficient to determine that a violation of this chapter has occurred, he shall seek civil penalties pursuant to subsections (3) through (8) of this section, or criminal penalties pursuant to subsections (9) and (10) of this section, or both.

(3) The commissioner[~~, on behalf of the board,~~] shall initiate enforcement of a civil penalty by simultaneously citing the appropriate party for the offense and stating the civil penalty to be paid.

(4) If, within fifteen (15) working days from the receipt of the citation, a cited party fails to notify the commissioner that he intends to contest the citation, then the citation shall be deemed final.

(5) If a cited party notifies the commissioner that he intends to challenge a citation issued under this section, the commissioner shall cause the matter to be heard as soon as practicable by ***a hearing officer*** [~~an administrative law judge~~]. The ***hearing officer*** [~~administrative law judge~~] shall issue a ruling thereon within fifteen (15) days of the hearing.

(6) A cited party may appeal the ruling of the ***hearing officer*** [~~administrative law judge~~] within fifteen (15) days following the issuance of the ruling. The appeal shall be made in writing to the [~~Workers' Compensation Board, and the board, through the~~] commissioner ***who***[~~,~~] shall***,*** as soon as practicable, schedule the matter for hearing. The ***commissioner*** [~~board~~] shall issue a ruling on the matter within thirty (30) days of the hearing.

(7) An appeal of the ruling of the ***commissioner*** [~~board~~] on civil penalties imposed in this chapter shall be to the Court of Appeals.

(8) The following civil penalties shall be applicable for violations of particular provisions of this chapter:

- (a) Any employer subject to this chapter[~~,~~] who fails to make the report required by KRS 342.038[~~,~~] within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.
- (b) ***Any employer, insurer on behalf of an employer, or claims administrator acting on behalf of an employer who fails to make timely payment of a statement for services under KRS 342.020(1) without having***

reasonable grounds to delay payment may be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1000) for each offense.

(c) Any person who violates ***subsection (9) of Section 16 of this Act, subsection (2) of Section 19 of this Act,*** KRS 342.040, ***subsection (1) of Section 62 of this Act*** [~~342.335~~], 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

(d)[~~(c)~~]Any person who violates any of the provisions of KRS 342.460, 342.465, or 342.470 shall be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000) for each offense.

(9) The commissioner shall initiate enforcement of a criminal penalty by causing a complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to act on the violation within twenty (20) days following the filing of the complaint, the commissioner[~~, on behalf of the board,~~] shall certify ***the*** [~~such~~] inaction by the local prosecutor to the Attorney General who shall initiate proceedings to prosecute the violation. The provisions of KRS 15.715 shall not apply to this section.

(10) The following criminal penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any person who violates ***subsection (2) of Section 19 of this Act,*** KRS 342.040, ***subsection (1) of Section 62 of this Act*** [~~342.335~~], 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both.

(b) ***Any person who violates subsection (2) of Section 62 of this Act shall be guilty of a Class D felony.***

(c) Any person who violates any of the provisions of KRS 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both.

(11) Fines paid pursuant to subsections (8) and (10) of this section shall be paid into the special fund.

PART 15

MISCELLANEOUS PROVISIONS

Section 64. KRS 304.14-110 is amended to read as follows:

All statements and descriptions in any application for an insurance policy or annuity contract, by or on behalf of the insured or annuitant, shall be deemed to be representations and not warranties. Misrepresentations, omissions and incorrect statements shall not prevent a recovery under the policy or contract unless either:

(1) Fraudulent; or

(2) Material either to the acceptance of the risk, or to the hazard assumed by the insurer; or

(3) The insurer in good faith would either not have issued the policy or contract, or would not have issued it at the same premium rate, or would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise. ***This subsection shall not apply to applications taken for workers' compensation insurance coverage.***

Section 65. KRS 342.012 is amended to read as follows:

(1) For the purposes of this chapter, an owner or owners of a business, including qualified partners of a partnership owning a business, whether or not employing any other person to perform a service for hire, shall be included within the meaning of the term employee if ***the*** [~~such~~] owner, owners, or qualified partners elect to come under the provisions of this chapter and provide the insurance required thereunder. Nothing in this section shall be construed to limit the responsibilities of ***the*** [~~such~~] owners or partners to provide coverage for their employees and nonqualified partners, if any, required under this chapter.

(2) When an owner, owners, or qualified partners have elected to be included as employees, ***this inclusion*** [~~such~~] shall be accomplished by the issuance of an appropriate endorsement to a workers' compensation insurance policy.

(3) For the purpose of this section, "qualified partner" means a partner who has entered into a meaningful partnership agreement which shows on its face that the partner will substantially participate in the profit or loss of the business engaged in by the partnership and that the partner has made some contribution to the partnership which entitles him to participate in the profits of the business as well as to participate in the decision-making process of the partnership.

(4) For the purposes of this section, "nonqualified partner" means a person who has entered into a partnership agreement which shows on its face that this person will receive regular payments in exchange for work for the business engaged in by the partnership; that the person will not participate in the decision-making of the partnership and will not participate in the profits and losses of the business engaged in by the partnership.

(5) Every partnership filing a partnership agreement for the purpose of exemption pursuant to the provisions of KRS 342.340[~~,~~] shall, on or before April 15 of each year, file with the ***commissioner*** [~~board~~] the partnership identification number assigned to the partnership by the Internal Revenue Service[~~, and shall also file a copy of the tax return of the~~

~~partnership~~]. ***On or before April 15 of each year, each partnership having an agreement on file with the commissioner shall file a copy of the tax return of the partnership with the commissioner.*** Failure to comply with the provisions of this subsection shall be prima facie evidence that the partnership agreement filed with the ***commissioner*** [~~board~~] is composed of "nonqualified partners" as defined in this section, and the ***commissioner*** [~~board~~] shall promptly notify interested government agencies of the failure of the filed partnership agreement to ***indicate compliance with*** [~~provide exemption of the partnership from the provisions of~~] KRS 342.340. With particular reference to employers engaged in coal mining, the ***commissioner*** [~~board~~] shall promptly report the failure to comply with the provisions of this subsection to the Department of Mines and Minerals so that appropriate action may be undertaken pursuant to KRS 351.175.

Section 66. KRS 342.038 is amended to read as follows:

(1) Every employer subject to this chapter shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within one (1) week after the occurrence and knowledge, as provided in KRS 342.185 to 342.200, of an injury to an employee causing his absence from work for more than one (1) day, a report thereof shall be made in writing and mailed to the ***department*** [~~board~~] on blanks procured from the ***department*** [~~board~~] for the purpose.

(2) The report shall contain the name, nature, and location of the business of the employer and name, age, sex, wages, and occupation of the injured employee, and shall state the date and hour of the accident causing the injury, the nature and cause of the injury, and any other information required by the ***commissioner*** [~~board~~].

(3) ***Every employer subject to this chapter shall report to his workers' compensation insurance carrier or the party responsible for the payment of workers' compensation benefits any work-related injury or disease or alleged work-related injury or disease within three (3) working days of receiving notification of the incident or alleged incident.***

(4) Every employer or insurer subject to this chapter shall file additional reports covering specifically voluntary payments and settlements, and ***any*** [~~such~~] other reports [~~as~~] are required by the ***commissioner*** [~~Workers' Compensation Board~~] by ***administrative*** regulation for the determination of the promptness of voluntary payment and validity and fairness of agreements. In addition, the ***commissioner*** [~~board~~] may require additional information as may be necessary to comply with a federal statute or regulation or any state statute.

(5)[~~(4)~~] Upon the termination of the disability of the injured employee, or if the disability extends beyond a period of sixty (60) days, then also at the expiration of ***that*** [~~such~~] period***,*** the employer shall make a supplementary report to the ***commissioner*** [~~board~~] on blanks procured from the ***department*** [~~board~~] for the purpose.

Section 67. KRS 342.185 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, no proceeding under this chapter for compensation for an injury or death shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable after the happening thereof and unless an application for adjustment of claim for compensation with respect to ***the*** [~~such~~] injury shall have been made with the ***department*** [~~board~~] within two (2) years after the date of the accident, or in case of death, within two (2) years after ***the*** [~~such~~] death, whether or not a claim has been made by the employee himself for compensation. ***The*** [~~Such~~] notice and ***the*** [~~such~~] claim may be given or made by any person claiming to be entitled to compensation or by someone in his behalf. If payments of income benefits [~~as such~~] have been made***,*** [~~voluntarily~~] the filing of an application for adjustment of claim with the ***department*** [~~board~~] within ***the*** [~~such~~] period shall not be required, but shall become requisite within two (2) years following the suspension of [~~such voluntary~~] payments or within two (2) years of the date of the accident, whichever is later.

(2) The right to compensation under this chapter resulting from work-related exposure to the human immunodeficiency virus shall be barred unless notice of the injurious exposure is given in accordance with subsection (1) of this section and unless an application for adjustment of claim for compensation shall have been made with the commissioner within five (5) years after the injurious exposure to the virus.

SECTION 68. A NEW SECTION OF SUBTITLE 20 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Any insurer providing workers' compensation insurance coverage for a Kentucky location shall provide proof of coverage to the commissioner of the Department of Workers' Claims in the Labor Cabinet in accordance with Section 35 of this Act.

Section 69. KRS 342.700 is amended to read as follows:

(1) Whenever an injury for which compensation is payable under this chapter has been sustained under circumstances creating in some other person than the employer a legal liability to pay damages, the injured employee may either claim compensation or proceed at law by civil action against ***the*** [~~such~~] other person to recover damages, or proceed both against the employer for compensation and ***the*** [~~such~~] other person to recover damages, but he shall not collect from both. If the injured employee elects to proceed at law by civil action against ***the*** [~~such~~] other person to recover damages, he shall give due and timely notice to the employer ***and the special fund*** of the filing of ***the*** [~~such~~] action. If compensation is awarded under this chapter, the employer, his insurance carrier, the special fund, and the uninsured employer's fund, or any of them, having paid the compensation or having become liable therefor, may recover in his or its own name or that of the injured employee from the other person in whom legal liability for damages exists, not to exceed the

indemnity paid and payable to the injured employee, less the employee's legal fees and expense. ***The notice of civil action shall conform in all respects to the requirements of KRS 411.188(2).***

(2) A principal contractor, intermediate, or subcontractor shall be liable for compensation to any employee injured while in the employ of any one (1) of his intermediate or subcontractors and engaged upon the subject matter of the contract, to the same extent as the immediate employer. Any principal, intermediate, or subcontractor who pays ***the*** [~~such~~] compensation may recover the amount paid from any subordinate contractor through whom he has been rendered liable under this section. Every claim to compensation under this subsection shall in the first instance be presented to and instituted against the immediate employer, but ***the*** [~~such~~] proceedings shall not constitute a waiver of the employee's rights to recover compensation under this chapter from the principal or intermediate contractor nor shall ***the*** [~~such~~] claim be barred by limitations, ***if the*** [~~provided such~~] claim is filed against the principal or intermediate contractor within one (1) year after a final unappealed order has been rendered by ***a hearing officer*** [~~an administrative law judge~~] determining that immediate employer has insufficient security to pay the full and maximum benefits that could be determined to be due him under this chapter. The collection of full compensation from one employer shall bar recovery by the employee against any other. But he shall not collect from all a total compensation in excess of the amount for which his immediate employer is liable. This subsection shall apply only in cases where the injury occurred on, in, or about the premises on which the principal contractor has undertaken to execute work or which are under his control otherwise or management.

SECTION 70. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

Pursuant to administrative regulations promulgated under KRS Chapter 13A by the commissioner of the Department of Workers' Compensation Coverage and Compliance, each insurance company writing workers' compensation insurance policies in the Commonwealth, every group of self-insurers, and each employer carrying its own risk shall file in the manner directed by the commissioner, on a quarterly basis, a report for the preceding quarter setting forth the amount of workers' compensation premium collected and the amounts expended in terms of dollars and percentage of payout in the following areas:

(1) Administrative expenses.

(2) Legal defense:

(a) Attorneys;

(b) Medical witnesses;

(c) Vocational witnesses; and

(d) Other legal defense expenses.

(3) Income benefits:

(a) Temporary total;

(b) Permanent partial; and

(c) Permanent total.

(4) Medical benefits:

(a) Physicians, including medical doctors and osteopathic physicians;

(b) Chiropractors;

(c) Hospitals;

(d) Physical therapists;

(e) Pain centers or clinics;

(f) Other medical rehabilitation facilities; and

(g) Medical management fees.

(5) Vocational rehabilitation:

(a) In-house or associated consultants;

(b) Contract consultants;

(c) Vocational rehabilitation program centers; and

(d) New job training.

(6) Attorneys' fees for claimants' counsel.

(7) Other expenditures, including itemizations of all categories of expenditures exceeding one percent (1%) of workers' compensation insurance premiums.

(8) Other data and information that the commissioner may require by administrative regulation, after consultation with the Kentucky Workers' Compensation Funding Commission, as appropriate to evaluate fiscal aspects of the workers' compensation system.

SECTION 71. A NEW SECTION OF KRS CHAPTER 338 IS CREATED TO READ AS FOLLOWS:

Effective July 15, 1994, the Division of Education and Training of the Kentucky Occupational Safety and Health Program shall be expanded by eight (8) employees. These additional staff shall assist employers in their efforts to improve safety and health practices in their workplaces. Effective July 15, 1994, the Division of Compliance of the Kentucky Occupational Safety and Health Program shall be expanded by twelve (12) employees. These employees shall be used to assure compliance with industrial health and safety regulations. Effective July 15, 1994, the Kentucky Occupational Safety and Health Review Commission shall expand its staff by one (1) employee. The additional employee shall enable the review commission to expedite the processing of contested citations and appeals. These additional expenditures shall be financed by the Kentucky Workers' Compensation Funding Commission from funds collected for the special fund pursuant to KRS 342.122.

PART 16

GENERAL CONFORMING AMENDMENTS

Section 72. KRS 342.040 is amended to read as follows:

(1) Except as provided in KRS 342.020, no income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of twelve percent (12%) per annum on each installment from the time it is due until paid except that if the ***hearing officer*** [~~administrative law judge~~] determines that a denial, delay, or termination in the payment of income benefits was without reasonable foundation, the rate of interest shall be eighteen percent (18%) per annum. In no event shall income benefits be instituted later than the ***fifteenth*** [~~15th~~] day after the employer has knowledge of the disability or death. Income benefits shall be due and payable not less often than semimonthly. If the employer should terminate, or fail to make payments when due, the employer shall notify the ***commissioner*** [~~board~~] of ***the*** [~~such~~] termination or failure to make payments and the ***commissioner*** [~~board~~] shall, in writing, advise the employee or known dependent of right to prosecute a claim under this chapter.

(2) If overdue temporary total disability income benefits are recovered in a proceeding brought under this chapter by an attorney for an employee, or paid by the employer after receipt of notice of the attorney's representation, a reasonable attorney's fee for these services may be awarded. The award of attorney's fees shall be paid by the employer if the ***hearing officer*** [~~administrative law judge~~] determines that the denial or delay was without reasonable foundation. No part of the fee for representing the employee in connection with the recovery of overdue temporary total disability benefits withheld without reasonable foundation shall be charged against or deducted from benefits otherwise due the employee.

(3) All retraining incentive benefits awarded pursuant to KRS 342.732 shall be payable on the regular payday of the employer, commencing with the second regular payday after the award of the retraining incentive benefit by the ***hearing officer*** [~~administrative law judge~~] becomes final. Retraining incentive benefits shall be due and payable not less often than semimonthly.

(4) Upon written request of the employee, all payments of compensation shall be mailed to the employee at his last known address.

Section 73. KRS 342.090 is amended to read as follows:

Payment of death benefits in good faith, to a supposed dependent or to a dependent subsequent in right to another or other dependents shall protect and discharge the employer and insurer unless and until the lawful dependent or dependents prior in right have given the employer or insurer written notice of his or their claim. In case the employer or insurer is in doubt as to who are dependents or as to their respective rights, the ***hearing officer*** [~~administrative law judge~~] shall, on application, decide and direct to whom payment shall be made, and payment made under ***this*** [~~such~~] direction shall release the employer and insurer from all liability. If an appeal is taken from the order of the ***hearing officer*** [~~administrative law judge~~] directing payment, persons receiving payment under ***the*** [~~such~~] order shall furnish bond for the protection of adverse claimants pending the outcome of the proceedings.

Section 74. KRS 342.140 is amended to read as follows:

The average weekly wage of the injured employee at the time of the injury or last injurious exposure shall be determined as follows:

(1) If at the time of the injury which resulted in death or disability or the last date of injurious exposure preceding death or disability from an occupational disease:

  (a) The wages were fixed by the week, the amount so fixed shall be the average weekly wage;

  (b) The wages were fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve (12) and divided by fifty-two (52);

  (c) The wages were fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by fifty-two (52);

(d) The wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by thirteen (13) the wages (not including overtime or premium pay) of said employee earned in the employ of the employer in the first, second, third, or fourth period of thirteen (13) consecutive calendar weeks in the fifty-two (52) weeks immediately preceding the injury.

(e) The employee had been in the employ of the employer less than thirteen (13) calendar weeks immediately preceding the injury, his average weekly wage shall be computed under paragraph (d), taking the wages (not including overtime or premium pay) for ***that*** [~~such~~] purpose to be the amount he would have earned had he been so employed by the employer the full thirteen (13) calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation.

(f) The hourly wage has not been fixed or cannot be ascertained, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where ***the*** [~~such~~] services are rendered by paid employees.

(2) In occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the average weekly wage shall be taken to be one-fiftieth (1/50) of the total wages which the employee has earned from all occupations during the twelve (12) calendar months immediately preceding the injury.

(3) In the case of volunteer firemen, police, and civil defense members or trainees, the income benefits shall be based on the average weekly wage in their regular employment.

(4) If the employee was a minor, apprentice, or trainee when injured, and it is established that under normal conditions his wages should be expected to increase during the period of disability, that fact may be considered in computing his average weekly wage.

(5) When the employee is working under concurrent contracts with two (2) or more employers and the defendant employer has knowledge of ***the*** [~~such~~] employment prior to the injury, his wages from all ***the*** [~~such~~] employers shall be considered as if earned from the employer liable for compensation.

(6) The term "wages" as used in this section and KRS 342.143 means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, and fuel or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer to the extent ***the*** [~~such~~] gratuities are reported for income tax purposes.

(7) The ***commissioner*** [~~board~~] shall, from time to time, based upon the best available information, determine by ***administrative*** regulation industries which ordinarily do not have a full working day for five (5) days in every week. In ***those*** [~~such~~] industries, compensation shall be computed at the average weekly wage earned by the employee at the time of injury reckoning wages as earned while working full time. "At full time" as used ***in this subsection*** [~~herein~~] means a full working day for five (5) working days in every week regardless of whether the injured employee actually worked all or part of the time.

Section 75. KRS 342.143 is amended to read as follows:

For the purposes of this chapter, the average weekly wage of the state shall be determined by the commissioner as follows: On or before September 1 of each year, the total wages reported by subject employers under the Kentucky Unemployment Insurance Law for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total number of insured workers reported for the preceding year by twelve (12)). The average annual wage thus obtained shall be divided by fifty-two (52) and the average weekly wage thus determined rounded to the nearest cent. ***The*** [~~Such~~] average weekly wage shall be certified to the commissioner by the Cabinet for Human Resources in a manner prescribed by the ***commissioner*** [~~Workers' Compensation Board~~] by ***administrative*** regulation. The average weekly wage as so determined shall be applicable for the full period during which income or death benefits are payable, when the date of occurrence of injury or of disability in the case of disease, or of death, falls within the calendar year commencing January 1 following the September 1 determination. Whenever a change in the average weekly wage of the state is of ***an*** [~~such~~] amount that the minimum weekly income benefits for total disability or for death are increased or decreased by one dollar ($1) or more, or the maximum weekly income benefits for total disability or for death are increased or decreased by two dollars ($2) or more, computed in each case and rounded to the nearest dollar, an adjustment in those minimums or maximums which are affected in the requisite amount by the change in the average weekly wage of the state shall be made which will reflect this increase or decrease, but no change in ***the*** [~~such~~] limitations shall otherwise be made.

Section 76. KRS 342.150 is amended to read as follows:

Whenever compensation has been paid for not less than six (6) months, thereafter, on the application of all parties in any case where the ***hearing officer*** [~~administrative law judge~~] determines that it will be for the best interests of all parties and will not subject the employer or his insurer to an undue risk of overpayment, future payments of compensation or any part thereof may be commuted to a lump sum of an amount which will equal the total sum of the probable future payments so commuted, discounted at four percent (4%) true discount compounded annually on each payment. Upon payment of ***this*** [~~such~~] lump sum, all liability for the payments therein commuted shall cease.

Section 77. KRS 342.155 is amended to read as follows:

Whenever the ***hearing officer*** ~~[administrative law judge]~~ considers it expedient, any lump sum which is paid as provided in KRS 342.150 hereof shall be paid to any suitable person appointed by the District Court of the county of the residence of the injured employee or of his dependents as trustee to administer or apply the same for the benefit of the person or persons entitled thereto. The receipt of ***the*** ~~[such]~~ trustee for the amount so paid to him shall discharge the employer and his insurer. Except as otherwise ~~[herein]~~ specifically provided ***in this section***, the manner of qualification and the rights, duties, and liabilities of the trustee shall be determined by the general laws of this state.

Section 78. KRS 342.160 is amended to read as follows:

(1) The benefits in case of death shall be paid to one (1) or more dependents of the deceased employee for the benefit of all the dependents entitled thereto, as determined by the ***hearing officer*** ~~[administrative law judge]~~. The dependents to whom payments are made shall apply the same to the use of the persons entitled thereto under this chapter, according to their respective claims on the deceased for support. The compensation of a mentally disabled person shall be paid to his guardian or conservator.

(2) If the dependents are a widow, widower, or other head of a family of minor children and one (1) or more minor children, it shall be sufficient for the widow, widower, or head of the family to make application for compensation on behalf of all. Where the dependents are mentally incapacitated or are minors the head of whose family is not a dependent, the application may be made by the guardian, conservator, or next friend of ***those*** ~~[such]~~ dependents.

Section 79. KRS 342.205 is amended to read as follows:

(1) After an injury and so long as compensation is claimed, the employee, if requested by ***the employer*** ~~[a party or by the administrative law judge]~~, shall submit himself to examination, at a reasonable time and place, to a duly qualified physician or surgeon designated and paid by the requesting ***employer*** ~~[party]~~. ***The scope of the examination shall be limited to determining whether or not medical treatment or proposed medical treatment for the employee is reasonable and necessary for the cure and relief of the effects of the work-related injury or occupational disease, or to a medical determination as to fraud or willful and wanton misconduct with respect to an evaluation performed by a certified occupational medicine center.*** The employee shall have the right to have a duly qualified physician or surgeon designated and paid by himself present at the examination, but this right shall not deny the requesting party's physician or surgeon the right to examine the injured employee at all reasonable times and under all reasonable conditions.

(2) The party requesting an examination pursuant to subsection (1) of this section shall make arrangements to provide all the cost of the examination. The requesting party shall also prepay the cost of transportation of the employee to and from the examination if public transportation is utilized. If the employee uses his own vehicle to travel to and from the examination, the requesting party shall prepay the employee at the state mileage rate. The requesting party shall also reimburse the employee for the cost of meals, lodging, parking, and toll charges upon proof of same by written voucher. The amounts prepaid or reimbursed by the requesting party, as required ***by this subsection*** ~~[herein]~~, shall be the same as, and in accordance with, state travel ***administrative*** regulations and standards promulgated and established pursuant to KRS Chapter ***45*** ~~[18A]~~.

(3) If an employee refuses to submit himself to or in any way obstructs ***the*** ~~[such]~~ examination, his right to take or prosecute any proceedings under this chapter shall be suspended until the refusal or obstruction ceases. No compensation shall be payable for the period during which the refusal or obstruction continues.

(4) ~~[Any employee receiving benefits under this chapter may be required, upon request of any party, to furnish a sworn affirmed statement of earnings and other supporting information the administrative law judge may require.~~

~~(5)]~~ The ***department*** ~~[board]~~ shall supply forms for the report.

Section 80. KRS 342.231 is amended to read as follows:

(1) The commissioner of the Department of Workers' Claims shall be paid a salary not to exceed the salary of ***a hearing officer*** ~~[an administrative law judge]~~ as provided in KRS Chapter 342.

(2) The Labor Cabinet shall report monthly to the Committee on Appropriations and Revenue its monthly expenditures of restricted agency funds and the nature of ***the*** ~~[such]~~ expenditures. Separate reporting shall be done by each department within the Labor Cabinet and for general administration and support.

Section 81. KRS 342.235 is amended to read as follows:

The ***commissioner*** ~~[board]~~ and ~~[its]~~ employees or authorized representatives ***of the department*** shall, for traveling necessitated by the discharge of official duties, be reimbursed for transportation actually paid for, not exceeding the regular fare over the most direct route, and meals and lodging actually paid for.

Section 82. KRS 342.240 is amended to read as follows:

The ***department*** ~~[board]~~ shall maintain its main office in Frankfort, Kentucky, using suitable rooms and offices belonging to this state, and shall be provided necessary office furniture to be paid for by the state. The ***commissioner*** ~~[board]~~ shall provide necessary supplies, books, ~~[and]~~ periodicals, and maps and shall provide ~~[itself with]~~ a seal for the authentication of ~~[its]~~ orders, awards, or proceedings ~~[and those]~~ of the ***hearing officers*** ~~[administrative law judges]~~, on which shall be inserted the words

"***Department of Workers' Claims*** [~~"Workers' Compensation Board~~], State of Kentucky, official seal." The board and the ***hearing officers*** [~~administrative law judges~~] may hold sessions at any place within the state where necessary and shall have power to sue or institute legal proceedings in any court of this state, under existing laws as to jurisdiction of actions. Unless consented to by the ***commissioner*** [~~board~~], all actions or proceedings against ***the board*** [~~it~~] or a member in his official capacity, or against ***a hearing officer*** [~~an administrative law judge~~] or the commissioner in his official capacity shall be brought in the courts of Franklin County.

Section 83. KRS 342.260 is amended to read as follows:

(1) The ***commissioner*** [~~board~~] shall prepare [~~such~~] administrative regulations as ***he*** [~~it~~] considers necessary to carry on ***the*** [~~its~~] work ***of the department*** and the work of the ***hearing officers*** [~~administrative law judges~~] and may promulgate administrative regulations not inconsistent with this chapter and KRS Chapter 13A for carrying out the provisions of this chapter.

(2) Processes and procedure under this chapter shall be as summary and simple as reasonably possible. The board or any member thereof or any ***hearing officer*** [~~administrative law judge~~] for the purpose of this chapter, may subpoena witnesses, administer or cause to have administered oaths***,*** and examine or cause to have examined ***those*** [~~such~~] parts of the books and records of the parties to a proceeding as relate to questions in dispute.

(3) The sheriff shall serve all subpoenas of the board and ***hearing officers*** [~~administrative law judges~~] and shall receive the same fee as provided by law for like service in civil actions. Each witness who appears in obedience to ***the*** [~~such~~] subpoena of the board or any ***hearing officer*** [~~administrative law judge~~] shall receive for attendance the fees and mileage for witnesses in civil cases in the Circuit Courts.

(4) The Circuit Court shall, on application of the board, any member thereof, or any ***hearing officer*** [~~administrative law judge~~], enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers***,*** and records.

Section 84. KRS 342.265 is amended to read as follows:

If the employee and employer [~~and special fund or any of them~~] reach an agreement conforming to the provisions of this chapter in regard to compensation, a memorandum of the agreement shall be filed with the ***department*** [~~administrative law judge~~], and, if approved [~~by him~~], shall be enforceable as provided in KRS 342.305. In all cases where all parties have not joined in the settlement agreement, the ***ombudsman or hearing officer*** [~~administrative law judge~~] shall not approve the agreement unless the agreement certifies that the party not participating in the settlement has received a copy of the settlement agreement at least ten (10) days prior to submission of the agreement for approval. Nothing ***in this section*** [~~herein~~] shall prevent the voluntary payment of compensation in the amounts and for the periods prescribed in this chapter without formal agreement, but nothing shall operate as a final settlement except a memorandum of agreement filed with the ***department*** [~~administrative law judge~~] and approved by the ***ombudsman or hearing officer*** [~~administrative law judge~~] in accordance with this section. No limitations of time shall begin to run until the date upon which the agreement is filed with and approved by the ***ombudsman or hearing officer*** [~~administrative law judge~~].

Section 85. KRS 342.270 is amended to read as follows:

(1) If the parties fail to reach an agreement in regard to compensation under this chapter, either party may make written application to the ***commissioner*** [~~board~~] for a hearing in regard to the matter at issue and for a ruling thereon. The application must be filed within two (2) years after the accident, or, in case of death, within two (2) years after ***the*** [~~such~~] death, or within two (2) years after the cessation of ***income benefit*** [~~voluntary~~] payments, if any have been made.

(2) Except with respect to uncontested claims for retraining incentive benefits by reason of occupational pneumoconiosis related to exposure to coal dust, or for disability or death by reason of occupational diseases, within thirty (30) days after the application has been received the commissioner shall set the date for a prehearing conference, to be held as soon as practicable in view of the matter involved, and shall notify the parties at issue of the time and place of the prehearing conference.

(3) The prehearing conference shall be held at or convenient to the place where the employee resides, ***but*** [~~provided that such prehearing conference~~] shall be held within the boundaries of the Commonwealth. At the prehearing conference, ***a hearing officer*** [~~an administrative law judge~~] shall confer informally with the parties at issue and their counsel, if any, for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposal of the case. If agreement upon any matter is reached, the ***hearing officer*** [~~administrative law judge~~] shall write a memorandum setting forth the matters agreed upon. The ***hearing officer*** [~~administrative law judge~~] and all parties shall sign the memorandum, and the ***hearing officer*** [~~administrative law judge~~] shall file it with the ***commissioner*** [~~board~~]. Once filed, the memorandum shall become a part of the record.

(4) If the parties have previously filed an agreement which has been approved by the ***hearing officer*** [~~administrative law judge~~], and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125, which remedy shall be exclusive.

(5) An application for adjustment of claim shall be held in abeyance by the ***hearing officer*** [~~administrative law judge~~] during any period voluntary payments of compensation are being made under any benefit sections of this chapter to the

maximum which the employee's wages shall entitle him, unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay.

Section 86. KRS 342.275 is amended to read as follows:

In any claim in which settlement is not reached at the prehearing conference, the ***hearing officer*** [~~administrative law judge~~] shall hold a hearing on the matters at issue within sixty (60) days from the date of the prehearing conference in a location at or convenient to the place where the employee resides, ***but the*** [~~provided that such~~] conference shall be held within the boundaries of the Commonwealth. The ***hearing officer*** [~~administrative law judge~~] may grant continuances according to criteria established in administrative regulations promulgated by the ***commissioner***[~~board~~]. The commissioner shall notify the parties at issue of the time and place of the hearing. The ***hearing officer*** [~~administrative law judge~~] shall render the award, order, or decision within thirty (30) days after the case is submitted. The award, order, or decision, together with a statement of the findings of fact, rulings of law, and any other matters pertinent to the question at issue shall be filed with the record of proceedings, and a copy of the award, order, or decision shall immediately be sent to the parties in dispute.

Section 87. KRS 342.281 is amended to read as follows:

Within fourteen (14) days from the date of the award, order, or decision, any party may file a petition for reconsideration of the award, order, or decision of the ***hearing officer***[~~administrative law judge~~]. The petition for reconsideration shall clearly set out the errors relied upon with the reasons and argument for reconsideration of the pending award, order, or decision. All other parties shall have ten (10) days thereafter to file a response to the petition. The ***hearing officer*** [~~administrative law judge~~] shall be limited in ***the*** [~~such~~] review to the correction of errors patently appearing upon the face of the award, order, or decision and shall overrule the petition for reconsideration or make ***the*** [~~such~~] correction within ten (10) days after submission.

Section 88. KRS 342.285 is amended to read as follows:

(1) An award or order of the ***hearing officer*** [~~administrative law judge~~] as provided in KRS 342.275, if petition for reconsideration is not filed as provided for in KRS 342.281, shall be conclusive and binding as to all questions of fact, but either party may in accordance with administrative regulations promulgated by the ***commissioner*** [~~board~~] appeal to the Workers' Compensation Board for the review of ***the*** [~~such~~] order or award.

(2) No new or additional evidence may be introduced before the board except as to the fraud or misconduct of some person engaged in the administration of this chapter and affecting the order, ruling, or award, but the board shall otherwise hear the appeal upon the record as certified by the ***hearing officer*** [~~administrative law judge~~] and shall dispose of the appeal in summary manner. The board shall not substitute its judgment for that of the ***hearing officer*** [~~administrative law judge~~] as to the weight of evidence on questions of fact, its review being limited to determining whether or not:

  (a) The ***hearing officer*** [~~administrative law judge~~] acted without or in excess of his powers;

  (b) The order, decision, or award was procured by fraud;

  (c) The order, decision, or award is not in conformity to the provisions of this chapter;

  (d) The order, decision, or award is clearly erroneous on the basis of the reliable, probative, and material evidence contained in the whole record; or

  (e) The order, decision, or award is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(3) Within thirty (30) days from final submission, the board shall enter its decision affirming, modifying, or setting aside the order, decision, or award, or in its discretion remanding the claim to the ***hearing officer*** [~~administrative law judge~~] for further proceedings in conformity with the direction of the board. The board may, before decision and upon a sufficient showing of fact, remand the claim to the ***hearing officer***[~~administrative law judge~~].

Section 89. KRS 342.305 is amended to read as follows:

Any party in interest may file in the Circuit Court of the county in which the injury occurred a certified copy of a memorandum of agreement approved by the ***hearing officer*** [~~administrative law judge~~] or of an order or decision of the ***hearing officer*** [~~administrative law judge~~] or board, or of an award of the ***hearing officer*** [~~administrative law judge~~] on appeal from, or an award of the board rendered upon an appeal whether or not there is a motion to reopen or review pending under KRS 342.125. The court shall render judgment in accordance therewith and notify the parties. ***The*** [~~Such~~] judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same as though it had been rendered in a suit duly heard and determined by that court. Any such judgment, unappealed from or affirmed on appeal or modified in obedience to the mandate of the Court of Appeals shall be modified to conform to any decision of the ***hearing officer*** [~~administrative law judge~~] ending, diminishing, or increasing any weekly payment under the provisions of KRS 342.125 upon a presentation to it of a certified copy of such decision.

Section 90. KRS 342.310 is amended to read as follows:

If any ***hearing officer***[~~administrative law judge~~], the board, or any court before whom any proceedings are brought under this chapter determines that ***the*** [~~such~~] proceedings have been brought, prosecuted, or defended without reasonable ground, he or it may assess the whole cost of the proceedings which shall include actual expenses but not be limited to the following: court costs, travel expenses, deposition costs, physician expenses for attendance fees at depositions, ***attorney's*** [~~attorney~~] fees, and all other out-of-pocket expenses upon the party who has so brought, prosecuted, or defended them.

Section 91. KRS 342.325 is amended to read as follows:

All questions arising under this chapter, if not settled by agreement of the parties interested therein, with the approval of the ***hearing officer***[~~administrative law judge~~], shall be determined by the ***hearing officer*** [~~administrative law judge~~] except as otherwise provided in this chapter.

Section 92. KRS 342.350 is amended to read as follows:

(1) In order to comply with KRS 342.340, groups of employers may form, either among themselves or with employers in other states, mutual insurance associations, or reciprocal or interinsurance exchanges subject to the insurance laws of this state and ***any*** [~~such~~] reasonable conditions and restrictions not inconsistent therewith [~~as may be~~] fixed by the ***commissioner of the Department of Workers' Compensation Coverage and Compliance***[~~board~~]. Membership in ***these*** [~~such~~] mutual insurance associations or reciprocal or interinsurance exchanges so approved, together with evidence of the payment of premiums due, shall be evidence of compliance with KRS 342.340.

(2) The ***commissioner*** [~~board~~] may, except as provided in subsection (3), require any mutual insurance association or reciprocal or interinsurance exchange to purchase an annuity or to effect reinsurance with a company authorized to transact insurance in this state or to make ***a*** [~~such~~] deposit with a bank or trust company of this state ***that*** [~~as~~] shall in either case be approved by the ***commissioner*** [~~board~~] for the purpose of fully securing the payment of all deferred installments upon any claim for compensation.

(3) Any mutual insurance association or reciprocal or interinsurance exchange possessing a surplus of at least one hundred thousand dollars ($100,000) and not less in amount than the capital required of a domestic stock insurance company transacting the same kind of insurance shall not be required to purchase an annuity or effect reinsurance with a company authorized to transact insurance in this state or to make [~~such~~] a deposit with a bank or trust company of this state for the purpose of fully securing the payment of all deferred installments upon any claim for compensation.

(4) In addition, the ***commissioner***[~~board~~], under ***administrative*** [~~rules and~~] regulations ***that he*** [~~as it~~] shall prescribe, may permit eleven (11) or more employers or two (2) or more city, county, municipal, or urban-county employers or their agencies to enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as self-insurers. Employers securing certification as group self-insurers are regulated by the ***administrative*** [~~rules and~~] regulations drawn by the ***commissioner*** [~~Workers' Compensation Board~~] and are not to be in any way subject to the provisions of subsections (1), (2), and (3) of this section; [~~provided,~~] however, [~~that~~] the Governor may assign the regulatory authority under this subsection to another board or agency pursuant to KRS 12.028.

Section 93. KRS 342.380 is amended to read as follows:

No policy of insurance or rider to be used therewith shall be issued or delivered until a copy of its form has been filed with the commissioner of the Department of ***Workers' Compensation Coverage and Compliance*** [~~Insurance~~] at least thirty (30) days before such issue or delivery, unless before the expiration of thirty (30) days the commissioner has approved the form thereof in writing; nor if the commissioner notifies the company in writing that in his opinion the form of the policy or rider does not comply with the laws of this state, specifying fully the reasons for his opinion. Upon petition of the company, the decision of the commissioner shall be subject to review by the Franklin Circuit Court and to appeal therefrom to the Court of Appeals.

Section 94. KRS 342.382 is amended to read as follows:

(1) Any insurer authorized to write a policy of workers' compensation insurance shall transmit the following information on its workers' compensation experience only to the Department of ***Workers' Compensation Coverage and Compliance*** [~~Insurance~~] and the Workers' Compensation Advisory Council each year, and ***that*** [~~such~~] information shall be certified and reported on a net basis with respect to reinsurance for nationwide experience and direct basis with respect to Kentucky experience:

(a) Direct premiums written;

(b) Direct premiums earned;

(c) Dividends paid or credited to policyholders;

(d) Losses paid;

(e) Allocated loss adjustment expenses;

(f) The ratio of allocated loss adjustment expenses to losses paid;

(g) Unallocated loss adjustment expenses;

(h) The ratio of unallocated loss adjustment expenses to losses paid;

(i) The total of losses paid and unallocated and allocated loss adjustment expenses;

(j) The ratio of losses paid and unallocated and allocated loss adjustment expenses to premiums earned;

(k) The number of claims outstanding as of December 31 of each year;

(l) The total amount of losses unpaid as of December 31 of each year;

(m) The total amount of allocated and unallocated loss adjustment expenses unpaid as of December 31 of each year;

(n) The total of losses paid and allocated loss adjustment expenses and unallocated loss adjustment expenses, plus the total of losses unpaid as of December 31 of each year and loss adjustment expenses unpaid as of December 31 of each year; and

(o) Net investment gain or loss.

(2) (a) The first report of the information required in subsection (1) of this section shall include the information for the year ending December 31, 1987. Such report shall be filed no later than August 1, 1988. Beginning with the report for the period ending December 31, 1989, all future reports shall have all information required by subsection (1) of this section broken down by year for the current and two (2) preceding years.

(b) Within thirty (30) days after March 1, 1989, the Department of ***Workers' Compensation Coverage and Compliance*** [~~Insurance~~] shall commence a review of the rates of all workers' compensation insurers in effect at the time. If, after the review, the department finds on a preliminary basis that the rate may be excessive, inadequate, or unfairly discriminatory, the department shall so notify the insurer. Upon being so notified, the filer shall within sixty (60) days file with the department all information which the filer believes proves the reasonableness, adequacy, and fairness of the rate. In ***these*** [~~such~~] instances, the filer shall carry the burden of proof. In the event the department finds that a rate is excessive, inadequate, or unfairly discriminatory, the department shall order that a new rate schedule be thereafter filed by the filer and shall further specify the manner in which noncompliance shall be corrected.

Section 95. KRS 342.395 is amended to read as follows:

(1) Where an employer is subject to this chapter, then every employee of ***that*** [~~such~~] employer, as a part of his contract of hiring or who may be employed at the time of the acceptance of the provisions of this chapter by ***the*** [~~such~~] employer, shall be deemed to have accepted all the provisions of this chapter and shall be bound thereby unless he shall have filed, prior to the injury or incurrence of occupational disease, written notice to the contrary with the employer; and ***the*** [~~such~~] acceptance shall include all of the provisions of this chapter with respect to traumatic personal injury, silicosis***,*** and any other occupational disease. However, before an employee's written notice of rejection shall be considered effective, the employer ***shall*** [~~must~~] file the employee's notice of rejection with the ***Department of Coverage and Compliance***[~~Workers' Compensation Board~~]. The ***commissioner of that department*** [~~Workers' Compensation Board~~] shall not give effect to any rejection of this chapter not voluntarily made by the employee. If an employee withdraws his rejection, the employer shall notify the ***commissioner***[~~Workers' Compensation Board~~].

(2) Until [~~such~~] notice to the contrary ***as specified in subsection (1) of this section*** is [~~so~~] given to the employer, the measure of liability of ***the*** [~~such~~] employer shall be determined according to the compensation provisions of this chapter. Any [~~such~~] employee, may, without prejudice to any existing right or claim, withdraw his election to reject this chapter by filing with the employer a written notice of withdrawal, stating the date when the withdrawal is to become effective. Following the filing of ***that*** [~~such~~] notice, the status of the party withdrawing shall become the same as if the former election to reject this chapter had not been made, except that withdrawal shall not be effective as to any injury sustained or disease incurred less than one (1) week after the notice is filed.

Section 96. KRS 342.402 is amended to read as follows:

The ***commissioner***[~~Workers' Compensation Board~~], upon showing a certification of noncompliance, may temporarily restrain or temporarily or permanently enjoin the further operation of any employer covered by this chapter. ***The*** [~~Such~~] action shall be brought in Franklin Circuit Court.

Section 97. KRS 342.425 is amended to read as follows:

Upon the request of the ***commissioner***[~~board~~], the Attorney General, or, under his direction, the Commonwealth's attorney or county attorney of any county, shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this chapter arising within his jurisdiction, and shall defend in like manner all actions or proceedings brought against the ***department***[~~board~~], the ***employees*** [~~members~~] thereof***, board members*** or ***hearing officers*** [~~administrative law judges~~] in their official capacity.

Section 98. KRS 342.430 is amended to read as follows:

The ***commissioner*** [~~board~~] shall prepare and furnish, free of charge, blank forms of all notices, claims, reports, proofs***,*** and other blank forms and literature which ***he*** [~~it~~] considers proper and requisite to the efficient administration of this chapter. ***He*** [~~It~~] may authorize the publication and distribution of ***these*** [~~such~~] blanks by employers and their insurers in manner and form provided by ***him***[~~it~~], and shall ***promulgate administrative regulations*** [~~make rules~~] for their distribution so that they may be readily available.

Section 99. KRS 342.435 is amended to read as follows:

Annually on or before the ***fifteenth*** [~~15th~~] day of December***,*** the ***commissioner*** [~~board~~] shall make a report to the Governor for the preceding fiscal year, which shall include a statement of the number of awards made and of claims rejected by the board and each ***hearing officer and*** [~~administrative law judge,~~] a general statement of the causes of accident leading to the injuries for which awards were made or rejected claims based, together with any other information which the ***commissioner*** [~~board~~] deems proper to call to the attention of the Governor, including any recommendations ***he*** [~~it~~] may have to make, and it shall be the duty of the ***commissioner*** [~~board~~] to publish and distribute among employers and employees ***any*** [~~such~~] general information as to the business transacted by the department as may be useful and necessary. The annual report shall not exceed ten thousand (10,000) copies. All printing of the department shall be done by the contractor or contractors for public printing, subject to ***the*** [~~such~~] provisions of the general laws governing public printing [~~as may be~~] applicable thereto.

Section 100. KRS 342.650 is amended to read as follows:

The following employees are exempt from the coverage of this chapter:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two (2) employees each regularly employed forty (40) or more hours a week in ***domestic servant*** [~~such~~] employment.

(2) Any person employed, for not exceeding twenty (20) consecutive work days, to do maintenance, repair, remodeling, or similar work in or about the private home of the employer, or if the employer has no other employees subject to this chapter, in or about the premises where ***that*** [~~such~~] employer carries on his trade, business, or profession.

(3) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(4) Any person for whom a rule of liability for injury or death is provided by the laws of the United States, except those persons covered under Title IV, Public Law 91-173, 91st Congress, commonly referred to as the Black Lung Benefits of the Federal Coal Mine Health and Safety Act of 1969, or as amended.

(5) Any person employed in agriculture.

(6) Any person who would otherwise be covered but who elects not to be covered in accordance with the ***administrative*** [~~rules and~~] regulations promulgated by the ***commissioner***[~~board~~].

(7) Any person participating as a driver or passenger in a voluntary vanpool or carpool program while that person is on the way to or from his place of employment. For the purposes of this subsection, carpool or vanpool means any method by which two (2) or more employees are transported from their residences to their places of employment.

Section 101. KRS 342.660 is amended to read as follows:

(1) An employer who has in his employment any employee exempted under KRS 342.650 may elect to be subject to this chapter. ***This*** [~~Such~~] election on the part of the employer shall be made by the employer securing the payment of compensation to ***these*** [~~such~~] exempted employees in accordance with KRS 342.340. Any employee, otherwise exempted under KRS 342.650, of ***the*** [~~such~~] employer shall be deemed to have elected to come under this chapter, if at the time of the injury for which liability is claimed, ***his*** [~~such~~] employer has in force an election to be subject to this chapter with respect to the employment in which ***the*** [~~such~~] employee was injured and ***the*** [~~such~~] employee has not, either upon entering into employment or within five (5) days after the filing of an election by the employer given to ***his*** [~~such~~] employer and to the ***commissioner*** [~~board~~] notice in writing that he elects not to be subject to this chapter.

(2) ***An*** [~~Such~~] employer ***within the scope of subsection (1) of this section***, within five (5) days after securing the payment of compensation in accordance with KRS 342.340, shall give the ***commissioner*** [~~board~~] written notice of his election to be subject to this chapter. ***The*** [~~Such~~] employer shall post and keep posted on the premises where any employee or employees, otherwise exempted under KRS 342.650, works, printed notices furnished by the ***commissioner*** [~~board~~] stating his acceptance of this chapter. Failure to give the notices required by this paragraph shall not void or impair the employer's election to be subject to or relieve him of any liability under this chapter.

(3) Any employer who has complied with subsection (2) of this section may withdraw his acceptance of this chapter, by filing written notice with the ***commissioner*** [~~board~~] of the withdrawal of his acceptance. ***A*** [~~Such~~] withdrawal shall become effective 60 days after the filing of [~~such~~] notice or on the date of the termination of the security for payment of compensation, whichever last occurs. The withdrawal shall not be effective until the employer shall theretofore post notice of ***the*** [~~such~~] withdrawal where the affected employee or employees work or shall otherwise notify ***the*** [~~such~~] employees of [~~such~~] withdrawal.

Section 102. KRS 342.670 is amended to read as follows:

(1) If an employee, while working outside the territorial limits of this state, suffers an injury on account of which he, or in the event of his death, his dependents, would have been entitled to the benefits provided by this chapter had ***that*** [~~such~~] injury occurred within this state, ***that*** [~~such~~] employee, or in the event of his death resulting from ***that*** [~~such~~] injury, his dependents, shall be entitled to the benefits provided by this chapter, ***if*** [~~provided that~~] at the time of ***the*** [~~such~~] injury:

(a) His employment is principally localized in this state, or

(b) He is working under a contract of hire made in this state in employment not principally localized in any state, or

(c) He is working under a contract of hire made in this state in employment principally localized in another state whose workers' compensation law is not applicable to his employer, or

(d) He is working under a contract of hire made in this state for employment outside the United States and Canada.

(2) The payment or award of benefits under the workers' compensation law of another state, territory, province, or foreign

nation to an employee or his dependents otherwise entitled on account of such injury or death to the benefits of this chapter shall not be a bar to a claim for benefits under this chapter, ***if a*** [~~provided that~~] claim under this chapter is filed within two (2) years after ***that*** [~~such~~] injury or death. If compensation is paid or awarded under this chapter:

(a) The medical and related benefits furnished or paid for by the employer under ***another jurisdiction's*** [~~such other~~] workers' compensation law on account of such injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under this chapter had claim been made solely under this chapter;

(b) The total amount of all income benefits paid or awarded the employee under ***another jurisdiction's*** [~~such other~~] workers' compensation law shall be credited against the total amount of income benefits which would have been due the employee under this chapter, had claim been made solely under this chapter; ***and***

(c) The total amount of death benefits paid or awarded under ***another jurisdiction's*** [~~such other~~] workers' compensation law shall be credited against the total amount of death benefits due under this chapter***.***[~~;~~]

(3) If any employee is entitled to the benefits of this chapter by reason of an injury sustained in this state in employment by an employer who is domiciled in another state and who has not secured the payment of compensation as required by this chapter, the employer or his carrier may file with the ***commissioner*** [~~board~~] a certificate, issued by the commission or agency of ***the*** [~~such~~] other state having jurisdiction over workers' compensation claims, certifying that ***the*** [~~such~~] employer has secured the payment of compensation under the workers' compensation law of ***the*** [~~such~~] other state and that with respect to ***the*** [~~said~~] injury ***the*** [~~such~~] employee is entitled to the benefits provided under ***that*** [~~such~~] law, and that the benefits to which ***the*** [~~such~~] employee or his dependents is entitled are at least as great as those to which he would be entitled if the injury occurred and was processed under Kentucky law, under Kentucky coverage. In ***this*** [~~such~~] event:

(a) The filing of ***the*** [~~such~~] certificate shall constitute an appointment by ***the*** [~~such~~] employer or his carrier of the ***commissioner*** [~~board~~] as his agent for acceptance of the service of process in any proceeding brought by ***the*** [~~such~~] employee or his dependents to enforce his or their rights under this chapter on account of ***the*** [~~such~~] injury;

(b) The ***commissioner*** [~~board~~] shall send to ***the*** [~~such~~] employer or carrier, by certified mail to the address shown on ***the*** [~~such~~] certificate, a true copy of any notice of claim or other process served on the ***commissioner*** [~~board~~] by the employee or his dependents in any proceeding brought to enforce his or their rights under this chapter;

(c) 1. If ***the*** [~~such~~] employer is a qualified self-insurer under the workers' compensation law of ***the*** [~~such~~] other state, ***the*** [~~such~~] employer shall, upon submission of evidence satisfactory to the ***commissioner*** [~~board~~], of his ability to meet his liability to ***the*** [~~such~~] employee under this chapter, be deemed to be a qualified self-insurer under this chapter;

2. If ***the*** [~~such~~] employer's liability under the workers' compensation law of ***the*** [~~such~~] other state is insured, ***the*** [~~such~~] employer's carrier, as to ***the*** [~~such~~] employee or his dependents only, shall be deemed to be an insurer authorized to write insurance under and be subject to this chapter; [~~provided,~~] however, [~~that~~] unless its contract with ***the*** [~~said~~] employer requires it to pay an amount equivalent to the compensation benefits provided by this chapter, its liability for income benefits or medical and related benefits shall not exceed the amounts of ***the*** [~~such~~] benefits for which ***the*** [~~such~~] insurer would have been liable under the workers' compensation law of ***the*** [~~such~~] other state;

(d) If the total amount for which ***the*** [~~such~~] employer's insurance is liable under (c) above is less than the total of the compensation benefits to which ***the*** [~~such~~] employee is entitled under this chapter, the ***commissioner*** [~~board~~] may, if ***he*** [~~it~~] deems it necessary, require the employer to file security, satisfactory to the ***commissioner*** [~~board~~], to secure the payment of benefits due ***the*** [~~such~~] employee or his dependents under this chapter; and

(e) Upon compliance with the preceding requirements of this subsection (3), ***the*** [~~such~~] employer, as to ***the*** [~~such~~] employee only, shall be deemed to have secured the payment of compensation under this chapter.

(4) As used in this section:

(a) "United States" includes only the states of the United States and the District of Columbia;

(b) "State" includes any state of the United States, the District of Columbia, or any province of Canada;

(c) "Carrier" includes any insurance company licensed to write workers' compensation insurance in any state of the United States or any state or provincial fund which insures employers against their liabilities under a workers' compensation law;

(d) A person's employment is principally localized in this or another state when:

1. His employer has a place of business in this or ***the*** [~~such~~] other state and he regularly works at or from ***that*** [~~such~~] place of business, or

2. If subparagraph 1. foregoing is not applicable, he is domiciled and spends a substantial part of his working time in the service of his employer in this or ***the*** [~~such~~] other state;

(e) An employee whose duties require him to travel regularly in the service of his employer in this and one (1) or more other states may, by written agreement with his employer, provide that his employment is principally localized in this or another [~~such~~] state, and, unless ***the*** [~~such~~] other state refuses jurisdiction, ***the*** [~~such~~] agreement shall be given effect under this chapter;

(f) "Workers' compensation law" includes "occupational disease law."

Section 103. KRS 342.710 is amended to read as follows:

(1) One of the primary purposes of this chapter shall be restoration of the injured employee to gainful employment.

(2) The ***commissioner*** [~~board~~] shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities, both private and public. The ***commissioner*** [~~board~~] shall approve as qualified ***those*** [~~such~~] facilities, institutions, and physicians ***that*** [~~as~~] are capable of rendering competent rehabilitation service to seriously injured employees. No facility or institution shall be considered as qualified unless it is specifically equipped to provide rehabilitation services for persons suffering either from some specialized type of disability or general type of disability within the field of occupational injury and is staffed with trained and qualified personnel, and with respect to physical rehabilitation, unless it is supervised by a physician qualified to render ***that*** [~~such~~] service. No physician shall be considered qualified unless he has had the experience and training specified by the ***commissioner*** [~~board~~].

(3) An employee who has suffered an injury covered by this chapter shall be entitled to prompt medical rehabilitation services for whatever period of time is necessary to accomplish physical rehabilitation goals which are feasible, practical, and justifiable. When as a result of the injury he is unable to perform work for which he has previous training or experience, he shall be entitled to [~~such~~] vocational rehabilitation services, including retraining and job placement, [~~as may be~~] reasonably necessary to restore him to suitable employment. In all ***these*** [~~such~~] instances, the ***hearing officer*** [~~administrative law judge~~] shall inquire whether ***the*** [~~such~~] services have been voluntarily offered and accepted. The ***hearing officer*** [~~administrative law judge~~] on his own motion, or upon application of any party or carrier, after affording the parties an opportunity to be heard, may refer the employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render him fit for a remunerative occupation. Upon receipt of ***the*** [~~such~~] report, the ***hearing officer*** [~~administrative law judge~~] may order that the services and treatment recommended in the report, or [~~such~~] other rehabilitation treatment or service ***that*** the ***hearing officer*** [~~administrative law judge~~] may deem necessary, be provided at the expense of the employer or his insurance carrier. Vocational rehabilitation training, treatment, or service shall not extend for a period of more than fifty-two (52) weeks, except in unusual cases when by special order of the ***hearing officer*** [~~administrative law judge~~], after hearing and upon a finding, determined by sound medical evidence which indicates [~~such~~] further rehabilitation is feasible, practical, and justifiable, the period may be extended for additional periods.

(4) Where rehabilitation requires residence at or near the facility or institution, away from the employee's customary residence, ***the*** reasonable ***costs*** [~~cost~~] of his board, lodging, or travel shall be paid for by the employer or his insurance carrier.

(5) Refusal to accept rehabilitation pursuant to an order of ***a hearing officer*** [~~an administrative law judge~~] shall result in a fifty percent (50%) loss of compensation for each week of the period of refusal.

(6) The ***commissioner*** [~~board~~] shall cooperate on a reciprocal basis with the Kentucky Office of Rehabilitation of the Department of Education and the Department of Employment Services of the Kentucky Cabinet for Human Resources. In the event medical treatment, medical rehabilitation services, or vocational rehabilitation services are purchased for an injured employee by the Office of Vocational Rehabilitation or Department for Employment Services following the refusal by the employer or his insurance carrier to provide ***these*** [~~such~~] services, the ***hearing officer***[~~administrative law judge~~], after affording the parties an opportunity to be heard, may order reimbursement of the cost of ***the*** [~~such~~] treatment or services by the employer or his insurance carrier as apportioned in the award.

(7) The ***commissioner*** [~~board~~] shall[~~, by July 1, 1988,~~] promulgate administrative regulations to effectuate the provisions of this section. The administrative regulations shall ensure early intervention; prompt and cost-efficient delivery of rehabilitation services; and vigorous monitoring of qualified rehabilitation providers, facilities, and agencies.

Section 104. KRS 342.715 is amended to read as follows:

Notwithstanding the provisions of KRS 342.730, during the period the employee is eligible for permanent total disability benefits and is actively participating in a vocational or physical rehabilitation program, pursuant to an order of the ***hearing officer*** [~~administrative law judge~~], the employee's benefits shall be calculated by taking eighty percent (80%) of his average weekly wage, but not more than one hundred percent (100%) of the state's average weekly wage, times the percentage of disability as determined in this chapter.

Section 105. KRS 342.720 is amended to read as follows:

If death results from the injury, the employer shall pay the cost of burying in an amount not to exceed four thousand dollars ($4,000) to any person who performed ***the*** [~~such~~] service or incurred the liability for the service, whether or not the employee leaves dependents within the meaning of this chapter. Any such person is hereby authorized to file a petition with the

commissioner ~~[board]~~ for the fixing of the amount of the service and for an order requiring the employer to pay the cost of the service. If death occurs while the employee is away from his usual place of business or residence, the employer shall be liable for the additional reasonable cost of transportation of the body to the employee's place of residence within the Commonwealth of Kentucky.

Section 106. KRS 342.740 is amended to read as follows:

(1) For the purposes of this chapter***,*** the average weekly wage of the state shall be determined by the ***commissioner*** ~~[board]~~ as follows: On or before September 1 of each year, the total wages reported by subject employers under the Kentucky Unemployment Insurance Law for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total number of insured workers reported for the preceding year by twelve (12). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the nearest cent. ***This*** ~~[Such]~~ average weekly wage shall be certified to the ***commissioner*** ~~[board]~~ by the Cabinet for Human Resources in a manner prescribed by the ***commissioner*** ~~[board]~~ by ***administrative*** regulation. The average weekly wage as so determined shall be applicable for the full period during which income or death benefits are payable, when the date of occurrence of injury or of disablement in the case of disease, or of death, falls within the calendar year commencing January 1 following the September 1 determination.

(2) Whenever a change in the average weekly wage of the state is of ***an*** ~~[such]~~ amount that ***increases or decreases*** the minimum weekly income benefits for total disability or death ~~[are increased or decreased]~~ by $1 or more, or the maximum weekly income benefits for total disability or for death ~~[are increased or decreased]~~ by $2 or more***,*** computed in each case and rounded to the nearest dollar, an adjustment in those minimums or maximums which are affected in the requisite amount by the change in the average weekly wage of the state shall be made which will reflect the increase or decrease, but no change in ***these*** ~~[such]~~ limitations shall otherwise be made.

Section 107. KRS 342.780 is amended to read as follows:

A claimant may, in the original application for benefits, or any party may, by motion accompanied by proper allegations while the case is still pending, and the ***hearing officer*** ~~[administrative law judge]~~ shall, upon his own motion at any time before the rendition of the final award, cause the uninsured employers' fund to be made a party to the proceedings if it should appear that the named defendant has failed to secure the payment of compensation as required by KRS 342.340.

Section 108. KRS 342.790 is amended to read as follows:

When an award is made against an employer who***:***

(1) Has not secured payment of compensation by either securing insurance coverage or qualifying as a self-insurer***;***~~[,]~~ and

(2) Has not made a deposit of security, indemnity***,*** or bond acceptable to the ***commissioner*** ~~[board]~~ to secure the payment of compensation liability***;*** and

(3) Has failed to make payment of compensation according to the terms of ***that*** ~~[such]~~ award, the award shall constitute a liquidated claim for damages against ***that*** ~~[such]~~ employer in an amount commuted to a lump sum which will equal the present value of the total sum of the probable future payments discounted at four percent (4%) true discount compounded annually on each payment, which amount is to be ascertained and fixed by the ***commissioner*** ~~[board]~~, and the commissioner shall certify the same to the Attorney General who shall forthwith institute a civil action against ***that*** ~~[such]~~ employer in the name of the uninsured employers' fund for the collection of ***that*** ~~[such]~~ award. In ***that*** ~~[such]~~ action***,*** it shall be sufficient for plaintiff to set forth a copy of the award of the ***hearing officer*** ~~[administrative law judge]~~ relative to ***the*** ~~[such]~~ claim as certified by the commissioner and to state that there is due to plaintiff on ~~[such]~~ account of ***the*** ~~[such]~~ opinion, order***,*** or award of the ***hearing officer*** ~~[administrative law judge]~~ a specified sum which plaintiff claims with interest. A certified copy of ***the*** ~~[such]~~ award in ***the*** ~~[such]~~ claim shall be attached to the complaint and ***shall constitute*** ~~[constitutes]~~ prima facie evidence of the truth of the facts therein contained.

Section 109. KRS 150.170 is amended to read as follows:

(1) Except as provided in the following subsections of this section, and subject to administrative regulations adopted under this chapter, no person, resident or nonresident, shall do any act authorized by any kind of license or permit, or assist in any way any person in doing any act provided for in this chapter with respect to wildlife unless he holds the kind of license or permit, resident or nonresident, that authorizes the act. It shall be the specific purpose of this chapter to prohibit the taking or pursuing of any wildlife, protected or unprotected, or the fishing in any stream or body of water whether public or private, without first procuring the license provided for in KRS 150.175, except to the extent as may be otherwise provided in this section.

(2) A person under sixteen (16) years of age may, without a sport fishing license, take fish by angling, or take minnows by the use of a minnow seine, minnow trap, or dip net.

(3) The resident owner of farmlands, his spouse, or dependent children, shall, without procuring any sport hunting or sport fishing licenses, have the right to take fish or hunt during the open season, except trapping, on the farmlands of which they are bona fide owners. Tenants or their dependent children, residing upon these farmlands, shall have the same privilege.

(4) Residents or nonresidents observing, and participating in any field trial as authorized by the department may observe and

participate without obtaining a hunting license so long as game is not taken.

(5) Any resident who is sixty-five (65) years of age or older may, without any sport hunting or sport fishing licenses, do any act authorized by the licenses, but while so doing he shall carry upon his person an affidavit stating the year of his birth and place of residence.

(6) Any resident serviceman on furlough of more than three (3) days in this state may, without any Kentucky sport hunting or sport fishing licenses, do any act authorized by the licenses, but while so doing he shall carry on his person proper identification and papers showing his furlough status.

(7) Any disabled American veteran who is at least fifty percent (50%) disabled as a result of a service-connected disability who is residing in Kentucky may, without any sport hunting or sport fishing licenses, do any act authorized by the licenses, but while doing so shall carry the card provided for by this subsection in order to be exempt from hunting or fishing license requirements. A disabled veteran shall obtain a copy of his disability rating from the Veterans Administration. He shall forward the copy to the Director of the Division of Law Enforcement of the Department of Fish and Wildlife Resources. The division shall mail a card certifying his disability and exemption from license requirements, and shall retain a copy of the certification.

(8) Any resident who is declared totally and permanently disabled by the Federal Social Security Administration or by the state ***Department of Workers' Claims*** [~~Workers' Compensation Board~~] may, without any sport hunting or sport fishing licenses, do any act authorized by the licenses.

(9) Resident landowners, their spouses, or dependent children who kill or trap on their lands any wildlife causing damage to the lands or any personal property situated thereon shall not be required to have a hunting or trapping license. Tenants or their dependent children residing upon the lands shall also have the same privilege. Upon destruction of any wildlife by the above-specified individuals, the act shall be reported to the department or the resident conservation officer for the proper disposition of the carcass.

(10) If a reciprocal agreement is entered into between the commissioner, with the approval of the commission, and ratified by the General Assembly and the similar authority of Missouri, Tennessee, Virginia, West Virginia, Indiana, Ohio, or Illinois, persons holding a resident or nonresident fishing or a resident or nonresident statewide hunting license issued in these states shall be permitted to perform the acts authorized by the license upon certain contiguous waters and land areas adjacent to the common boundaries of the above-mentioned states and the State of Kentucky. A resident of the State of Kentucky shall purchase a proper Kentucky license to conform with the reciprocal agreement.

Section 110. KRS 164.2842 is amended to read as follows:

(1) The spouse, regardless of age, and any child of a permanently and totally disabled law enforcement officer, firefighter, or volunteer firefighter injured while in active service or in training for active service, who is over the age of seventeen (17) and under the age of twenty-three (23) shall not be required to pay any matriculation or tuition fee upon his admission to any state-supported university, community college, or vocational training institution for a period not in excess of thirty-six (36) months in order to obtain a diploma, nor in excess of the lesser number of months required for a certificate of completion.

(2) For the spouse or child to be entitled to benefits under this section, the disabled law enforcement officer, firefighter, or volunteer firefighter shall be rated permanently and totally disabled for pension purposes or one hundred percent (100%) disabled for compensation purposes by the Kentucky Justice Cabinet, the appropriate city or county law enforcement agency which employed the disabled, the administrative agency for the fire department or fire protection district recognized for funding under KRS 95A.262, or the administrative agency having jurisdiction over any paid firefighters of all counties and cities of all classes, or if deceased, the claim to benefits is to be based on the rating held by the law enforcement officer, firefighter, or volunteer firefighter at the time of death. The parent's or spouse's service and rating shall be evidenced by certification from the records of the Kentucky Justice Cabinet, the appropriate local law enforcement agency, the administrative agency for the fire department or fire protection district recognized for funding under KRS 95A.262, or the administrative agency having jurisdiction over any paid firefighters of all counties and cities of all classes.

(3) In the absence of certification of permanent and total disability by the Kentucky ***Department of Workers' Claims*** [~~Workers' Compensation Board~~], the Kentucky Justice Cabinet, the appropriate local law enforcement agency, the administrative agency for the fire department or fire protection district recognized for funding under KRS 95A.262, or the administrative agency having jurisdiction over any paid firefighters of all counties and cities of all classes, medical evidence showing permanent and total disability or the existence of permanent and total disability for a period of at least thirty (30) days immediately prior to death may be accepted, if this evidence is signed by a physician licensed to practice or an official of an accredited medical hospital.

(4) The parent-child relationship shall be shown by birth certificate, legal adoption papers, or other documentary evidence. The spousal relationship shall be shown by a marriage certificate or other documentary evidence.

(5) To entitle a spouse or child to benefits under this section the disabled law enforcement officer, firefighter, or volunteer firefighter shall have been a resident of the Commonwealth of Kentucky upon becoming a law enforcement officer, firefighter, or volunteer firefighter.

(6) The marriage of an eligible child shall not serve to deny full entitlement to the benefits provided in this section.

Section 111. KRS 164.515 is amended to read as follows:

(1) The spouse, regardless of age, and any child or orphan of a permanently and totally disabled member of the Kentucky National Guard injured while on state active duty, active duty for training, or inactive duty training, a permanently and totally disabled war veteran or prisoner of war or member of the Armed Services declared missing in action, who is over the age of seventeen (17) and under the age of twenty-three (23) shall not be required to pay any matriculation or tuition fee upon his admission to any state supported institution of higher education or to any state supported vocational training school for a period not in excess of thirty-six (36) months in order to obtain a diploma, nor in excess of the lesser number of months required for a certificate of completion.

(2) To be entitled to benefits under this section the parent of the child claiming benefits if living must be rated permanently and totally disabled for pension purposes or one hundred percent (100%) disabled for compensation purposes by the United States Veterans' Administration or the Department of Defense or if deceased the claim to benefits is to be based on the rating held by the veteran at the time of death or if a prisoner of war or missing in action, must have been declared as such by the Department of Defense. Members of the Kentucky National Guard must be rated permanently and totally disabled as provided in KRS Chapter 342. The parent's or spouse's service and rating must be evidenced by certification from the records of the Kentucky Department of Military Affairs, Veterans' Administration Records, or the Department of Defense of the United States.

(3) In the absence of certification of permanent and total disability by the Kentucky ***Department of Workers' Claims*** ~~[Workers' Compensation board]~~, the United States Veterans' Administration or the Department of Defense, medical evidence showing permanent and total disability or the existence of permanent and total disability for a period of at least thirty (30) days immediately prior to death may be accepted, if this evidence is signed by a physician licensed to practice or an official of an accredited medical hospital.

(4) The parent-child relationship must be shown by birth certificate, legal adoption papers or other documentary evidence. The spousal relationship must be shown by a marriage certificate or other documentary evidence.

(5) To entitle a spouse, child or orphan to benefit under this section the disabled member of the National Guard or war veteran living or deceased must have served on state active duty, active duty for training, or inactive duty training with the National Guard or during time of war or the Korean conflict or subsequent periods of federally recognized hostilities or have been disabled by hostile fire in the Armed Forces of the United States, and his discharge therefrom must have been under honorable conditions. He must be a resident or if deceased, was a resident of the Commonwealth of Kentucky.

(6) No provision of this section shall serve to deny these benefits to an eligible spouse, child, or orphan, who enlists, or who fulfills a military obligation, in the Armed Forces of the United States and is discharged therefrom under honorable conditions; such period of time spent in the military service to be compensated by like time, beyond the age of twenty-three (23) years if required, but not in excess of the period of enrollment as set forth in subsection (1) of this section.

(7) The marriage of an eligible child, or orphan, shall not serve to deny full entitlement to the benefits provided in this section.

PART 17

REPEALS

Section 112. The following KRS sections are repealed:

342.1202 Apportionment of award for income benefits for permanent disability based on pre-existing disease or pre-existing condition of the back or the heart.

342.121 Reference of medical questions in subsequent injury or occupational disease cases to physician -- Report -- Fees and expenses -- Decision of administrative law judge.

342.315 Appointment of physicians to examine employee -- Compensation and expenses of examination.

342.495 Kentucky Employee's Insurance Association created -- Attached to Labor Cabinet for administrative purposes.

342.500 Board of directors -- Selection -- Term.

342.505 Board officers elected annually.

342.510 Quorum of board -- Vacancies.

342.515 Representation of subscribers.

342.520 Subscriptions required to issue first policy.

342.525 Procedure required before first policy issued.

342.530 Board to group subscribers -- Amount of premiums.

342.535 Association to fix contingent liability -- Limit.

342.540 Assessments.

342.545 Dividends -- All funds available for contingent liability.

342.550 Commissioner of insurance to approve premiums, etc.
342.555 Board to make safety regulations -- Inspections -- Review of regulation.
342.765 Administration of fund -- Transfer of reimbursement funds -- Monthly reports.

PART 18
NONCODIFIED SECTIONS/TRANSITION SCHEDULE AND EFFECTIVE DATES

Section 113. (1) On the effective date of this Act, the existing administrative law judges shall be renamed as hearing officers for purposes of this chapter.

(2) The existing hearing officers under KRS Chapter 342 shall continue in office for the remainder of their current terms. It is not the intent of the General Assembly to replace the hearing officers on October 1, 1994, even though the authority for hiring and training the hearing officers will transfer to the commissioner of the Department on that date. The intent of the General Assembly is that the commissioner will assume responsibility for hiring the hearing officers as their positions or their terms expire after October 1, 1994. However, it is also the intent of the General Assembly that the commissioner assume responsibility for training and supervising the hearing officers on October 1, 1994.

Section 114. (1) Whereas the definitions of premium in Section 1 of this Act apply to deductible insurance policies in effect on December 31, 1993, subsections (25) and (26) of Section 1 of this Act shall be effective retroactively to December 31, 1993.

(2) Whereas the provisions of Section 33 relate to refunds of assessments for workers' compensation and the refund triggering date is January 1, 1994, Section 33 shall be effective retroactively to that date.

Section 115. (1) Whereas 803 KAR 25:095 and 803 KAR 25:096, in accordance with KRS Chapter 13A, will expire upon adjournment of the 1994 General Assembly unless they are codified in the Kentucky Revised Statutes, an emergency is declared and the following sections of this Act shall become effective upon the Act's passage and approval by the Governor: Section 16; Subsection (6) of Section 19; Section 20; and Section 21.

The Committee Amendment No. 1 to **HB 470** is as follows:

On page 14, line 10, by bracketing and striking through the word "board" and by inserting in lieu thereof the word "***commissioner***"; and

On page 37, line 14, by deleting the new language "***By December 1, 1994***"; and, on line 15, removing the closing bracket from "1988" and by striking through the word "and" and placing a closing bracket after the word "and"; and on line 15, by bracketing and striking through the word "thereafter"; and

On page 39, line 14, by deleting "***On October 1, 1994, and thereafter***" and inserting in lieu thereof "***Periodically, or***"; and

On page 52, line 11, by inserting "***ten***" after the word "hundred" and by bracketing and striking through "100%" and inserting in lieu thereof "***110%***"; on line 22, by inserting the word "***ten***" after "hundred"; and on line 23 by bracketing and striking through "100%" and by inserting in lieu thereof "***110%***"; and

On page 65, line 21, by bracketing and striking through "board" and by inserting in lieu thereof "***commissioner***"; and

On page 70, line 21, by bracketing and striking through "(c)" and by inserting in lieu thereof "***(b)***"; and

On page 81, line 10, by deleting "***57***" and by inserting in lieu thereof "***59***"; and

On page 94, line 22, by deleting "***Any***" and by inserting in lieu thereof "***The Kentucky Workers' Compensation Insurance Plan (KWCIP), a***" and by deleting the "***,***" after "***mechanism***"; and, on line 23, by deleting "***on the effective date of this section***"; and

On page 98, line 8, between the words "***a rate***" by inserting "***workers' compensation***"; and

On page 115, line 22, after "***employer***" by inserting "***or the insurance carrier***"; and

On page 117, after line 26, by adding the following Section 83 and by renumbering the remaining sections accordingly:

"Section 83. KRS 342.245 is amended to read as follows:

All proceedings of the board and the ***hearing officers***[~~administrative law judges~~] shall be recorded in books kept for that purpose by the commissioner, which shall constitute a public record and shall contain an entry of each case, claim or proceeding considered, heard or passed upon by each ***hearing officer*** [~~administrative law judge~~] and the board, with the award, finding or decisions made thereon."; and

On page 122, line 12, by bracketing and striking through "Within thirty (30) days from final submission" and by inserting in lieu thereof "***Within the time limits required in KRS 342.215***"; and

On page 139, line 14, by bracketing and striking through "certify the same to the Attorney General who shall forthwith"; and

On page 146, by deleting lines 15 through 23 ; and

On page 146, line 25, after "on" by inserting "and after".

Representative Lindsay moved that the rules be suspended to introduce guests. Agreed.

Floor Amendments

Floor Amendment No. 1 to **HB 427**, by Representative Cave:

On Page 4, line 17, by deleting "***The excess capital and surplus over***" and inserting in lieu thereof "***An amount equal to the insurer's capital and surplus which exceeds***".

Representative Noland moved that the rules be suspended to introduce guests. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 2 to the Committee Substitute to **HB 204**, by Representative Geveden:

On page 1, line 8, following " ***has been***" to add "***adjudicated guilty of an offense specified in this subsection or***" and

On page 1, line 12 following "***has been***" to add "***adjudicated guilty of an offense specified in this subsection or***" and

On page 1, line 17, following "***subject to***" to add "***a juvenile proceeding for an offense specified in this subsection or to***" and

On page 2, line 13 to delete "***(1)***" and to insert in lieu thereof "***(4)***" and

On page 3, line 4, following "***public***" to add "***or private***" and

On page 3, line 19, following "***public***" to add "***or private***" and

On page 4, line 1, following "***public***" to add "***or private***" and

On page 5, line 2 following "***public***" to add "***or private***" and

On page 6, line 2, following "***public***" to add "***or private***" and

On page 7, line 11, following "***public***" to add "***or private***".

Representative Richards moved that the rules be suspended to introduce guests. Agreed.

Representative Curd moved that the rules be suspended to introduce guests. Agreed.

Representative Turner moved that the rules be suspended to introduce guests. Agreed.

Representative Fox moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Fox moved the adoption of the following **Legislative Citation No. 69**. Agreed.

The House of Representatives of the Commonwealth of Kentucky commends the graduates in the adult P. A. C. E. Program for foresight and vision in reaching for academic stars for her children. For inasmuch as education is the key to future successes said recipient is wise indeed to quest for knowledge and aspires to lofty academic goals. The House of Representatives joins with Representative Rick Fox in commending you for your accomplishment and wishes you every success in the future. Given this 17th day of February, 1994.

Representative Graham moved that the rules be suspended to introduce guests. Agreed.

Representative Barrows moved that the rules be suspended to introduce guests. Agreed.

Representative Scorsone moved that the rules be suspended to introduce guests. Agreed.

Representative Callahan moved that the rules be suspended to introduce guests. Agreed.

Representative Bryant moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Bryant moved the adoption of the following **Legislative Citation No. 70**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its congratulations to the 1994 Graduates of the Corbin Area Vocational Education Center for having the stamina to carry through an educational goal. Obtaining your diploma is a great milestone of academic achievement and shows your determination as students. The House of Representatives joins with Representative Jo Elizabeth Bryant in commending you for your accomplishment and wishes you every success in the future. Given this 17th day of February 1994.

Representative Bondurant moved that the rules be suspended to introduce a guest. Agreed.

Representative Geveden moved that the rules be suspended to introduce a guest. Agreed.

Calendar

HB 401, HB 466, HB 504, HB 505, HB 508, HB 532, HCR 47, HB 187, HB 312, HB 458, SB 2, SB 12, SB 15, SB 24, SB 50, SB 62, HB 421, HB 500, HB 420, HB 483 and **HB 511** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Consent Calendar

HB 512 taken from the Consent Calendar and ordered read at length for the second time. Representative Stumbo moved that it be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Floor Amendments (Continued)

Floor Amendment No. 1 to the Committee Substitute to **HB 511**, by Representative Lear:

On page 2, line 3, after "and" by inserting "*two (2)*", and by bracketing and striking through "three (3)";

On page 2, lines 25 and 26, by deleting "*(11)*" and by bracketing and striking through the remainder of line 25 and line 26.

Orders of the Day

HB 180, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Morris moved the adoption of Committee Amendment No. 1 to **HB 180**. Agreed.

Representative Morris moved that **HB 180**, as amended, be passed.

On the roll call the vote was: Yeas 95, Nays 0. (See February 17, 1994 roll call on **HB 180** - Appendix)

HB 180, as amended, was passed and the title agreed to.

Representative Morris moved that the vote by which **HB 180**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

SB 91, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Richards moved the adoption of Committee Amendment No. 1 to **SB 91**. Agreed.

Representative Richards moved that **SB 91**, as amended, be passed.

On the roll call the vote was: Yeas 96, Nays 0. (See February 17, 1994 roll call on **SB 91** - Appendix)

SB 91, as amended, was passed and the title agreed to.

Representative Richards moved that the vote by which **SB 91**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

SB 120 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Northup moved that **SB 120** be passed.

On the roll call the vote was: Yeas 95, Nays 0. (See February 17 , 1994 roll call on **SB 120** - Appendix)

SB 120 was passed and the title agreed to.

Representative Northup moved that the vote by which **SB 120** was passed be reconsidered and said motion be placed on

the table. Agreed.

HB 272 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bowling moved that **HB 272** be passed.

On the roll call the vote was: Yeas 92, Nays 1. (See February 17 , 1994 roll call on **HB 272** - Appendix)

HB 272 was passed and the title agreed to.

Representative Bowling moved that the vote by which **HB 272** was passed be reconsidered and said motion be placed on the table. Agreed.

Report On Enrolled Bills

The Committee on Enrollment reported that **HJR 13** has been examined and found correctly enrolled. Said Bill was read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -2:29 p.m.)

HJR 13 delivered to the Senate and signed by the President. Delivered to the Governor on February 17, 1994 at 2:40 p.m.

Orders of the Day (Continued)

SB 60 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Morris moved that **SB 60** be passed.

On the roll call the vote was: Yeas 97, Nays 0. (See February 17 , 1994 roll call on **SB 60** - Appendix)

SB 60 was passed and the title agreed to.

Representative Morris moved that the vote by which **SB 60** was passed be reconsidered and said motion be placed on the table. Agreed.

SB 27, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Scorsone moved the adoption of Committee Amendment No. 1 to **SB 27**. Agreed.

Representative Scorsone moved that **SB 27**, as amended, be passed.

On the roll call the vote was: Yeas 96, Nays 0. (See February 17, 1994 roll call on **SB 27** - Appendix)

SB 27, as amended, was passed and the title agreed to.

Representative Stumbo moved that the vote by which **SB 27**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 127, with Committee Substitutes attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Coleman moved the adoption of the Committee Substitute No. 2 to **HB 127**. Agreed.

Representative Coleman moved that **HB 127**, by way of Committee Substitute No. 2, be passed.

On the roll call the vote was: Yeas 96, Nays 0. (See February 17, 1994 roll call on **HB 127** - Appendix)

HB 127, by way of Committee Substitute No. 2, was passed and the title agreed to.

Representative Coleman moved that the vote by which **HB 127**, by way of Committee Substitute No. 2, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 50, with Senate Committee Amendment and Senate Floor Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Committee Amendment No. 2 to **HB 50** is as follows:

On page 2, line 5, after the word "***boards***" delete "***shall***", and insert in lieu thereof "***may***".

The Senate Floor Amendment No. 3 to **HB 50** is as follows:

On page 2, line 3, beginning after "***shall***", by changing "***develop written procedures to assure that all vacant classified employee positions are advertised to the public***" to "***maintain a registry of all vacant classified employee positions that is available for public inspection in a location determined by the superintendent and make copies available at cost to interested parties***".

Representative Scorsone moved that the House concur in Senate Committee Amendment No. 2 to **HB 50**. Agreed.

Representative Scorsone moved that the House concur in Senate Floor Amendment No. 3 to **HB 50**. Agreed.

Representative Scorsone moved that **HB 50**, as amended by the Senate, be passed.

On the roll call the vote was: Yeas 95, Nays 0. (See February 17, 1994 roll call on **HB 50** - Appendix)

HB 50, as amended by the Senate, was passed and the title agreed to.

HJR 26 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Coleman moved that **HJR 26** be adopted.

On the roll call the vote was: Yeas 96, Nays 0. (See February 17 , 1994 roll call on **HJR 26** - Appendix)

HJR 26 was adopted.

Representative Coleman moved that the vote by which **HJR 26** was adopted be reconsidered and said motion be placed on the table. Agreed.

HR 46 taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HR 46** be adopted.

HR 46, A RESOLUTION amending the Rules of the House of Representatives, relating to analysis of bills.

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. That House Rule 52 is amended to read as follows:

Rule 52. **Fiscal Statement** ~~**[Required]**~~. A sponsor of a bill which, if enacted, would affect the revenues or expenditures of state government generally, may at any time by request cause the staff of the Legislative Research Commission to analyze and prepare a fiscal statement for the measure. The staff of the Legislative Research Commission shall analyze and prepare a fiscal statement for any bill which, if enacted, would fiscally affect local governments through the imposition of a local mandate; or fiscally affect state or local corrections services in a significant manner, including any bill which would modify or create a criminal penalty or otherwise affect the population of a correctional system or facility. ***Any member proposing an amendment which relates to fiscal matters herein described may cause a fiscal statement to be prepared. A fiscal statement shall be considered a public document upon introduction of the bill or amendment for which it was prepared.*** The chairman of the committee to which a bill has been referred may require that a fiscal statement be attached to the bill prior to posting. The chairman or a majority of the committee to which a bill has been referred may require that a fiscal statement be attached to the bill***, or amendment thereof,*** prior to final committee action. ~~[No measure for which the preparation of a fiscal statement has been requested or is required pursuant to this rule shall be placed in the Orders of the Day until the fiscal statement is attached.]~~ Members may require, by majority vote, that a fiscal statement be ***attached to***~~[prepared for]~~ any bill ***or amendment*** on the Orders of the Day ***relating to fiscal matters herein described***~~[not otherwise requiring preparation of a fiscal statement]~~. In such instance, the fiscal statement shall be attached to the bill***, or amendment thereof,*** prior to final consideration ***of the bill*** on the floor of the House. ~~[Any member proposing an amendment from the floor which relates to fiscal matters herein described shall cause a fiscal statement to be prepared and attached to the amendment. Until the time the fiscal statement is prepared and attached to the amendment, action on the bill to be amended along with the proposed amendment shall be passed over in the Orders of the Day but retained in the Orders of the Day. The requirement for a fiscal statement may be waived by a vote of a majority of the members elected to the House.]~~

Section 2. That House Rule 53 is amended to read as follows:

Rule 53. **Analysis of Administrative Regulation Promulgation Authority.** ***The sponsor of a bill which contains the authority for any agency, board, or political subdivision of state government to promulgate administrative regulations may at any time by request cause the staff of the Legislative Research Commission to prepare an analysis of such administrative regulation promulgation authority. The analysis shall include a summary of the measure, identification of governmental entities authorized to promulgate administrative regulations, and identification of subject matter for which***

administrative regulations may be promulgated. Any member proposing an amendment which relates to administrative regulation promulgation authority herein described may cause such an analysis to be prepared. An analysis shall be considered a public document upon introduction of the bill or amendment for which it was prepared. The chairman of the committee to which a bill has been referred may require that the analysis be attached to the bill prior to posting. The chairman or a majority of the committee to which a bill has been referred may require that the analysis be attached to the bill, or amendment thereof, prior to final committee action. Members may require, by majority vote, that an analysis be attached to any bill or amendment on the Orders of the Day relating to administrative regulation promulgation authority herein described. In such instance, the analysis shall be attached to the bill, or amendment thereof, prior to final consideration of the bill on the floor of the House. [~~**Proposed Administrative Regulations.** (1) Before committee consideration of any bill originating in the House, which contains the authority for any agency, board or political subdivision of state government to promulgate regulations, the bill shall have attached a copy of a statement of legislative intent for the bill, including a summary of guidelines to be followed in preparing regulations pursuant to the bill.~~

~~Every committee shall have the exclusive right to determine whether the summary submitted meets the requirements of this rule. The committee may waive the provisions of this rule by majority vote, and shall acknowledge on its committee report the receipt of and consideration of the matters submitted with the bill pursuant to this rule.~~

~~The purpose of the requirements of this rule is to inform the House of the general scope of the regulations authorized by the bill and to provide a permanent record of legislative intent; and pursuant thereto, when any bill subject to the provisions of this rule becomes law the Director of the Legislative Research Commission shall cause to be filed with the Administrative Regulation Review Subcommittee of the Legislative Research Commission the summary of the regulations submitted with the bill to be used by the Administrative Regulation Review Subcommittee when reviewing regulations promulgated pursuant to the bill. The Administrative Regulation Review Subcommittee shall use the material submitted with the bill to determine legislative intent.~~

~~Nothing contained in this rule shall preclude the promulgation of regulations differing from those filed or summarized and submitted with the bill.~~

~~(2) This amendment of the Rules of the House of Representatives shall apply only to bills introduced after February 5, 1980.~~]

Section 3. That House Rule 54 is amended to read as follows:

Rule 54. **Retention of Administrative Regulation Promulgation Authority Analyses.** ***The Director of the Legislative Research Commission shall cause analyses prepared pursuant to Rule 53 to be filed for informational purposes with the Administrative Regulations Compiler of the Legislative Research Commission.*** [~~**Rejected Administrative Regulations.** When an administrative regulation has been referred by the Clerk to a standing committee of the House, the committee shall review the regulation and take such action as it deems appropriate. If the committee recommends rejection it must set forth in its report the reasons for its rejection which shall be for either of the following reasons, or both: (1) The administrative regulation does not conform to statutory authority. (2) It does not carry out legislative intent.~~

~~Unless the House and Senate committees both recommend rejection of the regulation in their committee reports and the committee reports are thereafter adopted by at least two fifths of the members elected to each house, and a majority of the members voting, the regulation shall become effective.~~

~~When a House committee report recommending rejection has been adopted by the House as set forth above, the House Clerk shall so notify the Clerk of the Senate.~~

~~If both the Senate and the House have approved committee reports recommending rejection of a regulation, a report to that effect shall be signed by both clerks and sent to the promulgating agency and the regulations compiler. A copy of this report shall be on file in the office of the Clerk of the Senate and in the office of the Clerk of the House.~~

~~Proposed regulations that have been properly laid before the General Assembly shall become effective upon sine die adjournment of the General Assembly unless the General Assembly in regular session shall disapprove the proposed regulation.~~]

HR 46 was adopted by voice vote.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 598, by Representative Adkins: AN ACT relating to the state police.

HB 599, by Representative Riggs: AN ACT relating to insurance.

HB 600, by Representative Ridley: AN ACT relating to boards of county health departments.

HB 601, by Representative Treesh: AN ACT relating to crimes and punishments.

HB 602, by Representatives Treesh and Callahan: AN ACT relating to crimes and punishments.

HB 603, by Representative Marzian: AN ACT relating to firearms control.

HB 604, by Representatives Callahan, Johnson and Damron: AN ACT relating to taxation.

HB 605, by Representatives Mason and Bentley: AN ACT relating to workers' compensation.

HB 606, by Representative Ackerson: AN ACT relating to all-terrain vehicles.

HB 607, by Representative Lewis: AN ACT relating to descent.

HB 608, by Representative Johnson: AN ACT relating to civil actions.

HB 609, by Representative Johnson: AN ACT relating to crimes and punishments.

HB 610, by Representative Johnson: AN ACT relating to crimes and punishments.

HB 611, by Representative Johnson: AN ACT relating to credit cards.

HB 612, by Representative Johnson: AN ACT relating to civil actions.

HB 613, by Representative R. Smith: AN ACT relating to utility and underground facility damage prevention.

HB 614, by Representative Lewis: AN ACT relating to a decedent's property.

HB 615, by Representative Lewis: AN ACT relating to simultaneous death.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Tourism Development and Energy: **HB 567**

Economic Development: **HB 561**

Judiciary: **HB 444, HB 472**

Banking and Insurance: **HB 551, HB 547, HB 548, HB 510, HB 562**

Report of Committees (Continued)

The Committee on State Government reported **HB 264, HB 265,** with Committee Substitute attached thereto, **HB 266, HB 267, HB 268, HB 334,** with Committee Substitute and Committee Amendment attached thereto, **HB 355,** with Committee Substitute attached thereto, **HCR 24, HCR 25, HCR 34, HCR 35, HCR 38, HCR 39, HCR 40, SCR 44, SB 61** and **HB 57,** with Committee Amendments attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 264, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 42.023 is amended to read as follows:

(1) The Department of Administration of the cabinet established by KRS 42.014 shall be generally responsible for such functions and duties as the secretary may assign relating, but not limited to state accounting, accounts control, fiscal reporting, development and coordination of fiscal processes, preauditing of expenditures, supervision of purchasing and store keeping, control of stores, control of personal property and disposition of surplus personal property, printing and reproductions, state forms, postal services, technical assistance and advice to state agencies, and accounting, technical and economic assistance to local governments.

(2) There shall be established in the Department of Administration a Division of Accounts, a Division of Purchases, a Division of Printing, ~~[and]~~ a Division of Occupations and Professions, ***and a Division of Postal Services,*** each of which shall be headed by a director appointed by the commissioner, subject to the approval of the Governor, and who shall be responsible to the commissioner. There may be, if needed, sections assigned to specific areas of work, responsible directly to the commissioner for administration.

Section 2. KRS 42.025 is amended to read as follows:

(1) The Division of Printing shall be responsible for the printing and duplicating needs of state agencies, as provided by KRS Chapters 45A and 57. The division shall include printing consultants to advise and assist state agencies in advance planning on an annual basis of their printing needs and a forms control unit to review the requirements of state agencies for various kinds of forms and to advise and assist state agencies in forms control, development and revisions.

(2) The Division of County and Municipal Accounting shall be responsible for assisting both county and municipal governments in their financial administration and for providing state revenue sharing funds to these local governments. The division's responsibilities shall include but not be limited to the state local finance office (KRS 42.170), county fee systems, municipal technical assistance (KRS 91A.050), the local government economic assistance fund (KRS 42.450) and the county and municipal road aid fund (KRS 177.369 and 179.410).

(3) The Division of Postal Services shall operate the centralized postal services for executive branch agencies as set forth in KRS 12.020. The division shall operate at a central location with additional locations necessary to maintain and improve service levels.

Section 3. The General Assembly confirms Executive Order 93-1141 transferring all postal services duties and functions within the Transportation Cabinet and the Cabinet for Human Resources to the new Division of Postal Services in the Department for Administrative Services.

Section 4. The General Assembly confirms Executive Order 93-1141 dated November 23, 1993, to the extent that it is not otherwise confirmed by this Act.

HB 265, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 194.030 is amended to read as follows:

The Cabinet for Human Resources shall consist of the following major organizational units which are hereby created:

(1) Office of the Secretary;

(2) The Office for Policy and Budget. The Office for Policy and Budget shall provide the secretary with professional support in planning, budgeting, and policy analysis, including the appraisal of needs, the formulation of policy, and the evaluation of programs. The Office for Policy and Budget shall be headed by an administrator who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;

(3) [~~The Office of the Counsel. The Office of the Counsel shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of the Counsel shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of the Counsel shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be directly responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general in accordance with the provisions of KRS 15.105;~~

~~(4)~~] The Office of the Ombudsman. The Office of the Ombudsman shall provide a review of citizen complaints on services of the Cabinet for Human Resources when such complaints cannot be resolved through normal administrative remedies. The Office of the Ombudsman shall be headed by an ombudsman who shall be appointed by the Governor with the advice of the secretary. The ombudsman shall be directly responsible to the secretary;

(4)[~~(5)~~] The Office of Administrative Services. The Office of Administrative Services shall be responsible for providing administrative support services within the Cabinet for Human Resources. All fiscal, facility, and information management functions of the cabinet shall be vested in the Office of Administrative Services. The Office of Administrative Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The executive director shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director shall exercise authority over the Office of Administrative Services under the direction of the secretary and shall [~~only~~] fulfill ***the*** [~~such~~] responsibilities [~~as~~] delegated by the secretary;

(5) The Department of Law. The Department of Law shall provide legal support, advice, and assistance to the cabinet. The Department of Law shall be headed by a commissioner of law who shall also serve as general counsel to the Office of the Secretary. The commissioner of Law shall be an attorney in good standing, licensed to practice law in the Commonwealth, and shall report and be accountable to the secretary. The Department of Law shall be organized to include a Division of Administrative Law, a Division of Litigation, and a Division of Collections.

(6) The Department for Social Insurance. The Department for Social Insurance shall develop and operate programs of the cabinet that provide income maintenance or income supplementation services and social insurance benefit programs not assigned to another department. The Department for Social Insurance shall also be responsible for all eligibility

determination and certification functions associated with these programs. The Department for Social Insurance shall be headed by a commissioner for social insurance who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for social insurance shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for social insurance shall exercise authority over the Department for Social Insurance under the direction of the secretary and shall [~~only~~] fulfill ***the*** [~~such~~] responsibilities [~~as~~] delegated by the secretary;

(7) The Department for Medicaid Services. The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the federal Social Security Act. The Department for Medicaid Services shall be headed by a commissioner for medicaid services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for medicaid services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for medicaid services shall exercise authority over the Department for Medicaid Services under the direction of the secretary and shall [~~only~~] fulfill ***the*** [~~such~~] responsibilities [~~as~~] delegated by the secretary;

(8) The Department for Health Services. The Department for Health Services shall develop and operate all programs of the cabinet that provide health services and all programs for the prevention, detection, care, and treatment of physical disability, illness, and disease. The Department for Health Services shall be headed by a commissioner for health services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for health services shall be a duly licensed physician who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner shall advise the head of each major organizational unit enumerated in this section on policies, plans, and programs relating to all matters of public health, including any actions necessary to safeguard the health of the citizens of the Commonwealth. The commissioner shall serve as chief medical officer of the Commonwealth. The commissioner for health services shall exercise authority over the Department for Health Services under the direction of the secretary and shall [~~only~~] fulfill ***the*** [~~such~~] responsibilities [~~as~~] delegated by the secretary;

(9) The Department for Mental Health and Mental Retardation Services. The Department for Mental Health and Mental Retardation Services shall provide services for all programs for the prevention, detection, and treatment of mental disability, illness, and disease and administer all programs for the assistance of community treatment and prevention of such disability, illness, and disease. The Department for Mental Health and Mental Retardation Services shall be headed by a commissioner for mental health and mental retardation who shall be appointed by the secretary for human resources with the approval of the Governor in accordance with KRS 12.050. The commissioner for mental health and mental retardation shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for mental health and mental retardation shall exercise authority over the department under the direction of the secretary for human resources and shall [~~only~~] fulfill ***the*** [~~such~~] responsibilities [~~as~~] delegated by the secretary;

(10) The Department for Social Services. The Department for Social Services shall develop and operate all social service programs of the cabinet. The Department for Social Services shall be headed by a commissioner for social services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for social services shall be a person who by education, professional qualification, training, and experience in the administration and management of social service programs is qualified to perform the duties of this office. The commissioner for social services shall exercise authority over the Department for Social Services under the direction of the secretary and shall [~~only~~] fulfill ***the*** [~~such~~] responsibilities [~~as~~] delegated by the secretary;

(11) The Department for Employment Services. The Department for Employment Services shall develop and operate all employment development and placement programs including all job recruitment and business liaison functions, employability development and training programs, and all job counseling and job placement programs of the cabinet. In addition, the department shall develop and operate all programs relating to unemployment insurance laws of the Commonwealth including responsibilities relating to hearing and judging unemployment insurance benefit appeals. The Department for Employment Services shall be headed by a commissioner for employment services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for employment services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for employment services shall exercise authority over the Department for Employment Services under the direction of the secretary and shall fulfill ***the*** [~~only such~~] responsibilities [~~as~~] delegated by the secretary;

(12) The Office of the Inspector General. The Office of the Inspector General shall be responsible for:

(a) The conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and the conduct of special investigations requested by the secretary, commissioners, or office heads of the Cabinet for Human Resources into matters related to the cabinet or its programs;

(b) Licensing and regulatory functions as the secretary may delegate;

(c) Review of health facilities participating in transplant programs, as determined by the secretary, for the purpose of determining any violations of KRS 311.165 to 311.247; and

(d) The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority.

The Office of the Inspector General shall be headed by an inspector general who shall be appointed by the secretary with the approval of the Governor. The inspector general shall be directly responsible to the secretary;

(13) The Commission for Handicapped Children. The duties, responsibilities, and authority set out in KRS 200.460 to 200.490 shall be performed by the commission. The commission shall advocate the rights of handicapped children, and, to the extent that funds are available, shall provide ***those*** [~~such~~] services and facilities for handicapped children [~~as are~~] deemed appropriate by the commission. The commission shall be composed of seven (7) members appointed by the Governor to serve a term of office of four (4) years. The commission may promulgate [~~such~~] administrative regulations, pursuant to KRS Chapter 13A [~~as may be~~] necessary to implement and administer its responsibilities. The duties, responsibilities, and authority of the commission for handicapped children shall be performed through the Office of the Executive Director of the Commission. The executive director shall be appointed by the Governor pursuant to KRS 12.040, and the commission may at any time recommend the removal of the executive director upon filing with the Governor a full written statement of its reasons for [~~such~~] removal. The executive director shall report directly to the Commission for Handicapped Children and serve as the commission's secretary; and

(14) The Commission for Health Economics Control in Kentucky. The duties, responsibilities, and authority pertaining to the certificate of need functions and the licensure appeal functions, as set out in KRS 216B.010 to 216B.990, shall be performed by the commission. The commission may promulgate administrative regulations pursuant to KRS Chapter 13A necessary to implement and administer its responsibilities.

Section 2. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of such department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:
    1. The Governor.
    2. Lieutenant Governor.
    3. Department of State.
        (a) Secretary of State.
        (b) Board of Elections.
        (c) Registry of Election Finance.
    4. Department of Law.
        (a) Attorney General.
    5. Department of the Treasury.
        (a) Treasurer.
    6. Department of Agriculture.
        (a) Commissioner of Agriculture.
        (b) Kentucky Council on Agriculture.
    7. Superintendent of Public Instruction.
    8. Auditor of Public Accounts.
    9. Railroad Commission.

II. Program cabinets headed by appointed officers:
    1. Justice Cabinet:
        (a) Department of State Police.
        (b) Department of Criminal Justice Training.
        (c) Office of Administration.
        (d) Department of Corrections.
        (e) Parole Board.

(f) Kentucky State Corrections Commission.

2. Education and Humanities Cabinet:
   (a) Department of Education.
      (1) State Board for Elementary and Secondary Education.
      (2) Education Professional Standards Board.
   (b) Department for Libraries and Archives.
   (c) Kentucky Arts Council.
   (d) Kentucky Educational Television.
   (e) Kentucky Historical Society.
   (f) Kentucky Teachers' Retirement System Board of Trustees.
3. Natural Resources and Environmental Protection Cabinet:
   (a) Environmental Quality Commission.
   (b) Kentucky Nature Preserves Commission.
   (c) Department for Environmental Protection.
   (d) Department for Natural Resources.
   (e) Department for Surface Mining Reclamation and Enforcement.
   (f) Department of Law.
   (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
   (a) Department of Highways.
   (b) Department of Vehicle Regulation.
   (c) Department of Administrative Services.
   (d) Department of Fiscal Management.
   (e) Department of Rural and Municipal Aid.
   (f) Office of Aeronautics.
   (g) Office of General Counsel.
   (h) Office of Public Relations.
   (i) Office of Personnel Management.
   (j) Office of Minority Affairs.
5. Cabinet for Economic Development:
   (a) Department for Existing Business and Industry.
   (b) Tobacco Research Board.
   (c) Kentucky Development Finance Authority.
   (d) Office of Business and Technology.
   (e) Office of Industrial Development.
6. Public Protection and Regulation Cabinet:
   (a) Public Service Commission.
   (b) Department of Insurance.
   (c) Department of Housing, Buildings and Construction.
   (d) Department of Financial Institutions.
   (e) Department of Mines and Minerals.
   (f) Department of Public Advocacy.
   (g) Department of Alcoholic Beverage Control.
   (h) Kentucky Racing Commission.
   (i) Board of Claims.
   (j) Crime Victims Compensation Board.
   (k) Kentucky Board of Tax Appeals.
   (l) Backside Improvement Commission.

7. Cabinet for Human Resources:
    - (a) Department for Health Services.
    - (b) Department for Employment Services.
    - (c) Department for Social Insurance.
    - (d) Department for Social Services.
    - (e) Department for Medicaid Services.
    - (f) Department for Mental Health and Mental Retardation Services.
    - (g) ***Department of Law.***
    - ***(h)*** Unemployment Insurance Commission.
    - ***(i)***[~~(h)~~] Commission for Handicapped Children.
    - ***(j)***[~~(i)~~] Public Assistance Appeals Board.
    - ***(k)***[~~(j)~~] Office of Administrative Services.
    - ***(l)***[~~(k)~~] Office of Communications.
    - [~~(l) Office of General Counsel.~~]
    - (m) Office of Inspector General.
    - (n) Office of Policy and Budget.
    - (o) Office of the Ombudsman.
8. Finance and Administration Cabinet:
    - (a) Office of Legal and Legislative Services.
    - (b) Office of Management and Fiscal Affairs.
    - (c) Office of Historic Properties.
    - (d) Office of Financial Management and Economic Analysis.
    - (e) Office of Risk Management.
    - (f) Department for Administration.
    - (g) Department of Facilities Management.
    - (h) Department of Information Systems.
    - (i) State Property and Buildings Commission.
    - (j) Kentucky Pollution Abatement Authority.
    - (k) Kentucky Savings Bond Authority.
    - (l) Deferred Compensation Systems.
    - (m) Office of Equal Employment Opportunity Contract Compliance.
    - (n) Capital Plaza Authority.
    - (o) County Officials Compensation Board.
    - (p) Financial Disclosure Review Commission.
    - (q) Kentucky Employees Retirement Systems.
    - (r) Commonwealth Credit Union.
    - (s) State Investment Commission.
    - (t) Kentucky Housing Corporation.
    - (u) Governmental Services Center.
    - (v) Kentucky Local Correctional Facilities Construction Authority.
    - (w) Kentucky Turnpike Authority.
    - (x) Historic Properties Advisory Commission.
9. Labor Cabinet:
    - (a) Department of Workplace Standards.
    - (b) Department of Workers' Claims.
    - (c) Kentucky Labor-Management Advisory Council.
    - (d) Occupational Safety and Health Standards Board.
    - (e) Prevailing Wage Review Board.

(f) Workers' Compensation Board.
(g) Kentucky Employees Insurance Association.
(h) Apprenticeship and Training Council.
(i) State Labor Relations Board.
(j) Kentucky Occupational Safety and Health Review Commission.
(k) Office of Administrative Services.
(l) Office of Labor Management Relations.
(m) Office of General Counsel.

10. Revenue Cabinet:
(a) Department of Property Taxation.
(b) Department of Tax Compliance.
(c) Department of Administrative Services.

11. Tourism Cabinet:
(a) Department of Travel Development.
(b) Department of Parks.
(c) Department of Fish and Wildlife Resources.
(d) Kentucky Horse Park Commission.
(e) State Fair Board.
(f) Office of Administrative Services.
(g) Office of Film Promotion.
(h) Office of General Counsel.

12. Cabinet for Workforce Development:
(a) Department for Adult and Technical Education.
(b) Department of Vocational Rehabilitation.
(c) Department for the Blind.
(d) State Board for Adult and Technical Education.
(e) Governor's Council on Vocational Education.
(f) Governor's Commission on Literacy.
(g) The State Board for Proprietary Education.
(h) The GED Foundation.
(i) The Kentucky Occupational Information Coordinating Committee.
(j) The Kentucky Job Training Coordinating Council.

III. Other departments headed by appointed officers:
1. Department of Military Affairs.
2. Department of Personnel.
3. Council on Higher Education.
4. Department of Local Government.
5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.

Section 3. KRS 194.050 is amended to read as follows:

(1) The secretary shall formulate, promote, establish, and execute policies, plans, and programs and shall ***promulgate*** ~~[adopt]~~, administer, and enforce throughout the State of Kentucky all applicable state laws and all ~~[rules and]~~ regulations necessary in accordance with applicable state laws to protect, develop, and maintain the health, welfare, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet for Human Resources. The secretary shall ***promulgate*** ~~[adopt]~~, administer, and enforce ***the*** ~~[such rules and]~~ regulations ~~[as are]~~ necessary to implement programs mandated by federal law, ~~[or]~~ to qualify for the receipt of federal funds, and ~~[as are necessary]~~ to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.

(2) The secretary shall utilize the Citizens' Commission for Human Resources, the Institute for Aging, the Institute for Children, the Council for Social Services, the Council for Health Services, or the Council for Social Insurance to review

and make recommendations on contemplated administrative regulations. The appropriate citizens' council or councils shall be involved in the development of all administrative regulations issued under the authority of the cabinet. No administrative regulations issued under the authority of the cabinet shall be filed with the Legislative Research Commission unless issued under the authority of the secretary and the secretary shall not delegate this authority. All administrative regulations prepared within the cabinet shall be attested as to form and legality by the ***Department*** ~~[Office]~~ of ***Law*** ~~[the Counsel]~~.

(3) Except as otherwise provided by law, the secretary shall have authority to establish by regulation a schedule of reasonable fees, none of which shall exceed one hundred dollars ($100), to cover the costs of annual inspections of efforts regarding compliance with program standards administered by the Cabinet for Human Resources. All fees collected for inspections shall be deposited in the State Treasury and credited to a revolving fund account to be used for administration of those programs of the Cabinet for Human Resources. The balance of the account shall lapse to the general fund at the end of each biennium. ***The*** ~~[Such]~~ fees shall not be charged for investigation of complaints.

Section 4. The General Assembly confirms Executive Order 92-625, issued on June 30, 1992, to the extent that it is not otherwise confirmed by this Act.

The Committee Substitute to **HB 265** is as follows:

HB 265, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 194.030 is amended to read as follows:

The Cabinet for Human Resources shall consist of the following major organizational units which are hereby created:

(1) Office of the Secretary;

(2) The Office for Policy and Budget. The Office for Policy and Budget shall provide the secretary with professional support in planning, budgeting, and policy analysis, including the appraisal of needs, the formulation of policy, and the evaluation of programs. The Office for Policy and Budget shall be headed by an administrator who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;

(3) The Office of ***Legal Services*** ~~[the Counsel]~~. The Office of ***Legal Services*** ~~[the Counsel]~~ shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of ***Legal Services*** ~~[the Counsel]~~ shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of ***Legal Services*** ~~[the Counsel]~~ shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be directly responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general in accordance with the provisions of KRS 15.105;

(4) The Office of the Ombudsman. The Office of the Ombudsman shall provide a review of citizen complaints on services of the Cabinet for Human Resources when such complaints cannot be resolved through normal administrative remedies. The Office of the Ombudsman shall be headed by an ombudsman who shall be appointed by the Governor with the advice of the secretary. The ombudsman shall be directly responsible to the secretary;

(5) The Office of Administrative Services. The Office of Administrative Services shall be responsible for providing administrative support services within the Cabinet for Human Resources. All fiscal, facility, and information management functions of the cabinet shall be vested in the Office of Administrative Services. The Office of Administrative Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The executive director shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director shall exercise authority over the Office of Administrative Services under the direction of the secretary and shall ~~[only]~~ fulfill ***the*** ~~[such]~~ responsibilities ~~[as]~~ delegated by the secretary;

(6) The Department for Social Insurance. The Department for Social Insurance shall develop and operate programs of the cabinet that provide income maintenance or income supplementation services and social insurance benefit programs not assigned to another department. The Department for Social Insurance shall also be responsible for all eligibility determination and certification functions associated with these programs. The Department for Social Insurance shall be headed by a commissioner for social insurance who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for social insurance shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for social insurance shall exercise authority over the Department for Social Insurance under the direction of the secretary and shall ~~[only]~~ fulfill ***the*** ~~[such]~~ responsibilities ~~[as]~~ delegated by the secretary;

(7) The Department for Medicaid Services. The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the federal Social Security Act. The Department for Medicaid Services shall be headed by a commissioner for medicaid services who shall be appointed by the secretary with the approval of the

Governor in accordance with KRS 12.050. The commissioner for medicaid services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for medicaid services shall exercise authority over the Department for Medicaid Services under the direction of the secretary and shall ~~[only]~~ fulfill ***the*** ~~[such]~~ responsibilities ~~[as]~~ delegated by the secretary;

(8) The Department for Health Services. The Department for Health Services shall develop and operate all programs of the cabinet that provide health services and all programs for the prevention, detection, care, and treatment of physical disability, illness, and disease. The Department for Health Services shall be headed by a commissioner for health services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for health services shall be a duly licensed physician who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner shall advise the head of each major organizational unit enumerated in this section on policies, plans, and programs relating to all matters of public health, including any actions necessary to safeguard the health of the citizens of the Commonwealth. The commissioner shall serve as chief medical officer of the Commonwealth. The commissioner for health services shall exercise authority over the Department for Health Services under the direction of the secretary and shall ~~[only]~~ fulfill ***the*** ~~[such]~~ responsibilities ~~[as]~~ delegated by the secretary;

(9) The Department for Mental Health and Mental Retardation Services. The Department for Mental Health and Mental Retardation Services shall provide services for all programs for the prevention, detection, and treatment of mental disability, illness, and disease and administer all programs for the assistance of community treatment and prevention of such disability, illness, and disease. The Department for Mental Health and Mental Retardation Services shall be headed by a commissioner for mental health and mental retardation who shall be appointed by the secretary for human resources with the approval of the Governor in accordance with KRS 12.050. The commissioner for mental health and mental retardation shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for mental health and mental retardation shall exercise authority over the department under the direction of the secretary for human resources and shall ~~[only]~~ fulfill ***the*** ~~[such]~~ responsibilities ~~[as]~~ delegated by the secretary;

(10) The Department for Social Services. The Department for Social Services shall develop and operate all social service programs of the cabinet. The Department for Social Services shall be headed by a commissioner for social services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for social services shall be a person who by education, professional qualification, training, and experience in the administration and management of social service programs is qualified to perform the duties of this office. The commissioner for social services shall exercise authority over the Department for Social Services under the direction of the secretary and shall ~~[only]~~ fulfill ***the*** ~~[such]~~ responsibilities ~~[as]~~ delegated by the secretary;

(11) The Department for Employment Services. The Department for Employment Services shall develop and operate all employment development and placement programs including all job recruitment and business liaison functions, employability development and training programs, and all job counseling and job placement programs of the cabinet. In addition, the department shall develop and operate all programs relating to unemployment insurance laws of the Commonwealth including responsibilities relating to hearing and judging unemployment insurance benefit appeals. The Department for Employment Services shall be headed by a commissioner for employment services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for employment services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for employment services shall exercise authority over the Department for Employment Services under the direction of the secretary and shall fulfill ***the*** ~~[only such]~~ responsibilities ~~[as]~~ delegated by the secretary;

(12) The Office of the Inspector General. The Office of the Inspector General shall be responsible for:

(a) The conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and the conduct of special investigations requested by the secretary, commissioners, or office heads of the Cabinet for Human Resources into matters related to the cabinet or its programs;

(b) Licensing and regulatory functions as the secretary may delegate;

(c) Review of health facilities participating in transplant programs, as determined by the secretary, for the purpose of determining any violations of KRS 311.165 to 311.247; and

(d) The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority.

The Office of the Inspector General shall be headed by an inspector general who shall be appointed by the secretary with the approval of the Governor. The inspector general shall be directly responsible to the secretary;

(13) The Commission for Handicapped Children. The duties, responsibilities***,*** and authority set out in KRS 200.460 to 200.490 shall be performed by the commission. The commission shall advocate the rights of handicapped children, and***,*** to the extent that funds are available, shall provide ***those*** ~~[such]~~ services and facilities for handicapped children ~~[as are]~~

deemed appropriate by the commission. The commission shall be composed of seven (7) members appointed by the Governor to serve a term of office of four (4) years. The commission may promulgate [~~such~~] administrative regulations, pursuant to KRS Chapter 13A [~~as may be~~] necessary to implement and administer its responsibilities. The duties, responsibilities, and authority of the commission for handicapped children shall be performed through the Office of the Executive Director of the Commission. The executive director shall be appointed by the Governor pursuant to KRS 12.040, and the commission may at any time recommend the removal of the executive director upon filing with the Governor a full written statement of its reasons for [~~such~~] removal. The executive director shall report directly to the Commission for Handicapped Children and serve as the commission's secretary; and

(14) The Commission for Health Economics Control in Kentucky. The duties, responsibilities, and authority pertaining to the certificate of need functions and the licensure appeal functions, as set out in KRS 216B.010 to 216B.990, shall be performed by the commission. The commission may promulgate administrative regulations pursuant to KRS Chapter 13A necessary to implement and administer its responsibilities.

Section 2. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of such department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.

2. Lieutenant Governor.

3. Department of State.

(a) Secretary of State.

(b) Board of Elections.

(c) Registry of Election Finance.

4. Department of Law.

(a) Attorney General.

5. Department of the Treasury.

(a) Treasurer.

6. Department of Agriculture.

(a) Commissioner of Agriculture.

(b) Kentucky Council on Agriculture.

7. Superintendent of Public Instruction.

8. Auditor of Public Accounts.

9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:

(a) Department of State Police.

(b) Department of Criminal Justice Training.

(c) Office of Administration.

(d) Department of Corrections.

(e) Parole Board.

(f) Kentucky State Corrections Commission.

2. Education and Humanities Cabinet:

(a) Department of Education.

(1) State Board for Elementary and Secondary Education.

(2) Education Professional Standards Board.

(b) Department for Libraries and Archives.

(c) Kentucky Arts Council.

(d) Kentucky Educational Television.
(e) Kentucky Historical Society.
(f) Kentucky Teachers' Retirement System Board of Trustees.

3. Natural Resources and Environmental Protection Cabinet:
(a) Environmental Quality Commission.
(b) Kentucky Nature Preserves Commission.
(c) Department for Environmental Protection.
(d) Department for Natural Resources.
(e) Department for Surface Mining Reclamation and Enforcement.
(f) Department of Law.
(g) Office of Communications and Community Affairs.

4. Transportation Cabinet:
(a) Department of Highways.
(b) Department of Vehicle Regulation.
(c) Department of Administrative Services.
(d) Department of Fiscal Management.
(e) Department of Rural and Municipal Aid.
(f) Office of Aeronautics.
(g) Office of General Counsel.
(h) Office of Public Relations.
(i) Office of Personnel Management.
(j) Office of Minority Affairs.

5. Cabinet for Economic Development:
(a) Department for Existing Business and Industry.
(b) Tobacco Research Board.
(c) Kentucky Development Finance Authority.
(d) Office of Business and Technology.
(e) Office of Industrial Development.

6. Public Protection and Regulation Cabinet:
(a) Public Service Commission.
(b) Department of Insurance.
(c) Department of Housing, Buildings and Construction.
(d) Department of Financial Institutions.
(e) Department of Mines and Minerals.
(f) Department of Public Advocacy.
(g) Department of Alcoholic Beverage Control.
(h) Kentucky Racing Commission.
(i) Board of Claims.
(j) Crime Victims Compensation Board.
(k) Kentucky Board of Tax Appeals.
(l) Backside Improvement Commission.

7. Cabinet for Human Resources:
(a) Department for Health Services.
(b) Department for Employment Services.
(c) Department for Social Insurance.
(d) Department for Social Services.
(e) Department for Medicaid Services.
(f) Department for Mental Health and Mental Retardation Services.

(g) Unemployment Insurance Commission.

(h) Commission for Handicapped Children.

(i) Public Assistance Appeals Board.

(j) Office of Administrative Services.

(k) Office of Communications.

(l) Office of ***Legal Services***~~[General Counsel]~~.

(m) Office of Inspector General.

(n) Office of Policy and Budget.

(o) Office of the Ombudsman.

8. Finance and Administration Cabinet:

(a) Office of Legal and Legislative Services.

(b) Office of Management and Fiscal Affairs.

(c) Office of Historic Properties.

(d) Office of Financial Management and Economic Analysis.

(e) Office of Risk Management.

(f) Department for Administration.

(g) Department of Facilities Management.

(h) Department of Information Systems.

(i) State Property and Buildings Commission.

(j) Kentucky Pollution Abatement Authority.

(k) Kentucky Savings Bond Authority.

(l) Deferred Compensation Systems.

(m) Office of Equal Employment Opportunity Contract Compliance.

(n) Capital Plaza Authority.

(o) County Officials Compensation Board.

(p) Financial Disclosure Review Commission.

(q) Kentucky Employees Retirement Systems.

(r) Commonwealth Credit Union.

(s) State Investment Commission.

(t) Kentucky Housing Corporation.

(u) Governmental Services Center.

(v) Kentucky Local Correctional Facilities Construction Authority.

(w) Kentucky Turnpike Authority.

(x) Historic Properties Advisory Commission.

9. Labor Cabinet:

(a) Department of Workplace Standards.

(b) Department of Workers' Claims.

(c) Kentucky Labor-Management Advisory Council.

(d) Occupational Safety and Health Standards Board.

(e) Prevailing Wage Review Board.

(f) Workers' Compensation Board.

(g) Kentucky Employees Insurance Association.

(h) Apprenticeship and Training Council.

(i) State Labor Relations Board.

(j) Kentucky Occupational Safety and Health Review Commission.

(k) Office of Administrative Services.

(l) Office of Labor Management Relations.

(m) Office of General Counsel.

10. Revenue Cabinet:
    (a) Department of Property Taxation.
    (b) Department of Tax Compliance.
    (c) Department of Administrative Services.
11. Tourism Cabinet:
    (a) Department of Travel Development.
    (b) Department of Parks.
    (c) Department of Fish and Wildlife Resources.
    (d) Kentucky Horse Park Commission.
    (e) State Fair Board.
    (f) Office of Administrative Services.
    (g) Office of Film Promotion.
    (h) Office of General Counsel.
12. Cabinet for Workforce Development:
    (a) Department for Adult and Technical Education.
    (b) Department of Vocational Rehabilitation.
    (c) Department for the Blind.
    (d) State Board for Adult and Technical Education.
    (e) Governor's Council on Vocational Education.
    (f) Governor's Commission on Literacy.
    (g) The State Board for Proprietary Education.
    (h) The GED Foundation.
    (i) The Kentucky Occupational Information Coordinating Committee.
    (j) The Kentucky Job Training Coordinating Council.

III. Other departments headed by appointed officers:
1. Department of Military Affairs.
2. Department of Personnel.
3. Council on Higher Education.
4. Department of Local Government.
5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.

Section 3. KRS 194.050 is amended to read as follows:

(1) The secretary shall formulate, promote, establish***,*** and execute policies, plans, and programs and shall ***promulgate*** [~~adopt~~], administer, and enforce throughout the State of Kentucky all applicable state laws and all [~~rules and~~] regulations necessary in accordance with applicable state laws to protect, develop, and maintain the health, welfare, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet for Human Resources. The secretary shall ***promulgate*** [~~adopt~~], administer, and enforce ***the*** [~~such rules and~~] regulations [~~as are~~] necessary to implement programs mandated by federal law, [~~or~~] to qualify for the receipt of federal funds***,*** and [~~as are necessary~~] to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.

(2) The secretary shall utilize the Citizens' Commission for Human Resources, the Institute for Aging, the Institute for Children, the Council for Social Services, the Council for Health Services, or the Council for Social Insurance to review and make recommendations on contemplated administrative regulations. The appropriate citizens' council or councils shall be involved in the development of all administrative regulations issued under the authority of the cabinet. No administrative regulations issued under the authority of the cabinet shall be filed with the Legislative Research Commission unless issued under the authority of the secretary and the secretary shall not delegate this authority. All administrative regulations prepared within the cabinet shall be attested as to form and legality by the Office of ***Legal Services***[~~the Counsel~~].

(3) Except as otherwise provided by law, the secretary shall have authority to establish by regulation a schedule of reasonable fees, none of which shall exceed one hundred dollars ($100), to cover the costs of annual inspections of efforts regarding compliance with program standards administered by the Cabinet for Human Resources. All fees collected for inspections shall be deposited in the State Treasury and credited to a revolving fund account to be used for

administration of those programs of the Cabinet for Human Resources. The balance of the account shall lapse to the general fund at the end of each biennium. ***The*** ~~[Such]~~ fees shall not be charged for investigation of complaints.

Section 4. Pursuant to KRS 12.028(5), the General Assembly enacts Sections 1 to 3 of this Act as an alternative to, and in lieu of, the organizational structure established by Executive Order 92-625, which established a Department of Law in the Cabinet for Human Resources.

HB 266, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 174.020 is amended to read as follows:

(1) The Transportation Cabinet in addition to the departments set forth in KRS 174.015 shall consist of the following organizational units:

(a) Office of the Secretary of Transportation comprised of the secretary of transportation, chief deputy secretary (who shall also serve as commissioner of the Department of Highways), ~~[and]~~ a deputy secretary for legal affairs ***and the Office of Environmental Affairs created by paragraph (i) of this subsection***;

(b) Railroad Commission, attached to the Office of the Secretary for administrative purposes;

(c) Office of Public Relations, headed by an executive director who shall serve as press secretary and shall be responsible for public relations and information;

(d) Office of General Counsel headed by an executive director, which shall provide legal services for the cabinet;

(e) Office of Personnel Management, headed by an executive director who shall be responsible for the implementation of programs and practices for the recruitment, training, utilization and management of cabinet personnel;

(f) Office of Minority Affairs, headed by an executive director who shall be responsible for the development and implementation of programs and procedures for assisting minorities in employment and contractual relations with the cabinet;

(g) Office of Aeronautics, headed by an executive director who shall be responsible for the administration of the Commonwealth's airport planning and development programs; ~~[and]~~

(h) Kentucky Airport Zoning Commission established by KRS 183.861, which shall be attached to the Office of Aeronautics***; and***

(i) Office of Environmental Affairs, headed by an executive director who shall oversee and implement all Transportation Cabinet environmental issues, activities, policies, and programs. The Office of Environmental Affairs may direct the Transportation Cabinet's environmental activities, associated personnel and facilities when necessary to assure compliance with environmental laws and regulations.

(2) The executive directors of the Offices of Public Relations, General Counsel, Personnel Management, Minority Affairs***,*** ~~[and]~~ Aeronautics***, and Environmental Affairs*** shall be appointed by the secretary with the approval of the Governor pursuant to KRS 12.050.

Section 2. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of such department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
   (a) Secretary of State.
   (b) Board of Elections.
   (c) Registry of Election Finance.
4. Department of Law.
   (a) Attorney General.

5. Department of the Treasury.
    (a) Treasurer.
6. Department of Agriculture.
    (a) Commissioner of Agriculture.
    (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:
1. Justice Cabinet:
    (a) Department of State Police.
    (b) Department of Criminal Justice Training.
    (c) Office of Administration.
    (d) Department of Corrections.
    (e) Parole Board.
    (f) Kentucky State Corrections Commission.
2. Education and Humanities Cabinet:
    (a) Department of Education.
        (1) State Board for Elementary and Secondary Education.
        (2) Education Professional Standards Board.
    (b) Department for Libraries and Archives.
    (c) Kentucky Arts Council.
    (d) Kentucky Educational Television.
    (e) Kentucky Historical Society.
    (f) Kentucky Teachers' Retirement System Board of Trustees.
3. Natural Resources and Environmental Protection Cabinet:
    (a) Environmental Quality Commission.
    (b) Kentucky Nature Preserves Commission.
    (c) Department for Environmental Protection.
    (d) Department for Natural Resources.
    (e) Department for Surface Mining Reclamation and Enforcement.
    (f) Department of Law.
    (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
    (a) Department of Highways.
    (b) Department of Vehicle Regulation.
    (c) Department of Administrative Services.
    (d) Department of Fiscal Management.
    (e) Department of Rural and Municipal Aid.
    (f) Office of Aeronautics.
    (g) Office of General Counsel.
    (h) Office of Public Relations.
    (i) Office of Personnel Management.
    (j) Office of Minority Affairs.
    (k) Office of Environmental Affairs.
5. Cabinet for Economic Development:
    (a) Department for Existing Business and Industry.
    (b) Tobacco Research Board.

(c) Kentucky Development Finance Authority.
(d) Office of Business and Technology.
(e) Office of Industrial Development.

6. Public Protection and Regulation Cabinet:
(a) Public Service Commission.
(b) Department of Insurance.
(c) Department of Housing, Buildings and Construction.
(d) Department of Financial Institutions.
(e) Department of Mines and Minerals.
(f) Department of Public Advocacy.
(g) Department of Alcoholic Beverage Control.
(h) Kentucky Racing Commission.
(i) Board of Claims.
(j) Crime Victims Compensation Board.
(k) Kentucky Board of Tax Appeals.
(l) Backside Improvement Commission.

7. Cabinet for Human Resources:
(a) Department for Health Services.
(b) Department for Employment Services.
(c) Department for Social Insurance.
(d) Department for Social Services.
(e) Department for Medicaid Services.
(f) Department for Mental Health and Mental Retardation Services.
(g) Unemployment Insurance Commission.
(h) Commission for Handicapped Children.
(i) Public Assistance Appeals Board.
(j) Office of Administrative Services.
(k) Office of Communications.
(l) Office of General Counsel.
(m) Office of Inspector General.
(n) Office of Policy and Budget.
(o) Office of the Ombudsman.

8. Finance and Administration Cabinet:
(a) Office of Legal and Legislative Services.
(b) Office of Management and Fiscal Affairs.
(c) Office of Historic Properties.
(d) Office of Financial Management and Economic Analysis.
(e) Office of Risk Management.
(f) Department for Administration.
(g) Department of Facilities Management.
(h) Department of Information Systems.
(i) State Property and Buildings Commission.
(j) Kentucky Pollution Abatement Authority.
(k) Kentucky Savings Bond Authority.
(l) Deferred Compensation Systems.
(m) Office of Equal Employment Opportunity Contract Compliance.
(n) Capital Plaza Authority.
(o) County Officials Compensation Board.

(p) Financial Disclosure Review Commission.
(q) Kentucky Employees Retirement Systems.
(r) Commonwealth Credit Union.
(s) State Investment Commission.
(t) Kentucky Housing Corporation.
(u) Governmental Services Center.
(v) Kentucky Local Correctional Facilities Construction Authority.
(w) Kentucky Turnpike Authority.
(x) Historic Properties Advisory Commission.

9. Labor Cabinet:
(a) Department of Workplace Standards.
(b) Department of Workers' Claims.
(c) Kentucky Labor-Management Advisory Council.
(d) Occupational Safety and Health Standards Board.
(e) Prevailing Wage Review Board.
(f) Workers' Compensation Board.
(g) Kentucky Employees Insurance Association.
(h) Apprenticeship and Training Council.
(i) State Labor Relations Board.
(j) Kentucky Occupational Safety and Health Review Commission.
(k) Office of Administrative Services.
(l) Office of Labor Management Relations.
(m) Office of General Counsel.

10. Revenue Cabinet:
(a) Department of Property Taxation.
(b) Department of Tax Compliance.
(c) Department of Administrative Services.

11. Tourism Cabinet:
(a) Department of Travel Development.
(b) Department of Parks.
(c) Department of Fish and Wildlife Resources.
(d) Kentucky Horse Park Commission.
(e) State Fair Board.
(f) Office of Administrative Services.
(g) Office of Film Promotion.
(h) Office of General Counsel.

12. Cabinet for Workforce Development:
(a) Department for Adult and Technical Education.
(b) Department of Vocational Rehabilitation.
(c) Department for the Blind.
(d) State Board for Adult and Technical Education.
(e) Governor's Council on Vocational Education.
(f) Governor's Commission on Literacy.
(g) The State Board for Proprietary Education.
(h) The GED Foundation.
(i) The Kentucky Occupational Information Coordinating Committee.
(j) The Kentucky Job Training Coordinating Council.

III. Other departments headed by appointed officers:
  1. Department of Military Affairs.
  2. Department of Personnel.
  3. Council on Higher Education.
  4. Department of Local Government.
  5. Kentucky Commission on Human Rights.
  6. Kentucky Commission on Women.

Section 3. Executive Order 93-1149 as amended by Executive Order 93-1228, is confirmed to the extent that it is not otherwise confirmed by this Act.

HB 267, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of such department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:
  1. The Governor.
  2. Lieutenant Governor.
  3. Department of State.
    (a) Secretary of State.
    (b) Board of Elections.
    (c) Registry of Election Finance.
  4. Department of Law.
    (a) Attorney General.
  5. Department of the Treasury.
    (a) Treasurer.
  6. Department of Agriculture.
    (a) Commissioner of Agriculture.
    (b) Kentucky Council on Agriculture.
  7. Superintendent of Public Instruction.
  8. Auditor of Public Accounts.
  9. Railroad Commission.

II. Program cabinets headed by appointed officers:
  1. Justice Cabinet:
    (a) Department of State Police.
    (b) Department of Criminal Justice Training.
    (c) Office of Administration.
    (d) Department of Corrections.
    (e) Parole Board.
    (f) Kentucky State Corrections Commission.
  2. Education and Humanities Cabinet:
    (a) Department of Education.
  (1) State Board for Elementary and Secondary Education.
  (2) Education Professional Standards Board.

(b) Department for Libraries and Archives.
(c) Kentucky Arts Council.
(d) Kentucky Educational Television.
(e) Kentucky Historical Society.
(f) Kentucky Teachers' Retirement System Board of Trustees.

3. Natural Resources and Environmental Protection Cabinet:
(a) Environmental Quality Commission.
(b) Kentucky Nature Preserves Commission.
(c) Department for Environmental Protection.
(d) Department for Natural Resources.
(e) Department for Surface Mining Reclamation and Enforcement.
(f) Department of Law.
(g) Office of Communications and Community Affairs.

4. Transportation Cabinet:
(a) Department of Highways.
(b) Department of Vehicle Regulation.
(c) Department of Administrative Services.
(d) Department of Fiscal Management.
(e) Department of Rural and Municipal Aid.
(f) Office of Aeronautics.
(g) Office of General Counsel.
(h) Office of Public Relations.
(i) Office of Personnel Management.
(j) Office of Minority Affairs.

5. Cabinet for Economic Development:
(a) Department for Existing Business and Industry.
(b) Tobacco Research Board.
(c) Kentucky Development Finance Authority.
(d) Office of Business and Technology.
(e) Office of Industrial Development.

6. Public Protection and Regulation Cabinet:
(a) Public Service Commission.
(b) Department of Insurance.
(c) Department of Housing, Buildings and Construction.
(d) Department of Financial Institutions.
(e) Department of Mines and Minerals.
(f) Department of Public Advocacy.
(g) Department of Alcoholic Beverage Control.
(h) Kentucky Racing Commission.
(i) Board of Claims.
(j) Crime Victims Compensation Board.
(k) Kentucky Board of Tax Appeals.
(l) Backside Improvement Commission.

7. Cabinet for Human Resources:
(a) Department for Health Services.
(b) Department for Employment Services.
(c) Department for Social Insurance.
(d) Department for Social Services.

(e) Department for Medicaid Services.
(f) Department for Mental Health and Mental Retardation Services.
(g) Unemployment Insurance Commission.
(h) Commission for Handicapped Children.
(i) Public Assistance Appeals Board.
(j) Office of Administrative Services.
(k) Office of Communications.
(l) Office of General Counsel.
(m) Office of Inspector General.
(n) Office of Policy and Budget.
(o) Office of the Ombudsman.

8. Finance and Administration Cabinet:
(a) Office of Legal and Legislative Services.
(b) Office of Management and ***Budget*** [~~Fiscal Affairs~~].
(c) Office of Historic Properties.
(d) Office of Financial Management and Economic Analysis.
(e) [~~Office of Risk Management.~~
~~(f)~~] Department for Administration.
(f)[~~(g)~~] Department of Facilities Management.
(g)[~~(h)~~] Department of Information Systems.
(h)[~~(i)~~] State Property and Buildings Commission.
(i)[~~(j)~~] Kentucky Pollution Abatement Authority.
(j)[~~(k)~~] Kentucky Savings Bond Authority.
(k)[~~(l)~~] Deferred Compensation Systems.
(l)[~~(m)~~] Office of Equal Employment Opportunity Contract Compliance.
(m)[~~(n)~~] Capital Plaza Authority.
(n)[~~(o)~~] County Officials Compensation Board.
(o)[~~(p)~~] Financial Disclosure Review Commission.
(p)[~~(q)~~] Kentucky Employees Retirement Systems.
(q)[~~(r)~~] Commonwealth Credit Union.
(r)[~~(s)~~] State Investment Commission.
(s)[~~(t)~~] Kentucky Housing Corporation.
(t)[~~(u)~~] Governmental Services Center.
(u)[~~(v)~~] Kentucky Local Correctional Facilities Construction Authority.
(v)[~~(w)~~] Kentucky Turnpike Authority.
(w)[~~(x)~~] Historic Properties Advisory Commission.

9. Labor Cabinet:
(a) Department of Workplace Standards.
(b) Department of Workers' Claims.
(c) Kentucky Labor-Management Advisory Council.
(d) Occupational Safety and Health Standards Board.
(e) Prevailing Wage Review Board.
(f) Workers' Compensation Board.
(g) Kentucky Employees Insurance Association.
(h) Apprenticeship and Training Council.
(i) State Labor Relations Board.
(j) Kentucky Occupational Safety and Health Review Commission.

(k) Office of Administrative Services.
(l) Office of Labor Management Relations.
(m) Office of General Counsel.

10. Revenue Cabinet:
(a) Department of Property Taxation.
(b) Department of Tax Compliance.
(c) Department of Administrative Services.

11. Tourism Cabinet:
(a) Department of Travel Development.
(b) Department of Parks.
(c) Department of Fish and Wildlife Resources.
(d) Kentucky Horse Park Commission.
(e) State Fair Board.
(f) Office of Administrative Services.
(g) Office of Film Promotion.
(h) Office of General Counsel.

12. Cabinet for Workforce Development:
(a) Department for Adult and Technical Education.
(b) Department of Vocational Rehabilitation.
(c) Department for the Blind.
(d) State Board for Adult and Technical Education.
(e) Governor's Council on Vocational Education.
(f) Governor's Commission on Literacy.
(g) The State Board for Proprietary Education.
(h) The GED Foundation.
(i) The Kentucky Occupational Information Coordinating Committee.
(j) The Kentucky Job Training Coordinating Council.

III. Other departments headed by appointed officers:
1. Department of Military Affairs.
2. Department of Personnel.
3. Council on Higher Education.
4. Department of Local Government.
5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.

Section 2. KRS 42.014 is amended to read as follows:

(1) There is established within the cabinet the Office of Legal and Legislative Services, the Office of Management and ***Budget*** ~~[Fiscal Affairs]~~, the Office of Financial Management and Economic Analysis, and the Office of Historic Properties, each of which offices shall be headed by an executive director, the Department for Administration which shall be headed by a commissioner, and the Department for Facilities Management which shall be headed by a commissioner, each of whom shall be responsible to the secretary and appointed by the secretary upon the approval of the Governor. Each of these departments may have at least one (1) major assistant not in the classified service.

(2) The secretary shall establish the internal organization and assignment of functions which are not established by statute, and shall divide the cabinet into ***the*** ~~[such]~~ offices, bureaus, divisions, or other units ~~[as]~~ the secretary may deem necessary to perform the functions, powers, and duties of the cabinet, subject to the provisions of KRS Chapter 12.

Section 3. KRS 42.018 is amended to read as follows:

The Office of Management and ***Budget*** ~~[Fiscal Affairs]~~ established by KRS 42.014 shall be responsible for the fiscal, personnel, and payroll functions of the cabinet.

Section 4. KRS 42.0192 is amended to read as follows:

(1) There is established within the ***Department for Administration in the*** Finance and Administration Cabinet the ***Division*** ~~[Office]~~ of Risk Management. ~~[The office shall be attached to the office of the secretary of the Finance and~~

~~Administration Cabinet for administrative purposes.~~] The ***division*** [~~office~~] shall be headed by ***a*** [~~an executive~~] director who shall be appointed by the secretary of the Finance and Administration Cabinet subject to the approval of the Governor.

(2) The ***Division*** [~~Office~~] of Risk Management shall:

(a) Oversee and assist the management of the state fire and tornado insurance fund established in KRS Chapter 56;

(b) Develop and manage programs of risk assessment and insurance for the protection of state property not covered by the state fire and tornado insurance fund;

(c) Advise the secretary of the Finance and Administration Cabinet on the fiscal management of programs relating to life insurance, workers' compensation, and health care benefits for state employees, including, but not limited to, assisting and monitoring the development of a program of health care self-insurance for state employees as authorized under KRS 18A.2281 and 18A.2282;

(d) Serve as the central clearinghouse for coordinating and evaluating existing and new risk management programs within all state agencies;

(e) Develop financing techniques for risk protection; and

(f) Develop and implement other risk management, insurance, and self-insurance programs or other functions and duties as the secretary of the Finance and Administration Cabinet may direct the office to undertake and implement within the general statutory authority and control of the Finance and Administration Cabinet over state property and fiscal affairs of the executive branch of state government, including, but not limited to, those areas pertaining to tort and contractual liability, fidelity, and property risks.

(3) Nothing in this section shall be construed or interpreted as affecting the operation of the employee benefit programs generally administered by the Division of Employee Benefits within the Department of Personnel and of the State Risk and Insurance Services programs administered by the Department of Insurance. However, both of those departments shall coordinate the operation of life insurance, workers' compensation, health care benefit programs, and other self-insured programs with the ***Division*** [~~Office~~] of Risk Management.

(4) All cabinets, departments, boards, commissions, and other state agencies shall provide to the ***Division*** [~~Office~~] of Risk Management the technical advice and other assistance the ***Division*** [~~Office~~] of Risk Management or the secretary of the Finance and Administration Cabinet shall request in the performance of the functions of the ***division*** [~~office~~] as described in this section.

(5) The secretary of the Finance and Administration Cabinet shall have the power and authority to promulgate administrative regulations pursuant to KRS Chapter 13A for purposes of implementing a risk management program for the executive branch of state government. Any administrative regulations promulgated by the secretary shall be administered by the ***Division*** [~~Office~~] of Risk Management.

Section 5. KRS 42.023 is amended to read as follows:

(1) The Department ***for*** [~~of~~] Administration of the cabinet established by KRS 42.014 shall be generally responsible for ***the*** [~~such~~] functions and duties [~~as~~] the secretary may assign relating, but not limited to state accounting, accounts control, fiscal reporting, development and coordination of fiscal processes, preauditing of expenditures, supervision of purchasing and store keeping, control of stores, control of personal property and disposition of surplus personal property, printing and reproductions, state forms, postal services, technical assistance and advice to state agencies, and accounting, technical, and economic assistance to local governments.

(2) There shall be established in the Department ***for*** [~~of~~] Administration a Division of Accounts, a Division of Purchases, a Division of Printing, ***a Division of Risk Management, a Division of Creative Services,*** and a Division of Occupations and Professions, each of which shall be headed by a director appointed by the commissioner, subject to the approval of the Governor, and who shall be responsible to the commissioner. There may be, if needed, sections assigned to specific areas of work, responsible directly to the commissioner for administration.

Section 6. KRS 42.024 is amended to read as follows:

(1) The Division of Accounts shall perform ***the*** [~~such~~] financial record keeping functions [~~as~~] the secretary directs and shall in general be responsible for and perform the functions of the cabinet as outlined in KRS 45.305 and 48.800, and other related statutes.

(2) The Division of Purchases shall be responsible for the performance of the cabinet's purchasing functions under KRS Chapters 45 and 45A, except those purchasing functions related to the acquisition of interests in real property, and contractual and construction services which are related to and required in connection with the construction, renovation, and repair of state-owned buildings. The Division of Purchases shall be responsible for the control of all state-purchased personal property and for the disposition of all personal property of the state declared surplus. The division shall be the single state agency of the Commonwealth of Kentucky that may receive, warehouse, and distribute surplus property under the Federal Property and Administrative Services Act of 1949, as amended, and any other federal law relating to the disposal of surplus federal property to the states and political subdivisions within the states. The division shall comply with federal laws and regulations in the administration of surplus property received through federal agencies.

The secretary of the Finance and Administration Cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A as necessary to comply with the minimum standards established by federal laws and regulations governing disposal of surplus federal property and to implement subsection ***(4)***~~[(3)]~~ of this section.

(3) ***The Division of Creative Services shall provide photography, multimedia, and graphic service to state government.***

(4) The secretary of the Finance and Administration Cabinet may establish, charge, and collect from donees of federal surplus property a fair and reasonable fee or service charge to defray the cost of operating the surplus property disposal program. The fees shall be deposited in a trust and agency account in the State Treasury to the credit of the Division of Purchases.

Section 7. KRS 42.065 is amended to read as follows:

(1) A Division of Internal Audit is established in the ***Office of Management and Budget within the*** Finance and Administration Cabinet~~[, and is attached for administrative purposes to the Office of the Secretary of Finance]~~.

(2) The Division of Internal Audit shall be headed by a director, appointed by the secretary of finance pursuant to KRS 12.050, and shall include other personnel employed pursuant to KRS Chapter 18A, as determined by the director of the division, with the approval of the secretary, to be necessary and desirable to carry out the division's functions.

(3) The division may, with the approval of the secretary of finance, conduct any internal audit, investigation, or management review in the Finance and Administration Cabinet related to the secretary's duties and responsibilities as chief financial officer of the Commonwealth pursuant to KRS 42.012.

(4) When it is necessary to complete an internal audit, investigation, or management review in the Finance and Administration Cabinet, with the written approval of the secretary of the Governor's Executive Cabinet, the division shall have access, during business hours, to all books, reports, papers, and accounts in the office or under the custody or control of any budget unit, or of any other program cabinet, department, or agency under the authority and direction of the Governor.

Section 8. KRS 45A.710 is amended to read as follows:

(1) No contracting body shall enter into any personal service contract for advertising, promotional, or public relations services unless the ***Division of*** Creative Services ~~[Branch]~~ in the ***Department for Administration in the Finance and Administration Cabinet*** ~~[Office of the Governor]~~ has been informed in writing of the specific requirements relating to ***the*** ~~[such]~~ services and has declined in writing to provide the proposed services or has failed to respond to the contracting body's written request for ***the*** ~~[such]~~ services within thirty (30) days after receipt of the request. The contracting body shall furnish the ***Division of*** Creative Services ~~[Branch]~~ a comprehensive statement of, and be available as necessary for consultation about, the scope and nature of the proposed advertising, promotional, or public relations services.

(2) The ***Division of*** Creative Services ~~[Branch]~~ shall review each proposed personal service contract to determine whether the required services are available within state government at the same or less cost, whether the provisions of the proposed contract will provide the required services, and whether the individual or agency proposing the personal service contract has the expertise and resources to provide the services. The ***Division of*** Creative Services ~~[Branch]~~ shall forward its determination to the secretary of the Finance and Administration Cabinet and shall recommend any modifications or alterations in the proposed personal service contract.

(3) Each proposed personal service contract for advertising, promotional, or public relations services submitted to the Legislative Research Commission or the Finance and Administration Cabinet shall be accompanied by a copy of the correspondence between the contracting body and the ***Division of*** Creative Services, ~~[Branch]~~ including any advertisements concerning the proposed services from the ***Division of*** Creative Services ~~[Branch]~~ to the contracting body under subsections (1) and (2) of this section.

Section 9. The following KRS section is repealed:

11.066 Creative Services Branch in the Office of the Governor.

Section 10. The General Assembly confirms the following provisions of Executive Order 93-422:

(1) The creation of a Division of Information Resources within the Office of Management and Budget, headed by a director appointed by the secretary of the Finance and Administration Cabinet subject to the approval of the Governor; and

(2) The transfer of the responsibility for cabinet-wide coordination of computer services from the Department for Administration to the Division of Information Resources.

Section 11. The General Assembly confirms Executive Order 93-422, dated April 29, 1993, to the extent it is not otherwise confirmed by this Act.

HB 268, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of such department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:
  1. The Governor.
  2. Lieutenant Governor.
  3. Department of State.
    (a) Secretary of State.
    (b) Board of Elections.
    (c) Registry of Election Finance.
  4. Department of Law.
    (a) Attorney General.
  5. Department of the Treasury.
    (a) Treasurer.
  6. Department of Agriculture.
    (a) Commissioner of Agriculture.
    (b) Kentucky Council on Agriculture.
  7. Superintendent of Public Instruction.
  8. Auditor of Public Accounts.
  9. Railroad Commission.

II. Program cabinets headed by appointed officers:
  1. Justice Cabinet:
    (a) Department of State Police.
    (b) Department of Criminal Justice Training.
    (c) [~~Office of Administration.~~
    ~~(d)~~] Department of Corrections.
    (d) Office of the Secretary.
    (e) Offices of Deputy Secretaries.
    (f) Office of General Counsel.
    (g) Medical Examiner Program.
    (h)[~~(e)~~] Parole Board.
    (i)[~~(f)~~] Kentucky State Corrections Commission.
    (j) Commission on Correction and Community Service.
  2. Education and Humanities Cabinet:
    (a) Department of Education.
      (1) State Board for Elementary and Secondary Education.
      (2) Education Professional Standards Board.
    (b) Department for Libraries and Archives.
    (c) Kentucky Arts Council.
    (d) Kentucky Educational Television.
    (e) Kentucky Historical Society.
    (f) Kentucky Teachers' Retirement System Board of Trustees.
  3. Natural Resources and Environmental Protection Cabinet:
    (a) Environmental Quality Commission.
    (b) Kentucky Nature Preserves Commission.

(c) Department for Environmental Protection.
(d) Department for Natural Resources.
(e) Department for Surface Mining Reclamation and Enforcement.
(f) Department of Law.
(g) Office of Communications and Community Affairs.

4. Transportation Cabinet:
(a) Department of Highways.
(b) Department of Vehicle Regulation.
(c) Department of Administrative Services.
(d) Department of Fiscal Management.
(e) Department of Rural and Municipal Aid.
(f) Office of Aeronautics.
(g) Office of General Counsel.
(h) Office of Public Relations.
(i) Office of Personnel Management.
(j) Office of Minority Affairs.

5. Cabinet for Economic Development:
(a) Department for Existing Business and Industry.
(b) Tobacco Research Board.
(c) Kentucky Development Finance Authority.
(d) Office of Business and Technology.
(e) Office of Industrial Development.

6. Public Protection and Regulation Cabinet:
(a) Public Service Commission.
(b) Department of Insurance.
(c) Department of Housing, Buildings and Construction.
(d) Department of Financial Institutions.
(e) Department of Mines and Minerals.
(f) Department of Public Advocacy.
(g) Department of Alcoholic Beverage Control.
(h) Kentucky Racing Commission.
(i) Board of Claims.
(j) Crime Victims Compensation Board.
(k) Kentucky Board of Tax Appeals.
(l) Backside Improvement Commission.

7. Cabinet for Human Resources:
(a) Department for Health Services.
(b) Department for Employment Services.
(c) Department for Social Insurance.
(d) Department for Social Services.
(e) Department for Medicaid Services.
(f) Department for Mental Health and Mental Retardation Services.
(g) Unemployment Insurance Commission.
(h) Commission for Handicapped Children.
(i) Public Assistance Appeals Board.
(j) Office of Administrative Services.
(k) Office of Communications.
(l) Office of General Counsel.

(m) Office of Inspector General.
(n) Office of Policy and Budget.
(o) Office of the Ombudsman.

8. Finance and Administration Cabinet:
(a) Office of Legal and Legislative Services.
(b) Office of Management and Fiscal Affairs.
(c) Office of Historic Properties.
(d) Office of Financial Management and Economic Analysis.
(e) Office of Risk Management.
(f) Department for Administration.
(g) Department of Facilities Management.
(h) Department of Information Systems.
(i) State Property and Buildings Commission.
(j) Kentucky Pollution Abatement Authority.
(k) Kentucky Savings Bond Authority.
(l) Deferred Compensation Systems.
(m) Office of Equal Employment Opportunity Contract Compliance.
(n) Capital Plaza Authority.
(o) County Officials Compensation Board.
(p) Financial Disclosure Review Commission.
(q) Kentucky Employees Retirement Systems.
(r) Commonwealth Credit Union.
(s) State Investment Commission.
(t) Kentucky Housing Corporation.
(u) Governmental Services Center.
(v) Kentucky Local Correctional Facilities Construction Authority.
(w) Kentucky Turnpike Authority.
(x) Historic Properties Advisory Commission.

9. Labor Cabinet:
(a) Department of Workplace Standards.
(b) Department of Workers' Claims.
(c) Kentucky Labor-Management Advisory Council.
(d) Occupational Safety and Health Standards Board.
(e) Prevailing Wage Review Board.
(f) Workers' Compensation Board.
(g) Kentucky Employees Insurance Association.
(h) Apprenticeship and Training Council.
(i) State Labor Relations Board.
(j) Kentucky Occupational Safety and Health Review Commission.
(k) Office of Administrative Services.
(l) Office of Labor Management Relations.
(m) Office of General Counsel.

10. Revenue Cabinet:
(a) Department of Property Taxation.
(b) Department of Tax Compliance.
(c) Department of Administrative Services.

11. Tourism Cabinet:
(a) Department of Travel Development.

(b) Department of Parks.

(c) Department of Fish and Wildlife Resources.

(d) Kentucky Horse Park Commission.

(e) State Fair Board.

(f) Office of Administrative Services.

(g) Office of Film Promotion.

(h) Office of General Counsel.

12. Cabinet for Workforce Development:

(a) Department for Adult and Technical Education.

(b) Department of Vocational Rehabilitation.

(c) Department for the Blind.

(d) State Board for Adult and Technical Education.

(e) Governor's Council on Vocational Education.

(f) Governor's Commission on Literacy.

(g) The State Board for Proprietary Education.

(h) The GED Foundation.

(i) The Kentucky Occupational Information Coordinating Committee.

(j) The Kentucky Job Training Coordinating Council.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.

2. Department of Personnel.

3. Council on Higher Education.

4. Department of Local Government.

5. Kentucky Commission on Human Rights.

6. Kentucky Commission on Women.

Section 2. KRS 15A.020 is amended to read as follows:

There is established within the cabinet a Department of State Police***, a Department of Corrections,*** and a Department of Criminal Justice Training. Each department shall be headed by a commissioner appointed by the secretary with the approval of the Governor as required by KRS 12.050. The commissioners shall be directly responsible to the secretary and shall perform such functions, powers and duties as provided by law and as the secretary may prescribe.

Section 3. KRS 15A.030 is amended to read as follows:

The Justice Cabinet, in addition to the departments set forth in KRS 15A.020, shall consist of the following organizational units which are hereby created or reestablished:

(1) Office of secretary of justice comprised of the secretary of justice***, the Commission on Correction and Community Service, the Kentucky State Corrections Commission,*** and the Kentucky Crime Commission. ***The Parole Board shall be attached to the Office of the Secretary for administrative purposes only.***

(2) Offices of deputy secretaries of justice.

(3) Office of the general counsel.

(4) Medical examiner service program.

Section 4. KRS 196.065 is amended to read as follows:

(1) The ***department*** [~~cabinet~~] shall operate a forensic psychiatric facility to provide mental health care for persons convicted of a crime who are committed to the ***department*** [~~cabinet~~]. This care shall be provided by the ***department*** [~~cabinet~~] for the duration of the person's sentence.

(2) The ***department*** [~~cabinet~~] shall initiate or be responsible for initiation of hospitalization proceedings under KRS Chapter 202A or 202B for any inmate who needs mental health care at the expiration of his sentence.

Section 5. KRS 196.070 is amended to read as follows:

The commissioner of the Department of Corrections shall:

(1) Supervise and administer the Kentucky State Reformatory, the Kentucky Correctional Institution for Women, the Kentucky State Penitentiary, Northpoint Training Center, the Luther Luckett Correctional Complex, the Eastern Kentucky Correctional Complex, the Western Kentucky Correctional Complex, the Roederer Correctional Complex, and any minimum security correctional institutions established and operated by the department, or any divisions of those

institutions, the private prisons as provided by KRS 197.500, and the prison industry program within those institutions.

(2) Supervise the employment of prisoners who have not been paroled or conditionally released, either within or without the walls or enclosures of these institutions.

(3) Have the authority to transfer, with the approval of the secretary of the Finance and Administration Cabinet, appropriated funds from the budget of one (1) penal institution to another.

(4) Determine minimum, maximum, and conditional release dates of prisoners in accordance with KRS 197.045.

(5) Authorize the transfer of prisoners between institutions.

(6) Create those positions and employ those personnel necessary to perform the functions of the department.

SECTION 6. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

The Department of Corrections shall consist of the following organizational units:

(1) Office of General Counsel;

(2) Division of Administrative Services;

(3) Division of Corrections Training;

(4) Division of Institutional Operations;

(5) Division of Mental Health Programs;

(6) Division of Correctional Industries;

(7) Division of Medical Services;

(8) Division of Probation and Parole;

(9) Division of Local Facilities;

(10) Each state penal correctional institution referenced in KRS 197.010 shall be considered a division for organizational purposes. Each institution shall be headed by a warden pursuant to KRS 196.160.

Section 7. KRS 196.081 is amended to read as follows:

(1) To facilitate the need for comprehensive planning for the Department of Corrections and for related matters the Kentucky State Corrections Commission is ~~[hereby]~~ created ***and is attached to the office of the secretary of the Justice Cabinet***. The commission shall consist of twelve (12) members as follows:

  (a) The Attorney General;

  (b) The secretary of the Justice Cabinet;

  (c) The commissioner of the Department of Corrections;

  (d) The chairman of the Parole Board;

  (e) The secretary of the Cabinet for Human Resources;

  (f) A county jailer chosen by the Governor;

  (g) A Circuit Judge chosen by the Governor from a list of three (3) submitted by the Chief Justice;

  (h) Two (2) criminal justice professionals who are familiar with correctional research, theory, and program implementation, appointed by the Governor;

  (i) A representative from a law enforcement agency, appointed by the Governor;

  (j) A Commonwealth's attorney chosen by the Governor from a list of three (3) submitted by the Prosecutors Advisory Council; and

  (k) The state Public Advocate.

(2) The terms of those representatives appointed by the Governor shall be three (3) years. These members shall serve at the pleasure of the Governor and shall be eligible for reappointment. If there is a vacancy, the Governor shall immediately make an appointment effective for the unexpired term.

(3) The Governor shall appoint a chairman of the corrections commission from among its members. The members of the commission shall elect from among its members a vice chairman who shall preside and exercise the functions of chairman during absence or disability of the chairman.

(4) Regular meetings of the commission shall be held at least once every three (3) months at a place, day, and hour determined by the commission. Special meetings shall be held when needed as determined by the chairman. If six (6) or more members of the commission request in writing that the chairman call a special meeting, the chairman shall call a special meeting.

(5) Members of the commission shall receive reimbursement for necessary expenses for attendance at official commission meetings or public hearings. The commission shall be staffed by a director and other staff.

(6) The commission shall:

(a) Develop and approve the methodology to be used by the commission to project and maintain current six (6) year projections of prison populations;

(b) Develop a six (6) year plan for Department of Corrections operations, including both construction and programmatic elements; this plan shall be developed with information supplied by the agencies, departments, and groups represented on the commission, and other public and private agencies and citizens with a vested interest in corrections;

(c) Monitor, modify, and update the six (6) year plan as necessary but not less frequently than semiannually and submit the current plan to the Legislative Research Commission not later than six (6) months prior to the commencement of every regular session of the General Assembly;

(d) Assist the Department of Corrections in preparing and submitting legislative proposals, including budget requests necessary to implement and update the six (6) year plan;

(e) Review and make recommendations to the General Assembly concerning legislative proposals, including Department of Corrections budget proposals, to insure consistency with the six (6) year plan;

(f) Develop, in cooperation with the Department of Public Advocacy, the Administrative Office of the Courts, the Prosecutors Advisory Council, and other interested parties, a schedule of punitive and rehabilitative alternatives to imprisonment for dissemination to judges, prosecutors, and defense attorneys. The schedule shall include, but shall not be limited to, rehabilitation treatment and counseling, community work and service, and drug and alcohol testing;

(g) Receive regular reports from the Department of Corrections, on a schedule established by the commission, as to the department's progress in complying with the six (6) year plan;

(h) Review and make recommendations to the department on any significant change in programs, policies, procedures, staffing, classification, or other component of corrections operations which departs from the six (6) year plan;

(i) Assist the Legislative Research Commission in the preparation of corrections impact statements for proposed legislation;

(j) Make recommendations to the Governor and the General Assembly concerning legislation affecting corrections including, but not limited to, legislation relating to sentencing, probation, and parole;

(k) In cooperation with the Administrative Office of the Courts, the Prosecutors Advisory Council, the Department of Social Services of the Cabinet for Human Resources, and the Kentucky Bar Association, conduct educational seminars for judges, attorneys, and probation officers, to disseminate information concerning the availability and appropriate utilization of community service, rehabilitation, and other types of alternative sentences and conditions of probation; and

(l) Administer the provisions of KRS 196.700 to 196.735.

(7) The six (6) year plan shall consist of at least the following elements:

(a) The location, capacity, classification, and staffing of each penal institution and program administered by the Department of Corrections;

(b) The location, capacity, classification, staffing, and anticipated cost and time of construction of each new facility to be constructed or each facility expansion to be constructed during the six (6) year plan period;

(c) The administrative structure of the Department of Corrections;

(d) Prison population projections for the six (6) year plan period;

(e) Education, rehabilitation, and prison industries programs administered by the Department of Corrections;

(f) The inmate labor program administered by the department; and

(g) Contingency plans to deal with unexpected increases in prison population.

(8) The six (6) year plan shall be submitted to the General Assembly and approved by the General Assembly with the additions, deletions, or modifications the General Assembly shall deem advisable. Upon adoption by the General Assembly, all new facilities, and renovations and expansions of existing facilities, shall be in accordance with the plan, except in the case of an emergency declared by the Governor after the adoption of the plan. All other material changes in the plan shall be presented to the Corrections Commission for review and recommendation prior to implementation. While a change may be implemented without commission approval, the Corrections Commission shall advise the Legislative Research Commission of any material change request that is not favorably recommended by the commission.

Section 8. KRS 196.270 is amended to read as follows:

There shall be established and maintained within the Department of Corrections a centralized canteen operation which shall be incorporated and self-supporting. Each institution administered by the department shall participate in the canteen operation. The directors of the canteen shall be as follows: the commissioner, the deputy commissioner of [~~the Department of~~] Adult Institutions, the executive director of the ***Division*** [~~Office~~] of Administrative Services, and the wardens of all state correctional institutions. All profits from the canteen, including the sale of handicrafts made by inmates to the general public, shall be used exclusively for the benefit of the inmates of the department. The directors of the canteen may consolidate the assets of the existing canteens for this purpose and to employ the staff and inmates necessary to efficiently manage the canteen.

Section 9. KRS 196.705 is amended to read as follows:

(1) In addition to its responsibilities under KRS 196.081, the Kentucky State Corrections Commission shall administer the provisions of KRS 196.700 to 196.735.

(2) The purposes of KRS 196.700 to 196.735 are to impose community-based sanctions in light of the needs of crime victims and the community to reduce prison overcrowding and improve management within the ***Department of*** Corrections [~~Cabinet~~] by providing the judicial system with sentences to be used in lieu of, at less cost, and to better effect on both victims, the community, and the offender than imprisonment. In furtherance of this purpose, KRS 196.700 to 196.735 provide for the following:

(a) Development of sentencing alternatives to incarceration for certain individuals convicted of a felony;

(b) Increased opportunities and requirements for certain individuals convicted of a felony to make restitution to victims of crime and the community through financial reimbursement or community service;

(c) Local involvement to assure that community corrections programs are specifically designed to meet the needs of the sentencing court and the community; and

(d) Reduced expenditures of state funds through an increase in alternatives to incarceration so that new prisons need not be built or new space added.

Section 10. KRS 439.302 is amended to read as follows:

The Commission on Correction and Community Service shall consist of the ***secretary of the Justice Cabinet, the*** commissioner of the Department of Corrections, the deputy commissioner of the Division of Community Services and Local Facilities; the deputy commissioner of the Division of Adult Correctional Institutions; the chairman of the Parole Board; two (2) Circuit Judges designated by the Governor; five (5) public members appointed by the Governor, these to include a psychiatrist, a professional educator, a member who is qualified to express the views of business and industry, a member who is qualified to express the views of organized labor, and a practicing attorney; and four (4) at-large appointees. The judicial and public members shall serve for the remainder of the term of office of the Governor during whose incumbency they were appointed, unless sooner removed for cause; all other members shall serve during their terms of office. The ***secretary of the Justice Cabinet*** [~~commissioner of the Department of Corrections~~] shall act as chairman of the commission. All public members of the commission shall receive twenty-five dollars ($25) per day for attending each meeting. Each commission member shall be reimbursed for his necessary travel and other expenses actually incurred in the discharge of his duties on the commission.

Section 11. KRS 439.320 is amended to read as follows:

(1) The Governor shall appoint a Parole Board consisting of seven (7) members, one (1) of whom he shall name as chairman of the board. He shall make each appointment from a list of three (3) names given to him by the Commission on Correction and Community Service. Each member appointed to the board shall have had at least five (5) years of actual experience in the field of penology, correction work, law enforcement, sociology, law, education, social work, medicine, or a combination thereof, or have served at least five (5) years previously on the Parole Board. No more than four (4) board members shall be of the same political party. The board shall be attached to the ***Justice Cabinet*** [~~Department of Corrections~~] for administrative purposes only; the Department of Corrections shall provide any clerical, stenographic, administrative, and expert staff assistance the board deems necessary to carry out its duties.

(2) The chairman shall be the chief administrative officer of the board and shall be responsible for all administrative, organizational, and personnel matters of the board.

(3) The members of the board shall give full time to the duties of their office and shall receive necessary traveling expenses and a salary to be determined pursuant to KRS 64.640(2), except the chairman of the board shall receive additional compensation of one thousand dollars ($1,000) per year for his services. Their terms of office shall be four (4) years and until their successors are appointed and have qualified. Their successors shall be appointed thereafter as provided in this section for terms of four (4) years, and a vacancy occurring before expiration of the term of office shall be similarly filled for the unexpired term. The chairman of the board shall serve as such until the expiration of his term at which time the Governor shall name his successor and designate the chairman of the board. If a vacancy occurs in the chairmanship of the board before the expiration of the term, the Governor may name a successor to serve for the remainder of the unexpired term.

(4) The organization of the board shall be determined by the chairman and a quorum of the board shall be as follows:

(a) For parole hearings, three (3) members; and

(b) For all other business, four (4) members. A decision by any three (3) member panel in a parole hearing shall be final unless any member of the full board requests that the full board hear the case, whereupon a parole hearing by not less than four (4) members of the board shall be held.

(5) The Governor may not remove any member of the board except for disability, inefficiency, neglect of duty, or malfeasance in office. Before removal, he shall give the member a written copy of the charges against him and shall fix the time when he can be heard in his defense, which shall not be less than ten (10) days thereafter. Upon removal, the

Governor shall file in the office of the Secretary of State a complete statement of all charges made against the member and the findings thereupon with a record of the proceedings.

(6) Present members of the board shall be deemed to have vacated their appointments and successors shall be appointed as provided in subsection (3) of this section. The Governor may reappoint present members if they meet the qualifications set forth in subsection (1) of this section.

Section 12. KRS 439.470 is amended to read as follows:

(1) The commissioner shall have the power and duty to make rules for the conduct of persons placed on probation or parole, except the commissioner shall not make any rule which conflicts with the conditions of probation imposed by the court or conditions of release imposed by the board.

(2) The commissioner, or his designee shall:

(a) Be responsible for any reports of investigation and supervision as may be requested by the board or the courts;

(b) Divide the state into districts and assign probation and parole officers to serve in the various districts and courts;

(c) Direct the work of the officers and other employees assigned to him;

(d) Formulate methods of investigation, supervision, record keeping, and reports;

(e) Conduct training courses for the staff;

(f) Negotiate~~[, with the approval of the commissioner,]~~ with public or private groups or institutions for further training of employees and authorize the expenditure of funds for that purpose when needed;

(g) Develop policies on probation and parole work in the light of other welfare administration policies.

Section 13. The General Assembly hereby confirms Executive Orders 93-313 and 92-511 as amended by 93-313 to the extent they are not otherwise confirmed by this Act.

HB 334, AN ACT relating to administrative hearings.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

As used in this chapter, unless the context requires otherwise:

(1) "Administrative agency" or "agency" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity authorized by law to conduct administrative hearings. The term does not include any unit in the legislative or judicial branches or any city, county, urban-county, charter county, or any other local unit of government contained in KRS Chapters 74 to 109.

(2) "Administrative hearing" or "hearing" means any type of administrative proceeding conducted by an agency as required or permitted by statute or regulation to adjudicate the legal rights, duties, privileges or immunities of a named person.

(3) "Party" means:

(a) The named person whose legal rights, duties, privileges, or immunities are being adjudicated in the administrative hearing;

(b) Any other person who is duly granted intervention in an administrative hearing; and

(c) Any agency named as a party to the adjudicatory proceeding or entitled or permitted by the law being enforced to participate fully in the administrative hearing.

(4) "Agency head" means the individual or collegial body in an agency that is responsible for entry of a final order.

(5) "Recommended order" means the whole or part of a preliminary hearing report to an agency head for the disposition of an administrative hearing.

(6) "Final order" means the whole or part of the final disposition of an administrative hearing, whenever made effective by an agency head, whether affirmative, negative, injunctive, declamatory, agreed, or imperative in form.

(7) "Hearing officer" means the individual, duly qualified and employed pursuant to this chapter, assigned by an agency head as presiding officer for an administrative hearing or the presiding member of the agency head.

(8) "Division" means the Division of Administrative Hearings in the Office of the Attorney General created pursuant to Section 18 of this Act.

SECTION 2. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.

(2) The provisions of this chapter shall not apply to investigations or any other type of information gathering or fact

finding activities.

(3) The following administrative hearings shall be exempt from application of this chapter:

(a) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;

(b) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35; and

(c) Any other administrative hearing procedure approved for exemption in compliance with Section 19 of this Act and enacted in conforming legislation by the 1996 Regular Session of the General Assembly;

(d) Any administrative hearing or portion thereof certified as exempt by the Attorney General when:

1. The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;

2. Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings; or

3. The hearing procedures represent either the preliminary stages or the review stages of a multilevel hearing process if the provisions of this chapter are applied at some level within a multilevel process.

(4) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures, by administrative regulation, which insofar as practical shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.

(5) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.

SECTION 3. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) An agency head may exercise all powers conferred on an agency relating to the conduct of administrative hearings, and he may delegate conferred powers to a hearing officer or a member of a collegial body that serves as an agency head. An agency head may not, however, delegate the power to issue a final order unless specifically authorized by statute.

(2) In securing hearing officers as necessary to conduct administrative hearings under the jurisdiction of the agency, an agency may:

(a) Employ hearing officers;

(b) Contract with another agency for hearing officers; or

(c) Contract with private attorneys through personal service contract.

(3) A hearing officer shall possess and meet qualifications as the Department of Personnel, the division and the employing agency may find necessary to assure competency in the conduct of an administrative hearing. The qualifications in this subsection shall not, however, apply to a member of a board, commission, or other collegial body who may serve as a hearing officer in his capacity as a member of the collegial body.

(4) All hearing officers, including members of collegial bodies who serve as hearing officers, shall receive training necessary to prepare them to conduct a competent administrative hearing. The training shall pertain to the conduct of administrative hearings generally and to the applications of the provisions of this chapter, specifically. The division shall establish by administrative regulation minimum standards concerning the length of training, course content, and instructor qualifications. Actual training may be conducted by an agency or any other organization, if the training program offered has been approved by the division as meeting minimum standards.

SECTION 4. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) A person who has served as an investigator or prosecutor in an administrative hearing or in its pre-adjudicative stage, shall not serve as hearing officer or assist or advise a hearing officer in the same proceeding. This shall not be construed as preventing a person who has participated in a determination of probable cause or other equivalent preliminary determination, from serving as a hearing officer in the same proceeding.

(2) (a) A hearing officer, agency head, or member of a agency head who is serving as a hearing officer, shall voluntarily disqualify himself and withdraw from any case in which he cannot afford a fair and impartial hearing or consideration. Any party may request the disqualification of a hearing officer, agency head, or member of the agency head by filing an affidavit, upon discovery of facts establishing grounds for a

disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding.

(b) Grounds for disqualification of a hearing officer shall include, but shall not be limited to, the following:

1. Serving as an investigator or prosecutor in the proceeding or the preadjudicative stages of the proceeding;

2. Participating in an ex parte communication which would prejudice the proceedings;

3. Having a pecuniary interest in the outcome of the proceeding; or

4. Having a personal bias toward any party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

SECTION 5. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) In any administrative hearing, the agency shall conduct the hearing as soon as practicable and shall give notice of the hearing to the parties not less than twenty (20) days in advance of the date set for the hearing. An agency shall make every effort to schedule a hearing on a date and at a location that is convenient to the parties involved.

(2) The notice required by subsection (1) of this section shall be served on the parties by certified mail, return receipt requested, to the last known address of the parties, by personal service, or by any other means which demonstrates actual notice was received. When any indispensable and necessary party to an adjudicatory proceeding consists of a large class, the notice may be served on a reasonable number of them as representatives of the class.

(3) The notice required by this section shall be in plain language and shall include:

(a) A statement of the date, time, place, and nature of the hearing;

(b) The name, official title, mailing address, and phone number of the hearing officer;

(c) The names, official titles, mailing addresses, and phone numbers of all parties to the hearing, including the counsel or representative of the agency;

(d) A statement of the issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and argument;

(e) A reference to the specific statutes and administrative regulations which relate to the issues involved;

(f) A statement advising the person of his right to legal counsel;

(g) A statement of the parties' right to examine any evidence to be used at the hearing and any exculpatory information in the agency's possession; and

(h) A statement advising that any party who fails to attend or participate as required at any stage of the administrative hearing process may be held in default under this chapter.

(4) If an agency decides not to conduct an administrative hearing in response to a petition, the agency shall notify the petitioner of its decision in writing, with a brief statement of the agency's reasons and any administrative review available to the petitioner.

SECTION 6. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) The hearing officer shall grant a petition for intervention if:

(a) The petition is submitted in writing to the hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(b) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

(2) The hearing officer may grant a petition for intervention upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(3) If a petitioner qualifies for intervention, the hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the

orderly and prompt conduct of the proceedings; and

(c) Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(4) The hearing officer, at least three (3) days before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The hearing officer shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

SECTION 7. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) A hearing officer may convene and conduct a prehearing conference upon reasonable notice to all parties to deal with exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas and orders, and other matters that will promote the orderly and prompt conduct of the hearing.

(2) Upon conclusion of a prehearing conference, the hearing officer shall issue a prehearing order incorporating all matters determined at the prehearing conference. If a prehearing conference is not held, the hearing officer may issue a prehearing order, based on the pleadings, to regulate the conduct of the hearing.

(3) Except to the extent precluded by another provision of law, informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is encouraged. Agencies shall establish by administrative regulation specific procedures to facilitate informal settlement of matters. This subsection shall not be construed, however, as requiring any party to settle a matter pursuant to informal procedures.

SECTION 8. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) A hearing officer shall preside over the conduct of an administrative hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing. When a prehearing order has been issued, the hearing officer shall regulate the hearing in conformity with the prehearing order.

(2) The hearing officer, at appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, motions, objections, and offers of settlement. The hearing officer, at appropriate stages of the proceedings, may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed recommended or final orders. A party shall serve copies of any filed item on all parties by mail or any other means prescribed by agency regulation.

(3) The hearing officer may issue subpoenas and discovery orders upon his own motion or when requested by a party. When an order is disobeyed, any party may apply to the Circuit Court of the judicial circuit in which the administrative hearing is held for an order requiring obedience. Failure to comply with an order of the court shall be cause for punishment as a contempt of the court.

(4) To the extent necessary for the full disclosure of all relevant facts and issues, the hearing officer shall afford all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by limited grant of intervention or a prehearing order.

(5) Any party to an administrative hearing may participate in person or be represented by counsel. If the party is a corporation or other artificial person, a duly authorized representative may participate. A party may be represented by other professionals if appropriate and if permitted by the agency by administrative regulation.

(6) If a party fails to attend or participate in a prehearing conference, hearing, or other stage of the administrative hearing process, the hearing officer may adjourn the proceedings and issue a default order or may continue the proceedings without the participation of the defaulting party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. A default order shall be considered a recommended order and shall be processed as provided in Section 11 of this Act.

(7) A hearing officer may conduct all or part of an administrative hearing, or a prehearing conference, by telephone, television, or other electronic means, if each party to the hearing has an opportunity to hear, and, if technically feasible, to see the entire proceeding as it occurs, and if each party agrees in writing.

(8) An administrative hearing shall be open to the public unless specifically closed pursuant to a provision of law. If an administrative hearing is conducted by telephone, television, or other electronic means, and is not closed, public access shall be satisfied by giving the public an opportunity, at reasonable times, to hear or inspect the agency's record.

SECTION 9. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) In an administrative hearing, findings of fact shall be based exclusively on the evidence on the record. The hearing officer shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this Commonwealth. Hearsay evidence may be admissible, but it shall not be sufficient in itself to support an agency's findings of facts unless it would be admissible over objections in civil actions.

(2) All testimony shall be made under oath or affirmation. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party. Any party shall have the right to inspect the documentary or tangible evidence relating to an administrative hearing either in person or by counsel. Copies of documentary evidence may be obtained upon the payment of a fee, except documents protected from disclosure by state or federal law. Nothing in this section shall be construed as giving a party the right to examine or copy the personal notes, observations or conclusions of the agency staff, unless exculpatory in nature, nor shall it be construed as allowing access to the work product of counsel for the agency. Conditions for examining and copying agency records, fees to be charged, and other matters pertaining to access to these records shall be governed by KRS 61.870 to 61.884.

(3) Objections to evidentiary offers may be made by any party and shall be noted in the record.

(4) The hearing officer may take official notice of facts which are not in dispute, or of generally recognized technical or scientific facts within the agency's specialized knowledge. The hearing officer shall notify all parties, either before or during the hearing, or in preliminary reports or otherwise, of any facts so noticed and their source. All parties shall be given an opportunity to contest facts officially noticed.

(5) The agency shall cause all testimony, motions, and objections in a hearing to be accurately and completely recorded. Any person, upon request, may receive a copy of the recording or a copy of the transcript, if the hearing has been transcribed, at the discretion of the agency, unless the hearing is closed by law. The agency may prepare a transcript of a hearing or a portion of a hearing upon request but the party making the request shall be responsible for the transcription costs. The form of all requests and fees charged shall be consistent with KRS 61.870 to 61.884.

SECTION 10. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) Unless required for the disposition of ex parte matters specifically authorized by statute, a hearing officer shall not communicate off the record with any party to the hearing or any other person who has a direct or indirect interest in the outcome of the hearing, concerning any substantive issue, while the hearing is pending.

(2) The prohibition stated in subsection (1) shall not apply to:

(a) Communication with other agency staff, if the communication is not an ex parte communication received by staff; and

(b) Communication among members of a collegial body or panel which by law is serving as a hearing officer.

(3) When an ex parte communication occurs, the hearing officer shall note the occurrence for the record, and, if in the opinion of the hearing officer, the nature of the communication could have a substantive bearing on the outcome of the hearing, he shall place on the record a copy of the communication, if it was written, or a memorandum of the substance of the communication, if it was oral.

SECTION 11. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) The hearing officer shall complete and submit to the agency head, no later than sixty (60) days after receiving a copy of the official record of the proceeding, a written recommended order which shall include his findings of fact, conclusion of law, and recommended disposition of the hearing, including recommended penalties, if any.

(2) If an extension of time is needed by the hearing officer to complete and submit his recommended order to the agency head, the hearing officer shall show good cause to the agency head, in writing, and based upon substantial proof, that an extension of time is needed.

(3) If the agency head, after a showing of good cause, grants the hearing officer an extension of time:

(a) The extension shall not exceed thirty (30) days from the date the extension was granted;

(b) The statement granting the extension shall be included in the record of the hearing; and

(c) Notice of the extension shall be sent to all parties.

(4) A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days within which to file exceptions to the recommendations with the agency head. Transmittal of a recommended order shall be in the same manner as provided for notification in Section 5 of this Act.

SECTION 12. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) In making the final order, the agency head shall consider the whole record or those portions of the record cited by the parties, and any exceptions duly filed to a recommended order.

(2) The agency head may accept the recommended order of the hearing officer and adopt it as the agency's final order, or it may reject or modify all or part of the recommended order.

(3) The final order in an administrative hearing shall be in writing and stated in the record. If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The final order shall also include the effective date of the order and a statement advising parties fully of available appeal rights.

(4) The agency head shall render a final order in an administrative hearing within ninety (90) days after:

- *(a) The conclusion of the hearing in which there was no hearing officer; or*
- *(b) The hearing officer submits a recommended order to the agency head.*

(5) Unless waived by the party, a copy of the final order shall be transmitted to each party or to his attorney of record in the same manner as provided in Section 5.

(6) This section shall not apply to disposition pursuant to subsection (3) of Section 7 of this Act.

(7) If, pursuant to statute, an agency may review the final order of another agency, the review is deemed to be a continuous proceeding as if before a single agency. The final order of the first agency is treated as a recommended order and the second agency functions as though it were reviewing a recommended order in accordance with Section 12.

SECTION 13. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

In each administrative hearing, an agency shall keep an official record of the proceedings which shall consist of:

- *(1) All notices, pleadings, motions, and intermediate rulings;*
- *(2) Any prehearing orders;*
- *(3) Evidence received and considered;*
- *(4) A statement of matters officially noticed;*
- *(5) Proffers of proof and objections and rulings thereon;*
- *(6) Proposed findings, requested orders, and exemptions;*
- *(7) A copy of the recommended order, exceptions filed to the recommended order, and a copy of the final order;*
- *(8) All requests by the hearing officer for an extension of time, and the response of the agency head;*
- *(9) Ex parte communications placed upon the record by the hearing officer; and*
- *(10) A recording or transcript of the proceedings.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

(2) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review. A court may relieve a petitioner of the requirement to exhaust all administrative remedies, to the extent that the administrative remedies are inadequate, or requiring their exhaustion would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

(3) Within twenty (20) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent correction or additions to the official record.

(4) A petition for judicial review shall not automatically stay a final order pending the outcome of the review, but the petitioner may request a stay.

SECTION 15. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) Review of a final order shall be conducted by the court without a jury and shall be confined to the record, unless there is fraud or misconduct involving a party engaged in administration of this chapter. The court, upon request, may hear oral argument and receive written briefs.

(2) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the final order or it may reverse the final order, in whole or in part, and remand the case for further proceedings if it finds the agency's final order is:

- *(a) In violation of constitutional or statutory provisions;*
- *(b) In excess of the statutory authority of the agency;*
- *(c) Clearly without support of substantial evidence on the whole record;*
- *(d) Arbitrary, capricious, or characterized by abuse of discretion;*

(e) Based on an ex parte communication which substantially prejudiced the rights of any party and likely affected the outcome of the hearing; or

(f) Prejudiced by a failure of the person conducting a proceeding to be disqualified pursuant to subsection (2) of Section 4 of this Act.

SECTION 16. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

Any aggrieved party may appeal any final judgment of the Circuit Court under this chapter to the Court of Appeals in accordance with the Kentucky Rules of Civil Procedure.

SECTION 17. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) An agency shall have authority to promulgate administrative regulations that are necessary to carry out the provisions of this chapter, including the authority to adopt provisions of the chapter by administrative regulations prior to the effective date of the Act, provided the regulations do not conflict with existing statutes.

(2) By July 1 of each odd-numbered year, each agency shall submit to the Legislative Research Commission a report on the status of the administrative hearing process in that agency. The report shall include a compilation of statistical data, a summary of complaints received and the resolution of the complaints, and other information as requested by the Legislative Research Commission in order to evaluate the effectiveness of administrative hearing procedures. The report shall also include any recommendations an agency may have for improving the administrative hearing process in Kentucky.

SECTION 18. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The Division of Administrative Hearings is created in the Office of Attorney General.

(2) This division shall have the following responsibilities:

(a) Employing and maintaining a pool of hearing officers for assignment to the individual agencies at their request, for the conduct of administrative hearings. The Attorney General's office may charge an agency a reasonable amount for services provided under this section, not to exceed the amount allowed for a sole practitioner under personal service contract. The Attorney General's office may also employ other staff as necessary to carry out functions and responsibilities assigned by KRS Chapter 13B;

(b) Reviewing and approving or disapproving requests from agencies for waivers from provisions of KRS Chapter 13B;

(c) Providing training in administrative hearing procedures for hearing officers as required in Section 3, either by developing and offering the training, or by contracting with appropriate organizations for the provision of training, or by approving training developed and submitted by the agencies;

(d) Consulting with the Department of Personnel and employing agencies in the establishment of relevant and appropriate qualifications for classes of hearing officers;

(e) Establishing, in cooperation with the Division of Consumer Protection, a clearinghouse for complaints concerning the administrative hearing process in Kentucky. Each complaint received shall be referred to the agency that is the subject of the complaint, and the action of the agency to resolve the complaint shall be noted and reported to the division;

(f) Reporting to the Legislative Research Commission by July 1 of each odd-numbered year, the status of the administrative hearing process in Kentucky. The report shall include a compilation of statistical data and other information necessary to assess the effectiveness and efficiency of hearing procedures and recommendations for making improvements to the system. Agencies shall provide the information requested by the Division of Administrative Hearings necessary to complete the report.

Section 19. (1) Sections 1 to 16 of this Act shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly.

(2) By no later than December 30, 1994, each administrative agency, as defined by Section 1 of this Act, shall submit to the Legislative Research Commission a statement of which existing statutes need to be repealed or amended to conform to the procedures established by this Act. If the agency believes that its unique circumstances warrant its being excluded from the provisions of this Act, it shall also provide the commission with a statement to that effect, including a detailed justification for exclusion, but the submission of a statement requesting exclusion shall not eliminate the obligation of submitting the statement relating to conformance.

(3) With the assistance of the staff of the Legislative Research Commission, each agency shall develop legislation to conform its procedures to the provisions of this Act. After review and approval by the Division of Administrative Hearings, the legislation shall be submitted to the Legislative Research Commission by no later than June 30, 1995. The Legislative Research Commission shall thereupon refer this draft to the appropriate interim joint committee for its consideration and action prior to the 1996 Regular Session of the General Assembly.

(4) If an agency has not submitted the proposed legislation required by subsection (3) of this section on or before June 30, 1995, the Legislative Research Commission shall immediately notify the secretary of the Finance and Administration

Cabinet and the State Treasurer, and no state funds shall be released to that agency beginning July 15, 1995, until the Legislative Research Commission certifies to these officials that the proposed legislation has been received.

The Committee Substitute to **HB 334** is as follows:

HB 334, AN ACT relating to administrative hearings.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

As used in this chapter, unless the context requires otherwise:

(1) "Administrative agency" or "agency" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity authorized by law to conduct administrative hearings. The term does not include any unit in the legislative or judicial branches or any city, county, urban-county, charter county, or any other local unit of government contained in KRS Chapters 74 to 109.

(2) "Administrative hearing" or "hearing" means any type of formal adjudicatory proceeding conducted by an agency as required or permitted by statute or regulation to adjudicate the legal rights, duties, privileges or immunities of a named person.

(3) "Party" means:

(a) The named person whose legal rights, duties, privileges, or immunities are being adjudicated in the administrative hearing;

(b) Any other person who is duly granted intervention in an administrative hearing; and

(c) Any agency named as a party to the adjudicatory proceeding or entitled or permitted by the law being enforced to participate fully in the administrative hearing.

(4) "Agency head" means the individual or collegial body in an agency that is responsible for entry of a final order.

(5) "Recommended order" means the whole or part of a preliminary hearing report to an agency head for the disposition of an administrative hearing.

(6) "Final order" means the whole or part of the final disposition of an administrative hearing, whenever made effective by an agency head, whether affirmative, negative, injunctive, declamatory, agreed, or imperative in form.

(7) "Hearing officer" means the individual, duly qualified and employed pursuant to this chapter, assigned by an agency head as presiding officer for an administrative hearing or the presiding member of the agency head.

(8) "Division" means the Division of Administrative Hearings in the Office of the Attorney General created pursuant to Section 18 of this Act.

SECTION 2. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.

(2) The provisions of this chapter shall not apply to investigations or any other type of information gathering or fact finding activities.

(3) The following administrative hearings shall be exempt from application of this chapter:

(a) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;

(b) Any nonadjudicatory, legislative public hearing conducted by an administrative agency;

(c) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;

(d) Any other administrative hearing procedure approved for exemption in compliance with Section 19 of this Act and enacted in conforming legislation by the 1996 Regular Session of the General Assembly. An agency shall establish grounds for exemption of an administrative hearing procedure when:

1. The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;

2. Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings;

3. The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter are applied at some level

within the multilevel process; or

4. The hearing procedures represent a comprehensive hearing process which provides a substantially equivalent level of due process protection as provided in this chapter; and

(e) After the effective date of this section, any administrative hearing, or portion thereof, certified as exempt by the Attorney General based on criteria contained in subsection (3)(d) of this section.

(4) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures, by administrative regulation, which insofar as practical shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.

(5) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.

SECTION 3. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) An agency head may exercise all powers conferred on an agency relating to the conduct of administrative hearings, and he may delegate conferred powers to a hearing officer or a member of a collegial body that serves as an agency head. An agency head may not, however, delegate the power to issue a final order unless specifically authorized by statute, or unless disqualified in accordance with subsection (2) of Section 4 of this Act.

(2) (a) In securing hearing officers as necessary to conduct administrative hearings under the jurisdiction of the agency, an agency may:

1. Employ hearing officers;

2. Contract with another agency for hearing officers; or

3. Contract with private attorneys through personal service contract.

(b) An agency may secure hearing officers pursuant to subsection (2)(a)3. of this section only if the Attorney General has first determined that the Attorney General's Office cannot provide the needed hearing officers to the agency. If the Attorney General determines that the Attorney General's Office can provide the needed hearing officers to the agency, the agency shall use the hearing officers provided by the Attorney General's Office. The expenses incurred by the Attorney General's Office in providing the hearing officers to the agency shall be paid to the Attorney General's Office by the agency in the following manner:

1. The amount to be paid by the agency to the Attorney General's Office shall be established by vouchers submitted by the Attorney General's Office to the agency which shall be promptly paid by the agency, at the beginning of, at the end of, or at any time during the provision of the hearing officers by the Attorney General's Office.

2. The expenses to be paid to the Attorney General's Office shall be calculated according to the amount of time spent by the salaried hearing officers of the Attorney General's Office in providing the services. The charge for time spent shall not exceed twenty-five percent (25%) more than the amount allowed for a sole practitioner under personal service contract. The Attorney General may require payment in advance of the provision of the requested services based on his calculation of the amount of time that will be spent by the salaried hearing officers of the Attorney General's Office in providing the services. The agency shall be reimbursed for any overpayment at the conclusion of the provision of services by the Attorney General's Office.

(3) A hearing officer shall possess and meet qualifications as the Department of Personnel, the division and the employing agency may find necessary to assure competency in the conduct of an administrative hearing. The qualifications in this subsection shall not, however, apply to a member of a board, commission, or other collegial body who may serve as a hearing officer in his capacity as a member of the collegial body.

(4) All hearing officers, including members of collegial bodies who serve as hearing officers, shall receive training necessary to prepare them to conduct a competent administrative hearing. The training shall pertain to the conduct of administrative hearings generally and to the applications of the provisions of this chapter, specifically. The division shall establish by administrative regulation minimum standards concerning the length of training, course content, and instructor qualifications. Actual training may be conducted by an agency or any other organization, if the training program offered has been approved by the division as meeting minimum standards.

SECTION 4. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) A person who has served as an investigator or prosecutor in an administrative hearing or in its pre-adjudicative stage, shall not serve as hearing officer or assist or advise a hearing officer in the same proceeding. This shall not be

construed as preventing a person who has participated in a determination of probable cause or other equivalent preliminary determination, from serving as a hearing officer in the same proceeding.

(2) (a) A hearing officer, agency head, or member of a agency head who is serving as a hearing officer, shall voluntarily disqualify himself and withdraw from any case in which he cannot afford a fair and impartial hearing or consideration. Any party may request the disqualification of a hearing officer, agency head, or member of the agency head by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding.

(b) Grounds for disqualification of a hearing officer shall include, but shall not be limited to, the following:

1. Serving as an investigator or prosecutor in the proceeding or the preadjudicative stages of the proceeding;

2. Participating in an ex parte communication which would prejudice the proceedings;

3. Having a pecuniary interest in the outcome of the proceeding; or

4. Having a personal bias toward any party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

SECTION 5. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) In any administrative hearing, the agency shall conduct the hearing as soon as practicable and shall give notice of the hearing to the parties not less than twenty (20) days in advance of the date set for the hearing. An agency shall make every effort to schedule a hearing on a date that is convenient to the parties involved.

(2) The notice required by subsection (1) of this section shall be served on the parties by certified mail, return receipt requested, sent to the last known address of the parties, or by personal service. Service by mail shall be complete upon mailing.

(3) The notice required by this section shall be in plain language and shall include:

(a) A statement of the date, time, place, and nature of the hearing;

(b) The name, official title, and mailing address of the hearing officer;

(c) The names, official titles, mailing addresses, and, if available, telephone numbers of all parties to the hearing, including the counsel or representative of the agency;

(d) A statement of the issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and argument;

(e) A reference to the specific statutes and administrative regulations which relate to the issues involved;

(f) A statement advising the person of his right to legal counsel;

(g) A statement of the parties' right to examine, prior to the hearing, any evidence to be used at the hearing and any exculpatory information in the agency's possession; and

(h) A statement advising that any party who fails to attend or participate as required at any stage of the administrative hearing process may be held in default under this chapter.

(4) If an agency decides not to conduct an administrative hearing in response to a petition, the agency shall notify the petitioner of its decision in writing, with a brief statement of the agency's reasons and any administrative review available to the petitioner.

SECTION 6. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) The hearing officer shall grant a petition for intervention if:

(a) The petition is submitted in writing to the hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(b) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

(2) The hearing officer may grant a petition for intervention upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(3) If a petitioner qualifies for intervention, the hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(4) The hearing officer, at least three (3) days before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The hearing officer shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

SECTION 7. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) A hearing officer may convene and conduct a prehearing conference upon reasonable notice to all parties to deal with exploration of jurisdictional matters, settlement possibilities, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas and orders, and other matters that will promote the orderly and prompt conduct of the hearing.

(2) Upon conclusion of a prehearing conference, the hearing officer shall issue a prehearing order incorporating all matters determined at the prehearing conference. If a prehearing conference is not held, the hearing officer may issue a prehearing order, based on the pleadings, to regulate the conduct of the hearing.

(3) Except to the extent precluded by another provision of law, informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is encouraged. Agencies shall establish by administrative regulation specific procedures to facilitate informal settlement of matters. This subsection shall not be construed, however, as requiring any party to settle a matter pursuant to informal procedures.

SECTION 8. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) A hearing officer shall preside over the conduct of an administrative hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing. When a prehearing order has been issued, the hearing officer shall regulate the hearing in conformity with the prehearing order.

(2) The hearing officer, at appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, motions, objections, and offers of settlement. The hearing officer, at appropriate stages of the proceedings, may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed recommended or final orders. The original of all filings shall be mailed to the agency and copies of any filed item shall be served on all parties by mail or any other means prescribed by agency regulation.

(3) The hearing officer may issue subpoenas and discovery orders when requested by a party. When a subpoena is disobeyed, any party may apply to the Circuit Court of the judicial circuit in which the administrative hearing is held for an order requiring obedience. Failure to comply with an order of the court shall be cause for punishment as a contempt of the court.

(4) To the extent necessary for the full disclosure of all relevant facts and issues, the hearing officer shall afford all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by limited grant of intervention or a prehearing order.

(5) Any party to an administrative hearing may participate in person or be represented by counsel. In informal proceedings, a party may be represented by other professionals if appropriate and if permitted by the agency by administrative regulation.

(6) If a party fails to attend or participate in a prehearing conference, hearing, or other stage of the administrative hearing process, or fails to comply with the orders of a hearing officer, the hearing officer may adjourn the proceedings and issue a default order or may continue the proceedings without the participation of the defaulting party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. A default order shall be considered a recommended order and shall be processed as provided in Section 11 of this Act.

(7) A hearing officer may conduct all or part of an administrative hearing, or a prehearing conference, by telephone, television, or other electronic means, if each party to the hearing has an opportunity to hear, and, if technically feasible, to see the entire proceeding as it occurs, and if each party agrees in writing.

(8) An administrative hearing shall be open to the public unless specifically closed pursuant to a provision of law. If an administrative hearing is conducted by telephone, television, or other electronic means, and is not closed, public access shall be satisfied by giving the public an opportunity, at reasonable times, to hear or inspect the agency's record.

SECTION 9. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) In an administrative hearing, findings of fact shall be based exclusively on the evidence on the record. The hearing officer shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or

statutory grounds or on the basis of evidentiary privilege recognized in the courts of this Commonwealth. Hearsay evidence may be admissible, but it shall not be sufficient in itself to support an agency's findings of facts unless it would be admissible over objections in civil actions.

(2) All testimony shall be made under oath or affirmation. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party. Any party shall have the right to inspect, prior to the hearing, the documentary or tangible evidence relating to an administrative hearing either in person or by counsel. Copies of documentary evidence may be obtained upon the payment of a fee, except documents protected from disclosure by state or federal law. Nothing in this section shall be construed as giving a party the right to examine or copy the personal notes, observations or conclusions of the agency staff, unless exculpatory in nature, nor shall it be construed as allowing access to the work product of counsel for the agency. Conditions for examining and copying agency records, fees to be charged, and other matters pertaining to access to these records shall be governed by KRS 61.870 to 61.884.

(3) Objections to evidentiary offers may be made by any party and shall be noted in the record.

(4) The hearing officer may take official notice of facts which are not in dispute, or of generally recognized technical or scientific facts within the agency's specialized knowledge. The hearing officer shall notify all parties, either before or during the hearing, or in preliminary reports or otherwise, of any facts so noticed and their source. All parties shall be given an opportunity to contest facts officially noticed.

(5) The agency shall cause all testimony, motions, and objections in a hearing to be accurately and completely recorded. Any person, upon request, may receive a copy of the recording or a copy of the transcript, if the hearing has been transcribed, at the discretion of the agency, unless the hearing is closed by law. The agency may prepare a transcript of a hearing or a portion of a hearing upon request but the party making the request shall be responsible for the transcription costs. The form of all requests and fees charged shall be consistent with KRS 61.870 to 61.884.

SECTION 10. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) Unless required for the disposition of ex parte matters specifically authorized by statute, a hearing officer shall not communicate off the record with any party to the hearing or any other person who has a direct or indirect interest in the outcome of the hearing, concerning any substantive issue, while the proceeding is pending.

(2) The prohibition stated in subsection (1) shall not apply to:

(a) Communication with other agency staff, if the communication is not an ex parte communication received by staff; and

(b) Communication among members of a collegial body or panel which by law is serving as a hearing officer.

(3) If an ex parte communication occurs, the hearing officer shall note the occurrence for the record, and, if in the opinion of the hearing officer, the nature of the communication could have a substantive bearing on the outcome of the hearing, he shall place on the record a copy of the communication, if it was written, or a memorandum of the substance of the communication, if it was oral.

SECTION 11. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) Except when a shorter time period is provided by law, the hearing officer shall complete and submit to the agency head, no later than sixty (60) days after receiving a copy of the official record of the proceeding, a written recommended order which shall include his findings of fact, conclusion of law, and recommended disposition of the hearing, including recommended penalties, if any.

(2) If an extension of time is needed by the hearing officer to complete and submit his recommended order to the agency head, the hearing officer shall show good cause to the agency head, in writing, and based upon substantial proof, that an extension of time is needed.

(3) If the agency head, after a showing of good cause, grants the hearing officer an extension of time:

(a) The extension shall not exceed thirty (30) days from the date the extension was granted;

(b) The statement granting the extension shall be included in the record of the hearing; and

(c) Notice of the extension shall be sent to all parties.

(4) A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head. Transmittal of a recommended order may be sent by regular mail to the last known address of the party.

SECTION 12. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) In making the final order, the agency head shall consider the record including the recommended order and any exceptions duly filed to a recommended order.

(2) The agency head may accept the recommended order of the hearing officer and adopt it as the agency's final order, or it may reject or modify all or part of the recommended order.

(3) The final order in an administrative hearing shall be in writing and stated in the record. If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The final order shall also include the effective date of the order and a statement advising parties fully of available appeal rights.

(4) The agency head shall render a final order in an administrative hearing within ninety (90) days after:

(a) The conclusion of the hearing in which there was no hearing officer; or

(b) The hearing officer submits a recommended order to the agency head.

(5) Unless waived by the party, a copy of the final order shall be transmitted to each party or to his attorney of record in the same manner as provided in Section 5.

(6) This section shall not apply to disposition pursuant to subsection (3) of Section 7 of this Act.

(7) If, pursuant to statute, an agency may review the final order of another agency, the review is deemed to be a continuous proceeding as if before a single agency. The final order of the first agency is treated as a recommended order and the second agency functions as though it were reviewing a recommended order in accordance with Section 12.

SECTION 13. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

In each administrative hearing, an agency shall keep an official record of the proceedings which shall consist of:

(1) All notices, pleadings, motions, and intermediate rulings;

(2) Any prehearing orders;

(3) Evidence received and considered;

(4) A statement of matters officially noticed;

(5) Proffers of proof and objections and rulings thereon;

(6) Proposed findings, requested orders, and exemptions;

(7) A copy of the recommended order, exceptions filed to the recommended order, and a copy of the final order;

(8) All requests by the hearing officer for an extension of time, and the response of the agency head;

(9) Ex parte communications placed upon the record by the hearing officer; and

(10) A recording or transcript of the proceedings.

SECTION 14. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

(2) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

(3) Within twenty (20) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. The court may require or permit subsequent correction or additions to the official record.

(4) A petition for judicial review shall not automatically stay a final order pending the outcome of the review, but the petitioner may request a stay from the court.

SECTION 15. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) Review of a final order shall be conducted by the court without a jury and shall be confined to the record, unless there is fraud or misconduct involving a party engaged in administration of this chapter. The court, upon request, may hear oral argument and receive written briefs.

(2) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the final order or it may reverse the final order, in whole or in part, and remand the case for further proceedings if it finds the agency's final order is:

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the agency;

(c) Without support of substantial evidence on the whole record;

(d) Arbitrary, capricious, or characterized by abuse of discretion;

(e) Based on an ex parte communication which substantially prejudiced the rights of any party and likely affected the outcome of the hearing;

(f) Prejudiced by a failure of the person conducting a proceeding to be disqualified pursuant to subsection (2) of Section 4 of this Act; or

(g) Deficient as otherwise provided by law.

SECTION 16. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

Any aggrieved party may appeal any final judgment of the Circuit Court under this chapter to the Court of Appeals in accordance with the Kentucky Rules of Civil Procedure.

SECTION 17. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

(1) An agency shall have authority to promulgate administrative regulations that are necessary to carry out the provisions of this chapter.

(2) Nothing in this chapter shall be construed to prohibit an agency from enacting administrative hearing procedures by administrative regulations which are supplemental to the provisions of this chapter.

SECTION 18. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The Division of Administrative Hearings is created in the Office of Attorney General.

(2) This division shall have the following responsibilities:

(a) Employing and maintaining a pool of hearing officers for assignment to the individual agencies at their request, for the conduct of administrative hearings. The Attorney General's office may also employ other staff as necessary to carry out functions and responsibilities assigned by KRS Chapter 13B;

(b) Reviewing and approving or disapproving requests from agencies for waivers from provisions of KRS Chapter 13B;

(c) Providing training in administrative hearing procedures for hearing officers as required in Section 3, either by developing and offering the training, or by contracting with appropriate organizations for the provision of training, or by approving training developed and submitted by the agencies;

(d) Consulting with the Department of Personnel and employing agencies in the establishment of relevant and appropriate qualifications for classes of hearing officers;

(e) Establishing, in cooperation with the Division of Consumer Protection, a clearinghouse for complaints concerning the administrative hearing process in Kentucky. Each complaint received shall be referred to the agency that is the subject of the complaint, and the action of the agency to resolve the complaint shall be noted and reported to the division;

(f) Reporting to the Legislative Research Commission by July 1 of each odd-numbered year, the status of the administrative hearing process in Kentucky. The report shall include a compilation of statistical data and other information necessary to assess the effectiveness and efficiency of hearing procedures and recommendations for making improvements to the system. Agencies shall provide the information requested by the Division of Administrative Hearings necessary to complete the report.

Section 19. (1) By no later than December 30, 1994, each administrative agency, as defined by Section 1 of this Act, shall submit to the Legislative Research Commission the following:

(a) A statement of which existing statutes need to be repealed or amended to conform to the procedures established by this Act;

(b) If the agency believes that its unique circumstances warrant its being exempted from the provisions of this Act, it shall provide the commission with a statement to that effect, including a detailed justification for exemption based on criteria contained in subsection (3)(d) of Section 2 of this Act; and

(c) Any information requested by Legislative Research Commission to assess the fiscal impact of conforming with the provisions of this Act.

(2) With the assistance of the staff of the Legislative Research Commission, each agency shall develop legislation to conform its procedures to the provisions of this Act. After review and approval by the Division of Administrative Hearings, the legislation shall be submitted to the Legislative Research Commission by no later than June 30, 1995. The Legislative Research Commission shall thereupon refer this draft to the appropriate interim joint committee for its consideration and action prior to the 1996 Regular Session of the General Assembly.

(3) If an agency has not submitted the proposed legislation required by subsection (2) of this section on or before June 30, 1995, the Legislative Research Commission shall immediately notify the secretary of the Finance and Administration Cabinet and the State Treasurer, and no state funds shall be released to that agency beginning July 15, 1995, until the Legislative Research Commission certifies to these officials that the proposed legislation has been received.

(4) An administrative agency may adopt the provisions of Sections 1 to 17 of this Act by promulgation of administrative regulations prior to the effective date of Sections 1 to 17 of this Act if the administrative regulations do not conflict with existing statutes.

Section 20. Sections 1 to 17 of this Act shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly.

The Committee Amendment No. 1 to the Committee Substitute to **HB 334** is as follows:

On page 20, after lines 18, by adding the following:

SECTION 21. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO READ AS FOLLOWS:

This Act shall be named "The Albert Jones Act of 1994."

HB 355, AN ACT relating to public financing of campaigns of slates of candidates for Governor and Lieutenant Governor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 121A.060 is amended to read as follows:

(1) In order to become a qualifying slate of candidates for the purpose of receiving a transfer from the fund in a primary or regular election, or both, a slate of candidates shall request certification from the registry in a form and in the manner which the registry shall prescribe by administrative regulations promulgated in accordance with this chapter.

(2) The registry shall immediately review the request of a slate of candidates for certification to receive a transfer from the fund. The request for certification shall include:

(a) A statement of intent accepting maximum expenditure limitations;

(b) A copy of the slate's nomination papers;

(c) The financial reports filed by or on behalf of the slate of candidates as of the date of the request for certification which indicate that the slate of candidates has raised a threshold qualifying amount in individual qualifying contributions for a transfer from the fund at a two (2) for one (1) matching ratio. [~~The threshold qualifying amount for a slate of candidates for Governor and Lieutenant Governor that elects to be eligible to receive a transfer from the fund in a primary election shall be six hundred thousand dollars ($600,000) in qualifying contributions.~~] The minimum threshold qualifying amount for a slate of candidates for Governor and Lieutenant Governor in a ***primary or*** regular election that elects to be eligible to receive a transfer from the fund shall be ***one*** [~~three~~] hundred ***fifty*** thousand dollars ***($150,000)*** [~~($300,000)~~] in qualifying contributions and the maximum threshold qualifying amount for a ***primary or*** regular election shall be six hundred thousand dollars ($600,000) in qualifying contributions for any one (1) election. Not more than fifty percent (50%) of a threshold qualifying amount shall be received from residents of the same congressional district. No transfer from the fund shall be made for qualifying contributions which a slate of candidates may receive in any one (1) election which in the aggregate exceed the maximum threshold qualifying amount unless a qualifying slate of candidates has been released from expenditure limitations pursuant to KRS 121A.080(4) or (5). The threshold qualifying amounts shall be increased or decreased in accordance with the consumer price index for all urban workers, and the registry shall make that adjustment in a year in which a Governor and Lieutenant Governor are elected not later than the filing deadline for the primary election; and

(d) Any other information reasonably necessary that is required by the registry.

(3) The registry shall certify whether a slate of candidates is eligible to receive a primary election transfer no later than seven (7) calendar days after the slate submits the required documentation.

(4) The registry shall certify whether a slate of candidates is eligible to receive a regular election transfer not later than seven (7) calendar days after the slate submits the required documentation; except that if the slate is required to take part in a primary election, the results of the primary election shall have been certified by the registry.

(5) A separate determination and certification shall be made for a primary and a regular election.

(6) The certification issued by the registry shall indicate:

(a) Whether a slate of candidates is eligible to receive a transfer; and

(b) The amount of fund transfers the slate of candidates is eligible to receive based on the amount of qualifying contributions that the slate has received at the time that it requests a transfer eligibility certification.

(7) A slate of candidates may make multiple requests for fund transfer eligibility certification in the course of a primary or regular election at the times and in the manner which the registry shall prescribe by administrative regulation.

(8) If a slate of candidates that has filed a statement of intent to accept a transfer is not eligible to receive a transfer, the certification shall:

(a) State the reasons why the slate of candidates is not eligible to receive a transfer; and

(b) What action, if any, the slate of candidates may take to qualify for a transfer.

(9) A slate of candidates may file with the registry a written request to review the determination of the registry no later than seven (7) calendar days after the date of certification. The registry shall issue a ruling not later than ten (10) days after receiving a request to review its determination.

(10) A slate of candidates denied certification by the registry may appeal an adverse ruling within twenty (20) days by filing a notice of appeal in the Court of Appeals in accordance with the Rules of Civil Procedure and the appeal of a ruling by the registry shall be advanced on the docket to permit a timely decision.

(11) No threshold qualifying amount shall be required for a slate of candidates participating in a runoff primary. A qualifying slate of candidates shall be certified to receive a fund transfer for the runoff primary, if one shall be held, upon the registry's certification that the qualifying slate of candidates received the highest or next highest number of votes for its party's nomination for Governor and Lieutenant Governor at the primary election or that a qualifying slate of candidates was determined by lot to be eligible to participate in a runoff primary pursuant to KRS 118.245(6).

(12) No qualifying slate of candidates seeking its party's nomination for Governor and Lieutenant Governor shall be eligible to receive transfers from the fund in a primary election unless at least one (1) additional slate of candidates seeking the same party's nomination for Governor and Lieutenant Governor in the primary election has received and deposited in its candidate campaign account funds in an amount not less than the threshold qualifying amount for the primary election as established in KRS 121A.060(2)(c). No qualifying slate of candidates seeking election to the offices of Governor and Lieutenant Governor in a regular election shall be eligible to receive transfers from the fund unless at least one (1) additional slate of candidates seeking election to the offices of Governor and Lieutenant Governor in the regular election has received and deposited in its candidate campaign account funds in an amount not less than the minimum threshold qualifying amount for the regular election as established in KRS 121A.060(2)(c). ***After this requirement has been met in a primary or regular election, qualifying slates may independently qualify for subsequent transfers in that election without regard to the ability of another qualifying in that election slate to qualify for subsequent transfers in that election.***

Section 2. KRS 121A.080 is amended to read as follows:

(1) If the registry certifies that a qualifying slate of candidates is eligible to receive a transfer from the fund, the slate may submit a transfer entitlement voucher to the registry, complying with the procedures of subsection (7) of this section. ***Qualifying slates of candidates may receive transfers from the fund according to the matching ratio and threshold levels of qualifying contributions received specified in KRS 121A.060(2)(c). Subject to subsections (4) and (5) of this section,*** a transfer entitlement voucher may document total qualifying contributions ***of*** [~~equal to six hundred thousand dollars ($600,000) for a primary election and~~] not less than ***one*** [~~three~~] hundred ***fifty*** thousand dollars ***($150,000)*** [~~($300,000)~~] but not more than six hundred thousand dollars ($600,000) for a ***primary or*** regular election for receipt of ***total*** [~~a~~] fund ***transfers*** [~~transfer in an amount~~] equal to twice the amount of qualifying contributions documented. A qualifying slate may submit multiple transfer entitlement vouchers as additional qualifying contributions are received in ***an*** [~~a regular~~] election, but the maximum amount of fund transfers a slate may receive in a primary or regular election shall not exceed ***one million two hundred thousand dollars ($1,200,000)*** [~~twice the amount of the maximum threshold qualifying amount~~], subject to the provisions of subsections (4) and (5) of this section.

(2) The fund transfer which a qualifying slate of candidates for Governor and Lieutenant Governor in a runoff primary may receive shall be three hundred thousand dollars ($300,000).

(3) The fund transfer amounts shall be increased or decreased in accordance with the consumer price index for all urban workers, and the registry shall make that adjustment annually, beginning in 1996, and in a year in which a Governor and Lieutenant Governor are elected not later than the filing deadline for the primary election. If the registry makes a finding of fact, after a public hearing of which all slates of candidates for Governor and Lieutenant Governor shall be notified, that the existing appropriations in the fund are insufficient to cover the anticipated fund transfers, the registry shall reduce the matching ratio to the ratio the registry determines so as not to exceed the amount of the fund. If the matching ratio is reduced for a primary election, it shall be applied retroactively to all transfers made to qualifying slates of candidates in the primary election. If the matching ratio is reduced for a regular election, it shall be applied retroactively to all transfers made to qualifying slates of candidates in the regular election.

(4) (a) If the registry makes a finding of fact, after a public hearing of which all slates of candidates for Governor and Lieutenant Governor shall be notified, that in the course of a primary election, runoff primary election, or regular election campaign a slate of candidates for Governor and Lieutenant Governor that has not accepted the provisions of this chapter has received contributions or made expenditures in excess of the expenditure limit as provided in KRS 121A.030(1), the registry shall certify that those slates of candidates that have elected to become eligible for fund transfers or may in the future elect to become eligible for fund transfers shall be released from expenditure limitations ***and may receive and submit for fund transfers qualifying contributions in excess of six hundred thousand dollars ($600,000)***. Slates of candidates released from expenditure limitations in a primary or regular election shall continue to be eligible to receive transfers from the fund. A slate of candidates that is released from expenditure limitations in a runoff primary shall not be eligible for transfers from the fund

in excess of three hundred thousand dollars ($300,000), but shall be eligible to accept qualifying contributions for the runoff primary;

(b) The registry shall conduct a public hearing within three (3) days after any report submitted to the registry by a campaign committee of a slate of candidates indicates that the slate of candidates has, or may have, received contributions or made expenditures in excess of the expenditure limits as provided in KRS 121A.030(1). The registry shall issue a ruling not later than seven (7) days after the public hearing; and

(c) A public hearing shall be conducted within three (3) days upon petition to the registry by a slate of candidates that, based upon its knowledge and belief, another slate of candidates has, or may have, received contributions in excess of the expenditure limitations as provided in KRS 121A.030(1). The registry shall issue a ruling not later than seven (7) days after the public hearing.

(5) Nothing in this section shall prevent any slate of candidates from notifying the registry in writing that its campaign committee has received contributions or made expenditures in excess of the expenditure limitations as provided in KRS 121A.030(1). In that case, no public hearing shall be held and the registry shall certify that those slates of candidates who have elected to become eligible for fund transfers or may in the future elect to become eligible for fund transfers for that election shall be released from expenditure limitations for that election and shall continue to be eligible to receive transfers from the fund if qualified by law.

(6) A slate of candidates shall establish a separate candidate campaign account for each primary, runoff primary, and regular election in which it participates. The unexpended balance of contributions and fund transfers in a candidate campaign account of a slate of candidates which remains after all financial obligations of the particular election for which the account is established have been satisfied shall be forwarded to the registry for deposit in the fund when the account is closed. The payment to the fund shall be made not later than ten (10) working days after the candidate campaign account for a particular election is closed. Funds in the candidate campaign account of a slate of candidates shall be expended only for expenses incurred in the particular election for which the account is established and shall not be used to pay expenses incurred in any other election or for any other purpose.

(7) To receive fund transfers for which it is eligible, each qualifying slate of candidates shall submit to the registry at the times and in the form and manner the registry may require, a transfer entitlement voucher. The voucher shall include the full name of all persons making a contribution to the campaign committee of the slate of candidates together with the date, the exact amount of the contribution, the specific address of the contributor, the congressional district in which the contributor resides, the occupation and employer of the contributor and the spouse of the contributor, or, if the contributor or the spouse of contributor is self-employed, the name under which he is doing business.

(8) Within three (3) working days of the receipt of the voucher, the registry shall:

(a) Make a determination, according to the procedures the registry may establish by administrative regulation, whether each contribution enumerated on the voucher is consistent with the provisions of this chapter;

(b) Certify for payment to the qualifying slate of candidates the amount of fund transfer for which it is eligible; and

(c) Promptly upon certification, issue a warrant on the fund for a transfer to the qualifying slate of candidates or its authorized treasurer in the amount certified by the registry.

(9) For the purpose of financing primary election campaigns, the registry shall make no transfer to a qualifying slate of candidates entitled to transfers from the fund earlier than January 1 of a year in which the Governor and Lieutenant Governor are elected.

(10) Transfers from the fund for a regular election campaign shall not be made earlier than the date the results of the primary election preceding the regular election of a year in which the Governor and Lieutenant Governor are elected are certified. If a qualifying slate of candidates is unopposed in a primary election, or has no opposition that has received contributions of not less than the threshold qualifying amount for the primary election, the registry shall make no transfer to that slate from the fund for the primary election. If a qualifying slate of candidates is unopposed in a regular election, or has no opposition that has received contributions of not less than the minimum threshold qualifying amount for the regular election, the registry shall make no transfer to that slate from the fund for the regular election.

(11) If a vacancy occurs in a slate of candidates before the ballots are printed for the primary election because of death, disqualification to hold the office sought, or severe disabling condition which arose after the slate formed a campaign committee, the remaining member of the slate may designate a replacement for the vacant candidate or change the composition of the slate and designate a running mate on forms filed with the registry not later than the deadline for printing primary election ballots, but only following certification to the remaining candidate by the Secretary of State that a vacancy exists for a reason specified in this subsection. If a vacancy occurs in a slate of candidates after the ballots are printed for the primary election, the remaining member of the slate may designate a replacement for the vacant candidate or change the composition of the slate and designate a running mate on forms filed with the registry prior to the primary election, but only following certification to the remaining candidate by the Secretary of State that a vacancy exists for a reason specified in this subsection. If a replacement for a vacant candidate is made after the ballots are printed for the primary election because of death, disqualification to hold the office sought, or severe disabling condition which arose after the slate formed a campaign committee, notices informing the voters of the change in the composition of the slate

shall be posted at each precinct polling place.

(12) The provisions of KRS 118.105 shall apply to vacancies occurring in the nomination of a qualifying slate of candidates.

(13) If during the course of a primary or regular election, a qualifying slate of candidates withdraws, is otherwise removed from the ballot, becomes the only slate of candidates for a party nomination or election on the ballot, or if both candidates on the slate die, the registry shall certify and pay on vouchers previously submitted by that slate, but any subsequent vouchers submitted by that slate shall not be certified nor shall transfers be made.

(14) The registry shall not certify any contribution made to a qualifying slate of candidates entitled to transfers from the fund, which, when added to other contributions made by the same contributor to the slate in connection with the ***primary*** ~~[regular]~~ election and in connection with the ***regular*** ~~[general]~~ election, violates the provisions of KRS 121A.050 or 121.150.

(15) The registry shall perform a continuing audit of all slates of candidates for Governor and Lieutenant Governor to ensure that they are in compliance with this chapter and the election laws of the Commonwealth.

The Committee Substitute to **HB 355** is as follows:

HB 355, AN ACT relating to public financing of campaigns of slates of candidates for Governor and Lieutenant Governor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 121A.060 is amended to read as follows:

(1) In order to become a qualifying slate of candidates for the purpose of receiving a transfer from the fund in a primary or regular election, or both, a slate of candidates shall request certification from the registry in a form and in the manner which the registry shall prescribe by administrative regulations promulgated in accordance with this chapter.

(2) The registry shall immediately review the request of a slate of candidates for certification to receive a transfer from the fund. The request for certification shall include:

(a) A statement of intent accepting maximum expenditure limitations;

(b) A copy of the slate's nomination papers;

(c) The financial reports filed by or on behalf of the slate of candidates as of the date of the request for certification which indicate that the slate of candidates has raised a threshold qualifying amount in individual qualifying contributions for a transfer from the fund at a two (2) for one (1) matching ratio. ~~[The threshold qualifying amount for a slate of candidates for Governor and Lieutenant Governor that elects to be eligible to receive a transfer from the fund in a primary election shall be six hundred thousand dollars ($600,000) in qualifying contributions.]~~ The minimum threshold qualifying amount for a slate of candidates for Governor and Lieutenant Governor in a ***primary or*** regular election that elects to be eligible to receive a transfer from the fund shall be three hundred thousand dollars ($300,000) in qualifying contributions and the maximum threshold qualifying amount for a ***primary or*** regular election shall be six hundred thousand dollars ($600,000) in qualifying contributions for any one (1) election. Not more than fifty percent (50%) of a threshold qualifying amount shall be received from residents of the same congressional district. No transfer from the fund shall be made for qualifying contributions which a slate of candidates may receive in any one (1) election which in the aggregate exceed the maximum threshold qualifying amount unless a qualifying slate of candidates has been released from expenditure limitations pursuant to KRS 121A.080(4) or (5). The threshold qualifying amounts shall be increased or decreased in accordance with the consumer price index for all urban workers, and the registry shall make that adjustment in a year in which a Governor and Lieutenant Governor are elected not later than the filing deadline for the primary election; and

(d) Any other information reasonably necessary that is required by the registry.

(3) The registry shall certify whether a slate of candidates is eligible to receive a primary election transfer no later than seven (7) calendar days after the slate submits the required documentation.

(4) The registry shall certify whether a slate of candidates is eligible to receive a regular election transfer not later than seven (7) calendar days after the slate submits the required documentation; except that if the slate is required to take part in a primary election, the results of the primary election shall have been certified by the registry.

(5) A separate determination and certification shall be made for a primary and a regular election.

(6) The certification issued by the registry shall indicate:

(a) Whether a slate of candidates is eligible to receive a transfer; and

(b) The amount of fund transfers the slate of candidates is eligible to receive based on the amount of qualifying contributions that the slate has received at the time that it requests a transfer eligibility certification.

(7) A slate of candidates may make multiple requests for fund transfer eligibility certification in the course of a primary or regular election at the times and in the manner which the registry shall prescribe by administrative regulation.

(8) If a slate of candidates that has filed a statement of intent to accept a transfer is not eligible to receive a transfer, the certification shall:

(a) State the reasons why the slate of candidates is not eligible to receive a transfer; and

(b) What action, if any, the slate of candidates may take to qualify for a transfer.

(9) A slate of candidates may file with the registry a written request to review the determination of the registry no later than seven (7) calendar days after the date of certification. The registry shall issue a ruling not later than ten (10) days after receiving a request to review its determination.

(10) A slate of candidates denied certification by the registry may appeal an adverse ruling within twenty (20) days by filing a notice of appeal in the Court of Appeals in accordance with the Rules of Civil Procedure and the appeal of a ruling by the registry shall be advanced on the docket to permit a timely decision.

(11) No threshold qualifying amount shall be required for a slate of candidates participating in a runoff primary. A qualifying slate of candidates shall be certified to receive a fund transfer for the runoff primary, if one shall be held, upon the registry's certification that the qualifying slate of candidates received the highest or next highest number of votes for its party's nomination for Governor and Lieutenant Governor at the primary election or that a qualifying slate of candidates was determined by lot to be eligible to participate in a runoff primary pursuant to KRS 118.245(6).

(12) No qualifying slate of candidates seeking its party's nomination for Governor and Lieutenant Governor shall be eligible to receive transfers from the fund in a primary election unless at least one (1) additional slate of candidates seeking the same party's nomination for Governor and Lieutenant Governor in the primary election has received and deposited in its candidate campaign account funds in an amount not less than the threshold qualifying amount for the primary election as established in KRS 121A.060(2)(c). No qualifying slate of candidates seeking election to the offices of Governor and Lieutenant Governor in a regular election shall be eligible to receive transfers from the fund unless at least one (1) additional slate of candidates seeking election to the offices of Governor and Lieutenant Governor in the regular election has received and deposited in its candidate campaign account funds in an amount not less than the minimum threshold qualifying amount for the regular election as established in KRS 121A.060(2)(c). ***After this requirement has been met in a primary or regular election, qualifying slates may independently qualify for subsequent transfers in that election without regard to the ability of another qualifying slate in that election to qualify for subsequent transfers in that election.***

Section 2. KRS 121A.080 is amended to read as follows:

(1) If the registry certifies that a qualifying slate of candidates is eligible to receive a transfer from the fund, the slate may submit a transfer entitlement voucher to the registry, complying with the procedures of subsection (7) of this section. ***Qualifying slates of candidates may receive transfers from the fund according to the matching ratio and threshold levels of qualifying contributions received specified in KRS 121A.060(2)(c). Subject to subsections (4) and (5) of this section,*** a transfer entitlement voucher may document total qualifying contributions ***of*** ~~[equal to six hundred thousand dollars ($600,000) for a primary election and]~~ not less than three hundred thousand dollars ($300,000) but not more than six hundred thousand dollars ($600,000) for a ***primary or*** regular election for receipt of ***total*** ~~[a]~~ fund ***transfers*** ~~[transfer in an amount]~~ equal to twice the amount of qualifying contributions documented. A qualifying slate may submit multiple transfer entitlement vouchers as additional qualifying contributions are received in ***an*** ~~[a regular]~~ election, but the maximum amount of fund transfers a slate may receive in a primary or regular election shall not exceed ***one million two hundred thousand dollars ($1,200,000)*** ~~[twice the amount of the maximum threshold qualifying amount]~~, subject to the provisions of subsections (4) and (5) of this section.

(2) The fund transfer which a qualifying slate of candidates for Governor and Lieutenant Governor in a runoff primary may receive shall be three hundred thousand dollars ($300,000).

(3) The fund transfer amounts shall be increased or decreased in accordance with the consumer price index for all urban workers, and the registry shall make that adjustment annually, beginning in 1996, and in a year in which a Governor and Lieutenant Governor are elected not later than the filing deadline for the primary election. If the registry makes a finding of fact, after a public hearing of which all slates of candidates for Governor and Lieutenant Governor shall be notified, that the existing appropriations in the fund are insufficient to cover the anticipated fund transfers, the registry shall reduce the matching ratio to the ratio the registry determines so as not to exceed the amount of the fund. If the matching ratio is reduced for a primary election, it shall be applied retroactively to all transfers made to qualifying slates of candidates in the primary election. If the matching ratio is reduced for a regular election, it shall be applied retroactively to all transfers made to qualifying slates of candidates in the regular election.

(4) (a) If the registry makes a finding of fact, after a public hearing of which all slates of candidates for Governor and Lieutenant Governor shall be notified, that in the course of a primary election, runoff primary election, or regular election campaign a slate of candidates for Governor and Lieutenant Governor that has not accepted the provisions of this chapter has received contributions or made expenditures in excess of the expenditure limit as provided in KRS 121A.030(1), the registry shall certify that those slates of candidates that have elected to become eligible for fund transfers or may in the future elect to become eligible for fund transfers shall be released from expenditure limitations ***and may receive and submit for fund transfers qualifying contributions in excess***

of six hundred thousand dollars ($600,000). Slates of candidates released from expenditure limitations in a primary or regular election shall continue to be eligible to receive transfers from the fund. A slate of candidates that is released from expenditure limitations in a runoff primary shall not be eligible for transfers from the fund in excess of three hundred thousand dollars ($300,000), but shall be eligible to accept qualifying contributions for the runoff primary;

(b) The registry shall conduct a public hearing within three (3) days after any report submitted to the registry by a campaign committee of a slate of candidates indicates that the slate of candidates has, or may have, received contributions or made expenditures in excess of the expenditure limits as provided in KRS 121A.030(1). The registry shall issue a ruling not later than seven (7) days after the public hearing; and

(c) A public hearing shall be conducted within three (3) days upon petition to the registry by a slate of candidates that, based upon its knowledge and belief, another slate of candidates has, or may have, received contributions in excess of the expenditure limitations as provided in KRS 121A.030(1). The registry shall issue a ruling not later than seven (7) days after the public hearing.

(5) Nothing in this section shall prevent any slate of candidates from notifying the registry in writing that its campaign committee has received contributions or made expenditures in excess of the expenditure limitations as provided in KRS 121A.030(1). In that case, no public hearing shall be held and the registry shall certify that those slates of candidates who have elected to become eligible for fund transfers or may in the future elect to become eligible for fund transfers for that election shall be released from expenditure limitations for that election and shall continue to be eligible to receive transfers from the fund if qualified by law.

(6) A slate of candidates shall establish a separate candidate campaign account for each primary, runoff primary, and regular election in which it participates. The unexpended balance of contributions and fund transfers in a candidate campaign account of a slate of candidates which remains after all financial obligations of the particular election for which the account is established have been satisfied shall be forwarded to the registry for deposit in the fund when the account is closed. The payment to the fund shall be made not later than ten (10) working days after the candidate campaign account for a particular election is closed. Funds in the candidate campaign account of a slate of candidates shall be expended only for expenses incurred in the particular election for which the account is established and shall not be used to pay expenses incurred in any other election or for any other purpose.

(7) To receive fund transfers for which it is eligible, each qualifying slate of candidates shall submit to the registry at the times and in the form and manner the registry may require, a transfer entitlement voucher. The voucher shall include the full name of all persons making a contribution to the campaign committee of the slate of candidates together with the date, the exact amount of the contribution, the specific address of the contributor, the congressional district in which the contributor resides, the occupation and employer of the contributor and the spouse of the contributor, or, if the contributor or the spouse of contributor is self-employed, the name under which he is doing business.

(8) Within three (3) working days of the receipt of the voucher, the registry shall:

(a) Make a determination, according to the procedures the registry may establish by administrative regulation, whether each contribution enumerated on the voucher is consistent with the provisions of this chapter;

(b) Certify for payment to the qualifying slate of candidates the amount of fund transfer for which it is eligible; and

(c) Promptly upon certification, issue a warrant on the fund for a transfer to the qualifying slate of candidates or its authorized treasurer in the amount certified by the registry.

(9) For the purpose of financing primary election campaigns, the registry shall make no transfer to a qualifying slate of candidates entitled to transfers from the fund earlier than January 1 of a year in which the Governor and Lieutenant Governor are elected.

(10) Transfers from the fund for a regular election campaign shall not be made earlier than the date the results of the primary election preceding the regular election of a year in which the Governor and Lieutenant Governor are elected are certified. If a qualifying slate of candidates is unopposed in a primary election, or has no opposition that has received contributions of not less than the threshold qualifying amount for the primary election, the registry shall make no transfer to that slate from the fund for the primary election. If a qualifying slate of candidates is unopposed in a regular election, or has no opposition that has received contributions of not less than the minimum threshold qualifying amount for the regular election, the registry shall make no transfer to that slate from the fund for the regular election.

(11) If a vacancy occurs in a slate of candidates before the ballots are printed for the primary election because of death, disqualification to hold the office sought, or severe disabling condition which arose after the slate formed a campaign committee, the remaining member of the slate may designate a replacement for the vacant candidate or change the composition of the slate and designate a running mate on forms filed with the registry not later than the deadline for printing primary election ballots, but only following certification to the remaining candidate by the Secretary of State that a vacancy exists for a reason specified in this subsection. If a vacancy occurs in a slate of candidates after the ballots are printed for the primary election, the remaining member of the slate may designate a replacement for the vacant candidate or change the composition of the slate and designate a running mate on forms filed with the registry prior to the primary election, but only following certification to the remaining candidate by the Secretary of State that a vacancy exists for a

reason specified in this subsection. If a replacement for a vacant candidate is made after the ballots are printed for the primary election because of death, disqualification to hold the office sought, or severe disabling condition which arose after the slate formed a campaign committee, notices informing the voters of the change in the composition of the slate shall be posted at each precinct polling place.

(12) The provisions of KRS 118.105 shall apply to vacancies occurring in the nomination of a qualifying slate of candidates.

(13) If during the course of a primary or regular election, a qualifying slate of candidates withdraws, is otherwise removed from the ballot, becomes the only slate of candidates for a party nomination or election on the ballot, or if both candidates on the slate die, the registry shall certify and pay on vouchers previously submitted by that slate, but any subsequent vouchers submitted by that slate shall not be certified nor shall transfers be made.

(14) The registry shall not certify any contribution made to a qualifying slate of candidates entitled to transfers from the fund, which, when added to other contributions made by the same contributor to the slate in connection with the ***primary*** ~~[regular]~~ election and in connection with the ***regular*** ~~[general]~~ election, violates the provisions of KRS 121A.050 or 121.150.

(15) The registry shall perform a continuing audit of all slates of candidates for Governor and Lieutenant Governor to ensure that they are in compliance with this chapter and the election laws of the Commonwealth.

HCR 24, A CONCURRENT RESOLUTION confirming the appointment of Janice Kaelin Douglass to the Board of the Kentucky Long-Term Policy Research Center.

WHEREAS, pursuant to KRS 7B.030, the Governor has appointed Janice Douglass as an at-large member of the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 1994; and

WHEREAS, at-large appointments to the Kentucky Long-Term Policy Research Center Board are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of January 12, 1994, the Governor has delivered Ms. Douglass' name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Janice Kaelin Douglass meets the requirements established in KRS 7B.030 for membership on the Kentucky Long-Term Policy Research Center Board;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate hereby confirm the appointment of Janice Kaelin Douglass to the Board of the Kentucky Long-Term Policy Research Center for a term ending October 6, 1994.

Section 2. That the Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Brereton Jones, Room 100, State Capitol, and Ms. Janice Douglass, 433 Ledgeview Park, Louisville, Kentucky 40206, in writing, of the General Assembly's action.

HCR 25, A CONCURRENT RESOLUTION confirming the appointment of Frederick C. Ladt to the Board of the Kentucky Long-Term Policy Research Center.

WHEREAS, pursuant to KRS 7B.030, the Governor has appointed Frederick C. Ladt as an at-large member of the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 1995; and

WHEREAS, at-large appointments to the Kentucky Long-Term Policy Research Center Board are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of January 12, 1994, the Governor has delivered Mr. Ladt's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Frederick C. Ladt meets the requirements established in KRS 7B.030 for membership on the Kentucky Long-Term Policy Research Center Board;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate hereby confirm the appointment of Frederick C. Ladt to the Board of the Kentucky Long-Term Policy Research Center for a term ending October 6, 1995.

Section 2. That the Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Brereton Jones, Room 100, State Capitol, and Mr. Frederick C. Ladt, 566 Whitney Drive, Paducah, Kentucky 42001, in writing, of the General Assembly's action.

HCR 34, A CONCURRENT RESOLUTION confirming the appointment of Vic Hellard, Jr. to the Board of the Kentucky Long-Term Policy Research Center.

WHEREAS, pursuant to KRS 7B.030, the Legislative Research Commission has appointed Vic Hellard, Jr. as an at-large member of the Kentucky Long-Term Policy Research Center Board for a term of two (2) years; and

WHEREAS, at-large appointments to the Kentucky Long-Term Policy Research Center Board are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of January 4, 1994, the Legislative Research Commission has delivered Mr. Hellard's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Vic Hellard, Jr. meets the requirements established in KRS 7B.030 for membership on the Kentucky Long-Term Policy Research Center Board;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate hereby confirm the appointment of Vic Hellard, Jr. to the Board of the Kentucky Long-Term Policy Research Center for a term of two (2) years.

Section 2. That the Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify the Legislative Research Commission, Room 300, State Capitol and Mr. Vic Hellard, Jr., Route 3, Lillard's Ferry Road, Versailles, Kentucky 40383, in writing, of the General Assembly's action.

HCR 35, A CONCURRENT RESOLUTION confirming the appointment of Betty Sue Griffin to the Board of the Kentucky Long-Term Policy Research Center.

WHEREAS, pursuant to KRS 7B.030, the Legislative Research Commission has appointed Dr. Betty Sue Griffin as an at-large member of the Kentucky Long-Term Policy Research Center Board for a term of three (3) years; and

WHEREAS, at-large appointments to the Kentucky Long-Term Policy Research Center Board are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of January 4, 1994, the Legislative Research Commission has delivered Dr. Griffin's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Betty Sue Griffin meets the requirements established in KRS 7B.030 for membership on the Kentucky Long-Term Policy Research Center Board;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate hereby confirm the appointment of Dr. Betty Sue Griffin to the Board of the Kentucky Long-Term Policy Research Center for a term of three (3) years.

Section 2. That the Clerk of the House of Representatives, pursuant to KRS 11.160(2) shall, notify the Legislative Research Commission, Room 300, State Capitol and Dr. Betty Sue Griffin, 603 Briar Cliff Drive, Frankfort, Kentucky 40601, in writing, of the General Assembly's action.

HCR 38, A CONCURRENT RESOLUTION confirming the appointment of Charles Beach, III to the Board of the Kentucky Long-Term Policy Research Center.

WHEREAS, pursuant to KRS 7B.030, the Legislative Research Commission has appointed Charles Beach, III as an at-large member of the Kentucky Long-Term Policy Research Center Board for a term of four (4) years; and

WHEREAS, at-large appointments to the Kentucky Long-Term Policy Research Center Board are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of January 4, 1994, the Legislative Research Commission has delivered Mr. Beach's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Charles Beach, III meets the requirements established in KRS 7B.030 for membership on the Kentucky Long-Term Policy Research Center Board;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate hereby confirm the appointment of Charles Beach, III to the Board of the Kentucky Long-Term Policy Research Center for a term of four (4) years.

Section 2. That the Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify the Legislative Research Commission, Room 300, State Capitol and Mr. Charles Beach, III, PO Box 127, Beattyville, Kentucky 41311, in writing, of the General Assembly's action.

HCR 39, A CONCURRENT RESOLUTION confirming the appointment of Paul B. Cook to the Board of the Kentucky Long-Term Policy Research Center.

WHEREAS, pursuant to KRS 7B.030, the Legislative Research Commission has appointed Dr. Paul B. Cook as an at-large member of the Kentucky Long-Term Policy Research Center Board for a term of three (3) years; and

WHEREAS, at-large appointments to the Kentucky Long-Term Policy Research Center Board are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of January 4, 1994, the Legislative Research Commission has delivered Dr. Cook's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Paul B Cook meets the requirements established in KRS 7B.030 for membership on the Kentucky Long-Term Policy Research Center Board;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate hereby confirm the appointment of Dr. Paul B. Cook to the Board of the Kentucky Long-Term Policy Research Center for a term of three (3) years.

Section 2. That the Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify the Legislative Research Commission, Room 300, State Capitol and Dr. Paul B. Cook, 652 Windmill Way, Bowling Green, Kentucky 42104, in writing, of the General Assembly's action.

HCR 40, A CONCURRENT RESOLUTION confirming the appointment of Penny M. Miller to the Board of the Kentucky Long-Term Policy Research Center.

WHEREAS, pursuant to KRS 7B.030, the Governor has appointed Dr. Penny Miller as an at-large member of the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 1996; and

WHEREAS, at-large appointments to the Kentucky Long-Term Policy Research Center Board are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of January 12, 1994, the Governor has delivered Dr. Miller's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Penny M. Miller meets the requirements established in KRS 7B.030 for membership on the Kentucky Long-Term Policy Research Center Board;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate hereby confirm the appointment of Penny M. Miller to the Board of the Kentucky Long-Term Policy Research Center for a term ending October 6, 1996.

Section 2. That the Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Brereton Jones, Room 100, State Capitol, and Dr. Penny M. Miller, 1001 Maple Ridge, Lexington, Kentucky 40509, in writing, of the General Assembly's action.

SCR 44, A CONCURRENT RESOLUTION honoring the late Dr. Sean MacBride and supporting his principles.

WHEREAS, Dr. Sean MacBride of Dublin, Ireland, outlined the MacBride Principles to seek to guarantee citizens of Northern Ireland equal access to employment; and

WHEREAS, these principles present a set of nine equal opportunity guidelines as a constructive and nonviolent means of addressing a major cause of conflict and dissension; and

WHEREAS, the MacBride Principles were first proposed in 1984 by four leading figures in the field of social equality in Ireland; and

WHEREAS, these principles were modeled after the Sullivan Principles for business firms operating in South Africa; and

WHEREAS, the MacBride Principles enjoy broad support among civic organizations, governmental bodies, pension funds, political parties and church groups, including the American Baptist Convention; and

WHEREAS, federal MacBride Principles legislation has been introduced in the House of Representatives and Senate of the United States Congress and legislation has been introduced and passed in twelve states;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:

Section 1. That this august body does hereby express its support for the concepts of civil rights, human rights, and equal employment opportunity, that are the essence of the MacBride Principles, and honors their author, Dr. Sean MacBride.

Section 2. That the General Assembly commends the MacBride Principles to the Kentucky Congressional delegation and urges them to support hearings regarding the federal legislation introduced by Congressman Hamilton Fish and Senators Frank Lautenberg and Al D'Amato.

Section 3. That the General Assembly asks the state retirement systems of the Commonwealth of Kentucky to consider the MacBride Principles when making investments in United States corporations located in Northern Ireland.

Section 4. That the Clerk of the Senate is directed to transmit copies of this Resolution to each member of Kentucky's Congressional delegation, to the General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, and to the Executive Secretary, Judicial Retirement System and the Legislator's Retirement Plan, State National Bank Building, Room 302, Frankfort, Kentucky 40601.

SB 61, AN ACT relating to state personnel.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 18A.095 is amended to read as follows:

(1) A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.

(2) Prior to dismissal, a classified employee with status shall be notified in writing of the intent to dismiss him. The notice shall also state:

  (a) The specific reasons for dismissal including:

    1. The statutory or regulatory violation;

    2. The specific action or activity on which the intent to dismiss is based;

    3. The date, time, and place of such action or activity; and

    4. The name of the parties involved; and

  (b) That the employee has the right to appear personally, or with counsel if he has retained counsel, to reply to the head of the cabinet ***or agency*** or his ***designee*** [~~deputy~~].

(3) The department shall prescribe and distribute a form to be completed and forwarded by an employee who wishes to appear before the head of the cabinet ***or agency*** or his ***designee*** [~~deputy~~], to each appointing authority. ***The*** [~~Such~~] form shall be attached to every notice of intent to dismiss, and shall contain written instructions explaining:

  (a) The right granted an employee under the provisions of this section relating to pretermination hearings; and

  (b) The time limits and procedures to be followed by all parties in pretermination hearings.

(4) No later than five (5) working days after receipt of the notice of intent to dismiss, excluding the day he receives ***the*** [~~such~~] notice, the employee may request to appear, personally or with counsel if he has retained counsel, to reply to the head of the cabinet ***or agency*** or his ***designee*** [~~deputy~~].

(5) ***Unless waived by the employee, the*** [~~Such~~] appearance shall be scheduled ***within*** six (6) working days after receipt of an employee's request to appear before the head of the cabinet ***or agency*** or his ***designee*** [~~deputy~~], excluding the day his request is received.

(6) No later than five (5) working days after the employee appears before the head of the cabinet ***or agency*** or his ***designee*** [~~deputy~~], excluding the day of the appearance, the cabinet head ***or agency*** or his ***designee*** [~~deputy~~] shall:

  (a) Determine whether to dismiss the employee or to alter, modify, or rescind the intent to dismiss; and

  (b) Notify the employee in writing of the decision.

(7) If the cabinet ***or agency*** head or his ***designee*** [~~deputy~~] determines that the employee shall be dismissed or otherwise penalized, the employee shall be notified in writing of:

  (a) The effective date of his dismissal or other penalization;

  (b) The specific reason for ***this*** [~~such~~] action, including:

    1. The statutory or regulatory violation;

    2. The specific action or activity on which the dismissal or other penalization is based;

    3. The date, time, and place of ***the*** [~~such~~] action or activity; and

4. The name of the parties involved;

(c) That he may appeal ***the*** [~~such~~] dismissal or other penalization to the board within sixty (60) days after receipt of this notification, excluding the day he receives notice.

(8) A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:

(a) The demotion, suspension, or other penalization;

(b) The effective date of the demotion, suspension, or other penalization;

(c) The specific reason for ***the*** [~~such~~] action including:

1. The statutory or regulatory violation;

2. The specific action or activity on which the demotion, suspension or other penalization is based;

3. The date, time, and place of the action or activity; and

4. The name of the parties involved; and

(d) That he has the right to appeal to the board within sixty (60) days, excluding the day that he received notification.

(9) Any unclassified employee who is dismissed, demoted, suspended, or otherwise penalized for cause may, within thirty (30) days after ***the*** [~~such~~] dismissal, demotion, suspension, or other form of penalization, appeal to the board for review thereof.

(10) (a) An employee whose position is reallocated shall be notified in writing by the appointing authority of:

1. The reallocation; and

2. His right to request reconsideration by the commissioner within ten (10) working days of receipt of the notice, excluding the day he receives notification;

(b) He shall be provided with a form prescribed by the commissioner on which to request reconsideration; and

(c) The employee shall file a written request for reconsideration of the reallocation of his position with the commissioner in ***a*** [~~such~~] manner and form ***prescribed by the commissioner*** [~~as the commissioner may prescribe,~~] and shall be given a reasonable opportunity to be heard thereon by the commissioner. The commissioner shall make a determination within sixty (60) days after the request has been filed by an employee. After reconsideration of the request by the commissioner, the employee may appeal to the board.

(11) Any state employee, applicant for employment, or eligible on a register may appeal to the board on the grounds that his right to inspect or copy records, including preliminary and other supporting documentation, relating to him has been denied, abridged, or impeded by a public agency. The board shall conduct a hearing to determine whether the records related to the employee, applicant or eligible, and whether his right to inspect or copy ***these records*** [~~such~~] was denied, abridged, or impeded. If the board determines that the records related to the employee and that the right to inspect or copy ***these*** [~~such~~] records has been denied, abridged, or impeded, the board shall order the public agency to make them available for inspection and copying and shall charge the cost of the hearing to the public agency. A state employee, an applicant for employment***,*** and an eligible on a register shall not have the right to inspect or to copy any examination materials.

(12) Any classified employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, ***disability*** [~~handicap~~], or age between forty (40) and seventy (70). Nothing ***in this section*** [~~herein~~] shall be construed to preclude any classified or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, ***disability,*** [~~handicap~~] or age in accordance with KRS Chapter 344.

(13) When an eligible's name is removed from a register, the commissioner shall notify the eligible of his action and the reasons therefor, together with his right of appeal. An eligible's name shall be restored to the register upon presentation of reasons satisfactory to the commissioner or in accordance with the decision of the board.

(14) (a) Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board;

(b) Any applicant whose application for admission to an open-competitive examination has been rejected shall be notified of ***this*** [~~such~~] rejection and the reasons therefor and may appeal to the board for reconsideration of his qualifications and for admission to the examination. Applicants may be conditionally admitted to an examination by the commissioner pending reconsideration by the board;

(c) Any applicant who has taken an examination may appeal to the board for a review of his rating in any part of ***the*** [~~such~~] examination to assure that uniform rating procedures have been applied equally and fairly;

(d) An appeal to the board by applicants or eligibles under subsections (11) and (13) of this section and under this subsection shall be filed in writing with the executive director not later than thirty (30) calendar days after the notification of the action in question was mailed.

(15) An evaluation may be appealed to the board if an employee has complied with the review procedure established under

KRS 18A.112.

(16) (a) Appeals to the board shall be in writing on an appeal form prescribed by the board. Appeal forms shall be available at the employee's place of work. The department shall be responsible for the distribution of ***these*** [~~such~~] forms;

(b) The appeal form shall be attached to any notice, or copy of ***any*** [~~such~~] notice, of dismissal, demotion, suspension, fine, involuntary transfer, or other penalization, reallocation, or notice of any other action an employee may appeal under the provisions of this section. The appeal form shall instruct the employee to state whether he is a classified or unclassified employee, his full name, his appointing authority, work station address and telephone number, and, if he has retained counsel at the time he files an appeal, the name, address, and telephone number of his attorney;

(c) The form shall also instruct a classified employee to state the action he is appealing in a short, plain, concise statement of the facts. The form shall instruct an unclassified employee to make a short, plain, concise statement of the reason ***for the appeal and the*** [~~or~~] cause given for his dismissal; and

(d) Upon receipt of the appeal by the board, the appointing authority and the department of personnel shall be notified and the board shall schedule a hearing within the time limits prescribed by this section.

(17) All notices from the board shall be in writing. Notices shall be written so as to be understood by non[~~-~~]attorneys.

(18) (a) The appealing employee and the appointing authority whose action is reviewed shall have the right to be heard publicly and to be represented by counsel to present evidentiary facts;

(b) Except as provided ***in this section*** [~~herein~~], an appeal shall be decided by the board only after a hearing. The board shall not deny, reject, or sustain an appeal, or make any other determination relating to an appeal, except after a hearing is conducted pursuant to the provisions of this section;

(c) The board ***shall*** [~~may~~] deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state ***the reasons for the appeal and*** the cause for which he has been dismissed. ***The board shall deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief.*** The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal ***the*** [~~such~~] denial under the provisions of KRS 18A.100;

(d) Any investigation by the board of any matter related to an appeal filed by an employee shall be conducted only upon notice to the employee, the employee's counsel, and the appointing authority. All parties to the appeal shall have access to information produced by ***the*** [~~such~~] investigations and ***the*** [~~such~~] information shall be presented at the hearing. Any party to the hearing shall be permitted an adequate opportunity to rebut or comment upon ***the*** [~~such~~] information;

(e) Each appeal shall be decided [~~on its merits and the board shall base its decision~~] upon the evidence, ***law,*** facts, and information contained in the record.

(19) At the hearing of [~~such~~] appeals, technical rules of evidence shall not apply. Upon its own motion or upon request by a party, the board may require the production by a party, a state employee***,*** or a state agency of documents, records, and other material relevant to the appeal.

(20) Each appeal shall be decided individually, unless otherwise agreed by the parties and the board. The board shall not:

(a) Employ class action procedures; or

(b) Conduct test representative cases.

(21) A board member or an employee of the board shall neither initiate, participate in, nor consider ex parte communications concerning a pending or impending proceeding before the board, except as specifically authorized by administrative regulation of the board in the conduct of a prehearing mediation and settlement procedure formally established by the board under KRS Chapter 13A. Board members shall abstain from public comment about a pending or impending proceeding before the board. This shall not prohibit board members from making public statements in the course of their official duties or from explaining for public information the procedures of the board.

(22) (a) An appeal to the board may be heard by the full board or one (1) or more of the following: Its executive director, its general counsel, any nonelected member of the board, or any of its hearing officers hired by personal service contract.

(b) Any appeal heard by less than the full board shall be reviewed by the full board before a final order of the board is issued:

1. Prior to a final order of the board, the board shall provide a copy of the findings of fact***, conclusions of law,*** and recommendations to the parties to the appeal and shall provide them with an opportunity to submit written exceptions and responses to such findings of fact and recommendations. At the request of a party or on its own motion, the board shall permit oral argument before the full board. ***The*** [~~Such~~] request shall be filed with the board within fifteen (15) days of the recommended order issued by a member, the executive director, or a hearing officer; and

2. The board shall review the record of the evidence presented ***or a summary of the record***, the findings of fact***, conclusions of law,*** and recommendations of the hearing officer, and the written exceptions and responses filed by parties to the appeal ***prior to entry of a final order. The transcript of the hearing shall be reviewed if a party supplies the transcript and requests review by the full board. The board may utilize video equipment to record and preserve the proceeding at its hearings and the videotape shall be the record on appeal. The board may charge a reasonable fee to a party requesting a copy or copies of the taped proceeding***.

(23) (a) If the board finds that the action complained of was taken by the appointing authority in violation of laws prohibiting favor for, or discrimination against, or bias with respect to***,*** his political or religious opinions or affiliations or ethnic origin, or in violation of laws prohibiting discrimination because of such individual's sex or age or ***disability*** [~~handicap~~], the appointing authority shall immediately reinstate the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole ***unless the order is stayed by the board or the court on appeal***;

(b) If the board finds that the action complained of was taken without just cause, the board shall order the immediate reinstatement of the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole ***unless the order is stayed by the board or the court on appeal***;

(c) If the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall ***direct the appointing authority to*** alter, modify, or rescind the disciplinary action;

(d) In all other cases, the board shall ***direct the appointing authority to*** rescind the action taken or otherwise grant ***specific*** [~~such other~~] relief ***or dismiss the appeal*** [~~to which the employee is entitled~~].

(24) If a final order of the board is appealed, a court shall award reasonable attorney fees to an employee who prevails by a final adjudication on the merits as provided by KRS 453.260. ***This*** [~~Such~~] award shall not include attorney fees attributable to the hearing before the board.

(25) When any employee is dismissed and not ordered reinstated after ***the*** [~~such~~] appeal, the board in its discretion may direct that his name be placed on an appropriate reemployment list for employment in any similar position other than the one from which he had been removed.

(26) After a final decision has been rendered by the board or court, an employee who prevails in his appeal shall be credited with the amount of leave time used for time spent at his hearing before the board or court. Employees who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at their hearings before the board or court.

(27) The board shall, within sixty (60) days after an appeal is filed, hear the appeal, and shall, within ninety (90) days after an appeal is filed, issue a final determination for the disposition thereof.

(28) If the appointing authority appeals the final order of the board, unless the board rules otherwise, the reinstated employee shall remain in his former position, or a position of like status or pay, until the conclusion of the appeals process, at which time the appointing authority shall take action in accordance with the court order.

(29) For the purposes of subsections (2), (3), (4), (5), (6), and (7) of this section, the word "agency" means any agency not assigned to a cabinet for organizational purposes.

Section 2. KRS 18A.100 is amended to read as follows:

(1) Any final order of the board either upholding or invalidating the dismissal, demotion, suspension, or other penalization of a classified or an unclassified employee may be appealed either by the employee or by the appointing authority.

(2) The party aggrieved may, within thirty (30) days after the entry of the final order with which he is dissatisfied, appeal that order by filing a petition with the clerk of the Franklin Circuit Court. The petition shall state completely the grounds upon which the review is sought and shall specify the alleged errors in the board's conclusion and order. The appellant shall furnish a copy of the petition to the opposing party and the board. Summons shall be issued by the Circuit Court clerk upon the petition directing the adverse party or parties to file an answer within twenty (20) days after service of summons. Service on the board shall be had by serving the Attorney General or any assistant attorney general. The executive director of the board shall within thirty (30) days after service of the summons file an attested copy of the order with the Circuit Court clerk, and of all ***documents in the record of*** [~~the steps taken by~~] the board relative to the attested order. If either party requests a transcript of the ***testimony or a copy of a videotape of the hearing*** [~~evidence~~], the requesting party shall bear the cost of the original copy of the transcript***, or cost of the videotape copy. The copy of the transcript*** [~~and it~~] shall be furnished within ninety (90) days ***and the copy of the videotape shall be furnished within thirty (30) days***.

(3) The board, the employee, and the appointing authority shall be necessary parties to [~~such~~] appeals. It shall not be necessary for the board to file responsive pleadings unless it so desires. If the appeal is from an order upholding the dismissal, demotion, suspension, or other penalization, the burden of appearing and defending the action of the board

shall be upon the appointing authority. If the appeal is from an order refusing to uphold the dismissal, demotion, suspension, or other penalization, the burden of appearing and defending the action of the board shall be upon the employee.

(4) The case shall be set down by the court for as early a day as possible for a hearing, and shall in all respects be expedited.

(5) No new or additional evidence shall be introduced in the Franklin Circuit Court except as to fraud or misconduct affecting the outcome of the case, but the court shall otherwise hear the case upon the record as attested by the executive director of the board, and shall in all respects dispose of the appeal in a summary manner. Its review shall be limited to determining whether or not:

(a) The board acted without or in excess of its power;

(b) The order appealed from was procured by fraud or misconduct;

(c) Substantial evidence supports the order appealed from;

(d) The board's decision is supported by the law.

(6) The court shall enter judgment affirming, modifying, or setting aside the order or, in its discretion, remanding the case to the board for proceedings in conformity with the directions of the court.

(7) Any party may appeal from the Circuit Court to the Court of Appeals in accordance with the Rules of Civil Procedure.

Section 3. KRS 18A.112 is amended to read as follows:

(1) Evaluations of employees shall comply with the provisions of this section.

(2) Salary advancements, promotions***,*** and demotions shall be determined by an employee's performance evaluation ***along with appropriate consideration to the factors contained in KRS 18A.0751(4)(f)***.

(3) Evaluations shall be in writing. An evaluator shall present and explain all documentation affecting an employee's evaluation and shall discuss every aspect of his performance with the employee at each evaluation. The evaluator shall elicit the employee's opinions and suggestions, and shall advise the employee of the measures needed to improve his performance.

(4) Each full-time employee who has completed his initial probationary period, each part-time employee who works over one hundred (100) hours each month and who has completed his initial probationary period, and each federally funded time-limited employee who has completed six (6) months service shall be evaluated.

(5) (a) The first-line supervisor of an employee shall be his evaluator, providing he has supervised the employee for a period of at least ninety (90) calendar days;

(b) If the evaluator has supervised an employee for at least ninety (90) calendar days, and if he ceases to be the employee's first-line supervisor after such period of time, he shall evaluate the employee at least five (5) working days prior to the day he ceases to be the employee's supervisor;

(c) If the first-line supervisor ceases to be the supervisor of an employee due to the suspension, demotion or dismissal of the first-line supervisor, paragraph (b) of this subsection shall not apply; and

(d) If the first-line supervisor ceases to be an employee's supervisor because the employee transfers, the first-line supervisor shall evaluate the employee prior to his transfer, provided he has supervised the employee no less than ninety (90) calendar days prior to notification of his transfer.

(6) An employee's performance shall be evaluated in each of the following categories:

(a) Job knowledge and skills;

(b) Quality of work;

(c) Productivity;

(d) Employee conduct, provided that the requirements of KRS 18A.020 have been met; and

(e) Improvement in performance provided that the requirements of KRS 18A.020 have been met.

(7) For each category, one (1) of the following ratings shall be given:

(a) Exceeds performance requirements;

(b) Meets performance requirements; or

(c) Fails to meet performance requirements.

(8) The ratings provided for in subsection (7) of this section shall be determined as follows:

(a) "Exceeds performance requirements" means that an employee's performance exceeds the performance requirements established for the employee's job in all categories;

(b) "Meets performance requirements" means that an employee's performance neither exceeds performance requirements in all categories nor fails to meet performance requirements in all categories established for the employee's job; and

(c) "Fails to meet performance requirements" means that an employee has failed to meet the performance requirements established for the employee's job in all categories.

(9) An employee who "exceeds performance requirements" shall be awarded a lump-sum payment of an amount to be determined by the commissioner based upon the appropriation for performance increments provided by the General Assembly. ***The*** [~~Such~~] lump-sum payment shall not increase the base salary or wages of the employee.

(10) Upon appointment to a position for which an evaluation is required by this section, and prior to the evaluation period, an evaluator shall:

- (a) Identify the specific performance requirements established for an employee's job;
- (b) Meet with the employee to inform him of ***these*** [~~such~~] requirements and to discuss them with the employee; and
- (c) Provide the employee with a written job description in sufficient detail to convey to the employee the specific performance requirements of his job, including but not limited to, specific duties, time limits, reporting requirements, and required procedures.

(11) (a) At intervals of six (6) months and twelve (12) months after the procedure provided for in subsection (10) of this section, the evaluator shall:

  1. Evaluate the employee's performance in writing;
  2. Assign a rating to each category and an overall rating to the employee's performance; and
  3. Discuss ***this*** [~~such~~] evaluation with the employee; and

- (b) The final rating of the employee's performance shall be made after the two (2) evaluations provided for in paragraph (a) of this subsection.

(12) (a) Within five (5) working days of an evaluation, an employee may request reconsideration of ***the*** [~~such~~] evaluation by the evaluator;

- (b) Within five (5) working days of [~~such~~] reconsideration, an employee may:
  1. Submit a written response to any evaluation. ***The*** [~~Such~~] response shall be attached to the evaluation; and
  2. Submit a written request for reconsideration of any evaluation to his second-line supervisor; and
- (c) No later than fifteen (15) working days after receipt of ***a*** [~~such~~] request, the second-line supervisor shall inform the employee and the evaluator in writing of his decision after he has:
  1. Obtained written statements from both the employee and the evaluator; or
  2. Met with the employee and the evaluator.

(13) Within thirty (30) days after the employee has received the written decision of his second-line supervisor, he may appeal an evaluation to the board.

(14) If an employee receives a "fails to meet performance requirements" rating in all categories on two (2) successive evaluations, he shall be:

- (a) Demoted to a position commensurate with his abilities; or
- (b) Terminated.

HB 57, AN ACT relating to congressional districts and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 118B.110 is amended to read as follows:

The First Congressional District shall consist of the following territory:

				—CENSUS—		
COUNTY	PREC	SECT	NAME	TRACT	BLCK	SECT
ADAIR	[~~A101~~		~~PELLYTON~~			
~~ADAIR~~	~~A102~~		~~WHITE OAK~~			
~~ADAIR~~	~~A104~~		~~EUNICE~~			
~~ADAIR~~	~~A105~~		~~LITTLE CAKE~~			
~~ADAIR~~	~~B101~~		~~GLENSFORK~~			
~~ADAIR~~	~~B102~~		~~E. COLUMBIA~~			
~~ADAIR~~	~~B104~~		~~OZARK~~			
~~ADAIR~~	~~C101~~		~~MELSON RIDGE~~			
~~ADAIR~~	~~C102~~		~~SOUTH COLUMBIA # 1~~			
~~ADAIR~~	~~C103~~		~~HARMONY~~			

~~ADAIR~~	~~D101~~	~~GRADYVILLE~~			
~~ADAIR~~	~~D102~~	~~NELL~~			
~~ADAIR~~	~~D103~~	~~SPARKSVILLE~~			
~~ADAIR~~	~~D104~~	~~SOUTH COLUMBIA # 2~~			
~~ADAIR~~	~~D105~~	~~BREEDING~~			
~~ADAIR~~	~~E101~~	~~MILLTOWN~~			
~~ADAIR~~	~~E102~~	~~TARTER~~			
~~ADAIR~~	~~E103~~	~~KELTNER~~			
~~ADAIR~~	~~E104~~	~~WEST COLUMBIA~~			
~~ADAIR~~	~~F101~~	~~CANE VALLEY~~			
~~ADAIR~~	~~F102~~	~~HOLMES~~			
~~ADAIR~~	~~F103~~	~~KNIFLEY~~			
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~102~~	
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~103~~	
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~107~~	
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~108~~	
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~109~~	
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~110~~	
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~111~~	
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~112~~	
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~201~~	
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~202~~	~~0201~~
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~203~~	
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~204~~	~~0201~~
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~205~~	
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~206~~	
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~207~~	
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~208~~	
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~209~~	
~~ADAIR~~	~~F104~~	~~ROLEY~~	~~9701~~	~~210~~	
~~ADAIR~~	~~G101~~	~~NORTH COLUMBIA~~			
~~ADAIR~~	~~G102~~	~~HURT~~]			
ALLEN					
BALLARD					
BUTLER					
CALDWELL					
CALLOWAY					
CARLISLE					
CHRISTIAN					
CLINTON					
CRITTENDEN					
CUMBERLAND					
FULTON					
GRAVES					
HENDERSON					
HICKMAN					
HOPKINS					
LIVINGSTON					

LOGAN
LYON
MARSHALL
MCCRACKEN
MCLEAN
MONROE
MUHLENBERG
OHIO
RUSSELL
SIMPSON
TODD
TRIGG
UNION
WEBSTER

Section 2. KRS 118B.120 is amended to read as follows:

The Second Congressional District shall consist of the following territory:

				—CENSUS—		
COUNTY	PREC	SECT	NAME	TRACT	BLCK	SECT
~~[ADAIR~~	~~F104~~		~~ROLEY~~	~~9701~~	~~101]~~	
BARREN						
BRECKINRIDGE						
BULLITT						
CASEY						
DAVIESS						
EDMONSON						
GRAYSON						
GREEN						
HANCOCK						
HARDIN						
HART						
JEFFERSON	A122		PRECINCT 122 28 DISTRICT	012104	411	
JEFFERSON	A122		PRECINCT 122 28 DISTRICT	012104	412	
JEFFERSON	A122		PRECINCT 122 28 DISTRICT	012104	413	
JEFFERSON	A122		PRECINCT 122 28 DISTRICT	012104	414	
JEFFERSON	A122		PRECINCT 122 28 DISTRICT	012104	419	
JEFFERSON	A122		PRECINCT 122 28 DISTRICT	012104	420	
JEFFERSON	A122		PRECINCT 122 28 DISTRICT	012104	901	0201
JEFFERSON	A122		PRECINCT 122 28 DISTRICT	012104	905	
JEFFERSON	A122		PRECINCT 122 28 DISTRICT	012104	917	
JEFFERSON	A122		PRECINCT 122 28 DISTRICT	012104	918	
JEFFERSON	A122		PRECINCT 122 28 DISTRICT	012104	928	
JEFFERSON	A122		PRECINCT 122 28 DISTRICT	012104	929	
JEFFERSON	A122		PRECINCT 122 28 DISTRICT	012104	938	
JEFFERSON	A122		PRECINCT 122 28 DISTRICT	012104	939	
JEFFERSON	A122		PRECINCT 122 28 DISTRICT	012104	940	
JEFFERSON	A122		PRECINCT 122 28 DISTRICT	012104	999	0201
JEFFERSON	B113		PRECINCT 113 29 DISTRICT			
JEFFERSON	B116		PRECINCT 116 29 DISTRICT			

JEFFERSON	B117	PRECINCT 117 29 DISTRICT			
JEFFERSON	B120	PRECINCT 120 29 DISTRICT			
JEFFERSON	B121	PRECINCT 121 29 DISTRICT			
JEFFERSON	C120	PRECINCT 120 30 DISTRICT	011703	201	
JEFFERSON	C120	PRECINCT 120 30 DISTRICT	011703	202	
JEFFERSON	C120	PRECINCT 120 30 DISTRICT	011703	203	
JEFFERSON	C120	PRECINCT 120 30 DISTRICT	011703	204	
JEFFERSON	C120	PRECINCT 120 30 DISTRICT	011703	208	
JEFFERSON	C120	PRECINCT 120 30 DISTRICT	011703	209	
JEFFERSON	F109	PRECINCT 109 33 DISTRICT			
JEFFERSON	F110	PRECINCT 110 33 DISTRICT			
JEFFERSON	F111	PRECINCT 111 33 DISTRICT			
JEFFERSON	F112	PRECINCT 112 33 DISTRICT			
JEFFERSON	F113	PRECINCT 113 33 DISTRICT			
JEFFERSON	F126	PRECINCT 126 33 DISTRICT			
JEFFERSON	I126	PRECINCT 126 37 DISTRICT	012003	302	0202
JEFFERSON	I126	PRECINCT 126 37 DISTRICT	012003	304	
JEFFERSON	I126	PRECINCT 126 37 DISTRICT	012003	305	
JEFFERSON	I126	PRECINCT 126 37 DISTRICT	012003	309	
JEFFERSON	I126	PRECINCT 126 37 DISTRICT	012003	399	
JEFFERSON	J123	PRECINCT 123 38 DISTRICT	012003	216	
JEFFERSON	J123	PRECINCT 123 38 DISTRICT	012003	217	
JEFFERSON	J123	PRECINCT 123 38 DISTRICT	012003	218	
JEFFERSON	J123	PRECINCT 123 38 DISTRICT	012003	219	
JEFFERSON	J123	PRECINCT 123 38 DISTRICT	012003	220	
JEFFERSON	J123	PRECINCT 123 38 DISTRICT	012003	302	0201
JEFFERSON	J124	PRECINCT 124 38 DISTRICT			
JEFFERSON	J125	PRECINCT 125 38 DISTRICT			
JEFFERSON	P105	PRECINCT 105 45 DISTRICT	012001	908	0201
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012001	915	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012001	916	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012001	918	0201
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012001	919A	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012001	919B	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012001	919C	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012001	919D	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012001	920	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012001	921A	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012001	921B	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012001	921C	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012001	922A	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012001	922B	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012001	922C	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012001	923	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012003	307	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012003	308	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012003	310	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012003	311	

JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012003	312	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012003	313	
JEFFERSON	P110	PRECINCT 110 45 DISTRICT	012003	399	
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	903	
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	904	
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	905	
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	906	
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	908	0202
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	909	
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	910	
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	911	0201
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	912	
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	913	
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	914	
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	917	
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	918	0202
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	925	
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	926	
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	927	
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	999	
JEFFERSON	P111	PRECINCT 111 45 DISTRICT	012001	999	
JEFFERSON	P112	PRECINCT 112 45 DISTRICT			
JEFFERSON	P113	PRECINCT 113 45 DISTRICT			
JEFFERSON	P114	PRECINCT 114 45 DISTRICT			
JEFFERSON	P115	PRECINCT 115 45 DISTRICT			
JEFFERSON	P116	PRECINCT 116 45 DISTRICT			
JEFFERSON	Q115	PRECINCT 115 46 DISTRICT			
JEFFERSON	Q118	PRECINCT 118 46 DISTRICT			
JEFFERSON	Q119	PRECINCT 119 46 DISTRICT			
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	210	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	211	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	311	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	401	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	402	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	403	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	405	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	410	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	411	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	412	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	413	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	414	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	415	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	416	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	417	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	418	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	419	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	420	
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	421	

JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	422
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	423
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	499
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	499
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT	011703	499
JEFFERSON	Q121	PRECINCT 121 46 DISTRICT		
JEFFERSON	R125	PRECINCT 125 47 DISTRICT		
JEFFERSON	R130	PRECINCT 130 47 DISTRICT		
LARUE				
LINCOLN	C102	WAYNESBURG #2		
LINCOLN	C103	KINGS MOUNTAIN		
LINCOLN	D101	HUSTONVILLE		
LINCOLN	D102	MCKINNEY		
MARION				
MEADE				
METCALFE				
NELSON				
SPENCER				
TAYLOR				
WARREN				
WASHINGTON				

Section 3. Notwithstanding KRS 117.055, 117.085, 117.145, 118.165, 118.215, and 118.225, the state and county boards of election, after the effective date of this Act, may revise precinct boundaries of precincts affected by this Act and shall accept candidates' nomination papers, draw for ballot position, certify candidates' names, and print ballots for the May 24, 1994 primary election in any district affected by this Act.

Section 4. Whereas, U.S. representatives from Kentucky will be nominated and elected in 1994 and any changes in congressional district boundaries must be effected prior to the May 24, 1994 primary election, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor.

The Committee Amendment No. 1 to **HB 57** is as follows:

On page 9, by deleting everything on line 14 after "Section 3." and by inserting in lieu thereof, "Sections 1 and 2 of this Act shall become effective November 9, 1994."; and

On page 9, by deleting lines 15 through 22 in their entirety.

The Committee Title Amendment to **HB 57** is as follows:

By deleting the words "and declaring an emergency".

The Committee on Transportation reported **HB 225,** with Committee Substitute attached thereto, **HB 492** with Committee Amendment attached thereto, **HB 533,** with Committee Amendment attached thereto, **SB 85, SB 106, SJR 13** and **SJR 27** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 225, AN ACT relating to damaged motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

The General Assembly finds that purchasers when buying vehicles are entitled to know if the vehicle has sustained prior severe damage. The most feasible mechanism for conveying that information is a designation on the title that the vehicle has previously sustained severe damage or has been rebuilt after being declared "junk," "salvage," or "water damaged."

SECTION 2. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 4 of this Act, unless the context otherwise requires:

(1) "Brand" means a designation affixed to a motor vehicle title that establishes a portion of the history of the motor vehicle and that shall be fixed to all subsequently issued titles for that vehicle;

(2) "Dealer" means a person or business as defined in KRS 190.010 who sells or offers for sale a motor vehicle;

(3) "Junk vehicle" means a vehicle which meets the description set forth in KRS 186A.295(1)(a);

(4) "Motor vehicle" means a motor vehicle as defined in KRS 186.010(8)(a) and (b);

(5) "Owner" means an individual, insurance company or other entity with legal title to the motor vehicle pursuant to KRS Chapter 186A;

(6) "Rebuilt salvage vehicle" means a vehicle that has been repaired to a road worthy condition after having been registered as a salvage vehicle pursuant to Section 3 of this Act, or a similar salvage designation from another licensing jurisdiction; and

(7) "Water damage" means damage to a motor vehicle caused by submerging or partially submerging the vehicle in water to the extent that the vehicle was submerged or partially submerged at any water level above the dashboard of the vehicle, regardless of the actual dollar amount of the damage.

Section 3. KRS 186A.335 is amended to read as follows:

(1) A salvage title shall be obtained by the owner ***of a*** [~~for any~~] motor vehicle ***that meets the following definition of a salvage vehicle:***

(a) A vehicle which has been wrecked, destroyed, or damaged, to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the vehicle to its pre-accident condition and for legal operation on the roads or highways exceeds seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Automobile Dealer's Association price guide.

(b) The value or repair parts for purposes of this definition shall be determined by using the current published retail cost of the original equipment manufacturer parts or the actual retail cost of the repair parts used in repair.

(c) The labor costs of repairs for purposes of this section shall be computed by using the hourly labor rate and time allocations which are reasonable and customary in the automobile repair industry in the community where the repairs are performed [~~subject to titling and registration pursuant to this chapter which is deemed to have damages of seventy-five percent (75%) or more of NADA book value. Provided, however, that For the purposes of this chapter, a motor vehicle on which ownership has been transferred to an insurance company through payment of damages, pursuant to subsection (1) of this section, the insurance company making the payment of damages shall be deemed the owner of such vehicle~~].

(2) The owner or ***an*** [~~its~~] authorized agent ***of a motor vehicle that meets the definition of a salvage vehicle as set forth in subsection (1) of this section*** shall, within fifteen (15) days from the loss or settlement of the loss, submit an application to the county clerk, on a form prescribed by the Department of Vehicle Regulation, for a salvage title, accompanied by a properly endorsed certificate of title and any lien satisfactions, if any appear, as may be required.

(3) The county clerk shall retain a copy of each salvage title application received and shall forward the original and its supporting documents to the Department of Vehicle Regulation in a manner similar to that for handling of an application for a title.

(4) The Department of Vehicle Regulation shall process the salvage title application in a manner similar to that used in processing a title application and the salvage title shall be delivered in a like manner of a title. Salvage titles shall be construed as proof of ownership of a vehicle in a state as to be unusable upon the highways of the Commonwealth. [~~Under no circumstances shall any~~] ***A*** vehicle ***shall not*** be issued a registration for highway use as long as a salvage title is in force.

(5) The only ***time*** [~~instance under which~~] a vehicle with a salvage title may be operated upon the highways of the Commonwealth is when it is in route to or from an inspection by the certified inspector prior to obtaining a certificate of title after having been rebuilt as per KRS 186.115.

SECTION 4. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

(1) The owner of a motor vehicle that meets the definition of a salvage vehicle as set forth in subsection (1) of Section 3 of this Act and has been issued a salvage certificate of title in Kentucky, or the equivalent thereof by another licensing jurisdiction, and has been rebuilt, may make application for a new certificate of title pursuant to KRS 186.115. The Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A governing the form of application.

(2) Upon receipt of a salvage certificate of title, or similar title issued by another state, and proof of passing the inspection required by KRS 186A.115, the cabinet shall issue a new certificate of title with the words "rebuilt salvage vehicle" printed on the face of the title. The brand shall be carried forward and printed in the appropriate section on the face of all titles issued thereafter for that motor vehicle.

(3) If ownership of a motor vehicle has been transferred to an insurance company through payment of damages, the insurance company making the payment of damages shall be deemed the owner of the vehicle.

(4) The owner of a water damaged vehicle shall make application to the cabinet for a salvage certificate of title as provided for in Section 3 of this Act. The owner of a vehicle with a brand from another jurisdiction identifying the vehicle as water damaged or other similar designation who is making application for a Kentucky title shall be issued a title with the words "water damaged" printed on the face of the title.

(5) A Kentucky certificate of title shall not be issued from an out-of-state junking certificate or other ownership document bearing a designation of "junk" or similar classification. Any motor vehicle damaged to the extent that it has been labeled as "junk" shall not be titled in the Commonwealth of Kentucky, but may be dismantled for parts or scrap.

(6) (a) When an insurance company makes a claim settlement on a vehicle that has been stolen and not recovered at the time the vehicle ownership is transferred, the company shall apply for a salvage certificate of title as provided for in Section 3 of this Act. If when the vehicle is recovered the vehicle has not sustained damage or has sustained only minor damage, the insurance company shall provide the Transportation Cabinet with the following information:

1. The motor vehicle shall receive an initial inspection by the certified inspector. The certified inspector shall make a minimum of two (2) photographs of the motor vehicle. These photographs shall be included in the application for a certificate of title to replace the salvage certificate of title. The certified inspector shall receive his usual fee plus mileage at the state reimbursement rate and a reasonable fee for photographs.

2. Upon repair of the vehicle, the owner shall present all receipts for parts used in the motor vehicle for repairs and submit the vehicle to the inspection process pursuant to KRS 186A.115; and

3. The owner shall present documentation from an automotive technician certified by Automotive Service Excellence stating that, in the opinion of the certified automotive technician, the motor vehicle is safe for highway use. The documentation shall be notarized and include the name, address, and place of employment of the technician who performed the inspection.

Upon receipt of this information, the cabinet shall issue the company a certificate of title to replace a salvage certificate of title. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A regarding the forms and any additional information which insurance companies shall be required to obtain and submit when seeking a certificate of title to replace a salvage certificate of title.

(b) In claim settlements that do not involve transfer of the vehicle to the insurance company, an insurer shall not render payment on a damage claim for a vehicle whose damage meets or exceeds seventy-five percent (75%) of the value of the vehicle, until the insurer has received proof that the owner has surrendered the title or has applied for a salvage certificate of title as set forth in Section 3 of this Act.

(c) An insurance company shall not refuse coverage to, and shall not reclassify coverage of, a vehicle that has been issued a rebuilt salvage title pursuant to the provisions of this section.

(7) A motor vehicle owner or a motor vehicle dealer licensed in this state who offers for sale, trade, or transfer a motor vehicle which carries a title brand, as set forth in subsection (2) of this section, shall disclose the nature of the brand to any prospective buyer or transferee, prior to the sale, and according to the following:

(a) Dealer disclosure shall be located on the previous consumer-owner sticker provided for in KRS 190.080. The sticker notification shall appear in a color different from that of the previous consumer-owner sticker and shall be set apart from other information required by KRS 190.080. The sticker wording shall be printed in at least ten (10) point, bold face type, on a background of obviously different color, and shall include the following: "THIS IS A REBUILT SALVAGE VEHICLE." This disclosure information shall not appear on previous consumer-owner stickers for vehicles that do not have a branded title. Dealer disclosure shall also be located on a buyer's notification form to be approved by the Transportation Cabinet. The form shall inform the buyer that the vehicle is a rebuilt salvage vehicle and may include any other information the cabinet deems necessary.

(b) Nondealer disclosure shall be made on the vehicle transaction record form provided for by KRS 186A.060. The cabinet shall design the form so that disclosure information appears near the beginning and informs the buyer that the vehicle is a rebuilt salvage vehicle.

(8) Failure of a dealer to procure the buyer's acknowledgment signature on the buyer's notification form or failure of any person other than a dealer to procure the buyer's acknowledgment signature on the vehicle transaction record form shall render the sale voidable at the election of the buyer. The election to render the sale voidable shall be limited to forty-five (45) days after issuance of the title. This provision shall not bar any other remedies otherwise available to the purchaser.

(9) The notification provisions of this section shall not apply to motor vehicles more than ten (10) model years old.

(10) The Transportation Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A, regarding the administration of the title branding procedure within ninety (90) days from the effective date of this Act. The administrative regulations may include designation of additional brands which provide significant information to the owner.

SECTION 5. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

Notwithstanding the provisions of Sections 2, 3, and 4 of this Act, if the United States Department of Transportation requires a uniform method for titling salvage and junk vehicles, the Kentucky Transportation Cabinet shall promulgate administrative regulations, pursuant to KRS Chapter 13A, to bring the provisions of Sections 2, 3, and 4 into compliance with federal law.

Section 6. KRS 186A.990 is amended to read as follows:

(1) Any person who knowingly gives false, fraudulent, or erroneous information in connection with an application for the registration, and when required, titling of a vehicle, or any application for assignment of a vehicle identification number, or replacement documents, or gives [~~such~~] information in connection with his review of [~~such~~] applications, or falsely certifies the truthfulness and accuracy of information supplied in connection with the registration and when required, titling of a vehicle, shall be guilty of forgery in the second degree.

(2) Any person who violates KRS 186A.260 or 186A.275 to 186A.285 shall be guilty of a Class D felony.

(3) Any person who violates KRS 186A.300 to 186A.315 shall be guilty of a Class D felony.

(4) Any person who operates a motor vehicle or trailer upon the highways of this state without a temporary tag when one is required, or with one that is expired, improperly executed, or displayed on a vehicle other than the one (1) to which it was legitimately and lawfully issued, shall be guilty of a Class B misdemeanor.

(5) Any person who violates any provisions of this chapter, or regulations promulgated pursuant thereto, and for which a specific penalty is not prescribed by statute, shall be guilty of a Class A misdemeanor.

(6) Criminal remedies or sanctions provided in this chapter are in addition to, and not exclusive of, any other criminal remedies or sanctions provided elsewhere in the statutes.

(7) Any person who violates the disclosure provisions of subsection (7) of Section 4 of this Act shall be guilty of a Class A misdemeanor.

The Committee Substitute to **HB 225** is as follows:

HB 225, AN ACT relating to damaged motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

The General Assembly finds that purchasers when buying vehicles are entitled to know if the vehicle has sustained prior severe damage. The most feasible mechanism for conveying that information is a designation on the title that the vehicle has previously sustained severe damage or has been rebuilt after being declared "junk," "salvage," or "water damaged."

SECTION 2. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 4 of this Act, unless the context otherwise requires:

(1) "Brand" means a designation affixed to a motor vehicle title that establishes a portion of the history of the motor vehicle and that shall be fixed to all subsequently issued titles for that vehicle;

(2) "Dealer" means a person or business as defined in KRS 190.010 who sells or offers for sale a motor vehicle;

(3) "Junk vehicle" means a vehicle which meets the description set forth in KRS 186A.295(1)(a);

(4) "Motor vehicle" means a motor vehicle as defined in KRS 186.010(8)(a) and (b);

(5) "Owner" means an individual, insurance company or other entity with legal title to the motor vehicle pursuant to KRS Chapter 186A;

(6) "Rebuilt salvage vehicle" means a vehicle that has been repaired to a road worthy condition after having been registered as a salvage vehicle pursuant to Section 3 of this Act, or a similar salvage designation from another licensing jurisdiction; and

(7) "Water damage" means damage to a motor vehicle caused by submerging or partially submerging the vehicle in water to the extent that the vehicle was submerged or partially submerged at any water level above the dashboard of the vehicle, regardless of the actual dollar amount of the damage.

Section 3. KRS 186A.335 is amended to read as follows:

(1) A salvage title shall be obtained by the owner *of a* [~~for any~~] motor vehicle *that meets the following definition of a salvage vehicle:*

(a) A vehicle which has been wrecked, destroyed, or damaged, to the extent that the total estimated or actual cost

of parts and labor to rebuild or reconstruct the vehicle to its pre-accident condition and for legal operation on the roads or highways exceeds seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Automobile Dealer's Association price guide.

(b) The value or repair parts for purposes of this definition shall be determined by using the current published retail cost of the original equipment manufacturer parts or the actual retail cost of the repair parts used in repair.

(c) The labor costs of repairs for purposes of this section shall be computed by using the hourly labor rate and time allocations which are reasonable and customary in the automobile repair industry in the community where the repairs are performed [~~subject to titling and registration pursuant to this chapter which is deemed to have damages of seventy-five percent (75%) or more of NADA book value. Provided, however, that For the purposes of this chapter, a motor vehicle on which ownership has been transferred to an insurance company through payment of damages, pursuant to subsection (1) of this section, the insurance company making the payment of damages shall be deemed the owner of such vehicle~~].

(2) The owner or ***an*** [~~its~~] authorized agent ***of a motor vehicle that meets the definition of a salvage vehicle as set forth in subsection (1) of this section*** shall, within fifteen (15) days from the loss or settlement of the loss, submit an application to the county clerk, on a form prescribed by the Department of Vehicle Regulation, for a salvage title, accompanied by a properly endorsed certificate of title and any lien satisfactions, if any appear, as may be required.

(3) The county clerk shall retain a copy of each salvage title application received and shall forward the original and its supporting documents to the Department of Vehicle Regulation in a manner similar to that for handling of an application for a title.

(4) The Department of Vehicle Regulation shall process the salvage title application in a manner similar to that used in processing a title application and the salvage title shall be delivered in a like manner of a title. Salvage titles shall be construed as proof of ownership of a vehicle in a state as to be unusable upon the highways of the Commonwealth. [~~Under no circumstances shall any~~] ***A*** vehicle ***shall not*** be issued a registration for highway use as long as a salvage title is in force.

(5) The only ***time*** [~~instance under which~~] a vehicle with a salvage title may be operated upon the highways of the Commonwealth is when it is in route to or from an inspection by the certified inspector prior to obtaining a certificate of title after having been rebuilt as per KRS 186.115.

SECTION 4. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

(1) The owner of a motor vehicle that meets the definition of a salvage vehicle as set forth in subsection (1) of Section 3 of this Act and has been issued a salvage certificate of title in Kentucky, or the equivalent thereof by another licensing jurisdiction, and has been rebuilt, may make application for a new certificate of title pursuant to KRS 186.115. The Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A governing the form of application.

(2) Upon receipt of a salvage certificate of title, or similar title issued by another state, and proof of passing the inspection required by KRS 186A.115, the cabinet shall issue a new certificate of title with the words "rebuilt salvage vehicle" printed on the face of the title. The brand shall be carried forward and printed in the appropriate section on the face of all titles issued thereafter for that motor vehicle.

(3) If ownership of a motor vehicle has been transferred to an insurance company through payment of damages, the insurance company making the payment of damages shall be deemed the owner of the vehicle.

(4) The owner of a water damaged vehicle shall make application to the cabinet for a salvage certificate of title as provided for in Section 3 of this Act. The owner of a vehicle with a brand from another jurisdiction identifying the vehicle as water damaged or other similar designation who is making application for a Kentucky title shall be issued a title with the words "water damaged" printed on the face of the title.

(5) A Kentucky certificate of title shall not be issued from an out-of-state junking certificate or other ownership document bearing a designation of "junk" or similar classification. Any motor vehicle damaged to the extent that it has been labeled as "junk" shall not be titled in the Commonwealth of Kentucky, but may be dismantled for parts or scrap.

(6) (a) When an insurance company makes a claim settlement on a vehicle that has been stolen and not recovered at the time the vehicle ownership is transferred, the company shall apply for a salvage certificate of title as provided for in Section 3 of this Act. If when the vehicle is recovered the vehicle has not sustained damage or has sustained only minor damage, the insurance company shall provide the Transportation Cabinet with the following information:

1. The motor vehicle shall receive an initial inspection by the certified inspector. The certified inspector shall make a minimum of two (2) photographs of the motor vehicle. These photographs shall be included in the application for a certificate of title to replace the salvage certificate of title. The certified inspector shall receive his usual fee plus mileage at the state reimbursement rate and a

reasonable fee for photographs;

2. Upon repair of the vehicle, the owner shall present all receipts for parts used in the motor vehicle for repairs and submit the vehicle to the inspection process pursuant to KRS 186A.115; and

3. The owner shall present documentation from an automotive technician certified by Automotive Service Excellence stating that, in the opinion of the certified automotive technician, the motor vehicle is safe for highway use. The documentation shall be notarized and include the name, address, and place of employment of the technician who performed the inspection.

Upon receipt of this information, the cabinet shall issue the company a certificate of title to replace a salvage certificate of title. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A regarding the forms and any additional information which insurance companies shall be required to obtain and submit when seeking a certificate of title to replace a salvage certificate of title.

(b) In claim settlements that do not involve transfer of the vehicle to the insurance company, an insurer shall not render payment on a damage claim for a vehicle whose damage meets or exceeds seventy-five percent (75%) of the value of the vehicle, until the insurer has received proof that the owner has surrendered the title or has applied for a salvage certificate of title as set forth in Section 3 of this Act.

(c) An insurance company shall not refuse coverage to, and shall not reclassify coverage of, a vehicle that has been issued a rebuilt salvage title pursuant to the provisions of this section.

(7) A motor vehicle owner or a motor vehicle dealer licensed in this state who offers for sale, trade, or transfer a motor vehicle which carries a title brand, as set forth in subsection (2) of this section, shall disclose the nature of the brand to any prospective buyer or transferee, prior to the sale, and according to the following:

(a) Dealer disclosure shall be located on the previous consumer-owner sticker provided for in KRS 190.080. The sticker notification shall appear in a color different from that of the previous consumer-owner sticker and shall be set apart from other information required by KRS 190.080. The sticker wording shall be printed in at least ten (10) point, bold face type, on a background of obviously different color, and shall include the following: "THIS IS A REBUILT SALVAGE VEHICLE." This disclosure information shall not appear on previous consumer-owner stickers for vehicles that do not have a branded title. Dealer disclosure shall also be located on a buyer's notification form to be approved by the Transportation Cabinet. The form shall inform the buyer that the vehicle is a rebuilt salvage vehicle and may include any other information the cabinet deems necessary.

(b) Nondealer disclosure shall be made on the vehicle transaction record form provided for by KRS 186A.060. The cabinet shall design the form so that disclosure information appears near the beginning and informs the buyer that the vehicle is a rebuilt salvage vehicle.

(8) Failure of a dealer to procure the buyer's acknowledgment signature on the buyer's notification form or failure of any person other than a dealer to procure the buyer's acknowledgment signature on the vehicle transaction record form shall render the sale voidable at the election of the buyer. The election to render the sale voidable shall be limited to forty-five (45) days after issuance of the title. This provision shall not bar any other remedies otherwise available to the purchaser.

(9) The notification provisions of this section shall not apply to motor vehicles more than ten (10) model years old.

(10) The Transportation Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A, regarding the administration of the title branding procedure within ninety (90) days from the effective date of this Act. The administrative regulations may include designation of additional brands which provide significant information to the owner.

SECTION 5. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

Notwithstanding the provisions of Sections 2, 3, and 4 of this Act, if the United States Department of Transportation requires a uniform method for titling salvage and junk vehicles, the Kentucky Transportation Cabinet shall promulgate administrative regulations, pursuant to KRS Chapter 13A, to bring the provisions of Sections 2, 3, and 4 into compliance with federal law.

Section 6. KRS 186A.990 is amended to read as follows:

(1) Any person who knowingly gives false, fraudulent, or erroneous information in connection with an application for the registration, and when required, titling of a vehicle, or any application for assignment of a vehicle identification number, or replacement documents, or gives [~~such~~] information in connection with his review of [~~such~~] applications, or falsely certifies the truthfulness and accuracy of information supplied in connection with the registration and when required, titling of a vehicle, shall be guilty of forgery in the second degree.

(2) Any person who violates KRS 186A.260 or 186A.275 to 186A.285 shall be guilty of a Class D felony.

(3) Any person who violates KRS 186A.300 to 186A.315 shall be guilty of a Class D felony.

(4) Any person who operates a motor vehicle or trailer upon the highways of this state without a temporary tag when one is

required, or with one that is expired, improperly executed, or displayed on a vehicle other than the one (1) to which it was legitimately and lawfully issued, shall be guilty of a Class B misdemeanor.

(5) Any person who violates any provisions of this chapter, or regulations promulgated pursuant thereto, and for which a specific penalty is not prescribed by statute, shall be guilty of a Class A misdemeanor.

(6) Criminal remedies or sanctions provided in this chapter are in addition to, and not exclusive of, any other criminal remedies or sanctions provided elsewhere in the statutes.

(7) Any person who violates the disclosure provisions of subsection (7) of Section 4 of this Act shall be guilty of a Class A misdemeanor.

HB 492, AN ACT relating to highways.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 176 IS CREATED TO READ AS FOLLOWS:

As used in Sections 2 and 3 of this Act:

(1) "Corridor" means any highway designed and planned for eventually being constructed as a four-lane major route, which may connect a rural area to its regional center, or to another corridor, and may include an existing highway facility or one that is currently not constructed to meet the four-lane criterion;

(2) The "Kentucky highway corridor fund" means a special account created within the Transportation Cabinet, from proceeds from the road fund, federal funding sources, general fund, private sources, or any other source, and designated for completion of the corridor system; and

(3) "Designated corridor system" means the system of strategic corridors set out in Section 2 of this Act, which may include interstate highways, parkways, the Appalachian development system, and other routes of significance, but does not necessarily mean an exact route as it currently exists.

SECTION 2. A NEW SECTION OF KRS CHAPTER 176 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky highway corridor fund is hereby established, which shall be used exclusively for the purposes of completing the following designated corridor system:

(a) East-to-west corridors:

 1. Interstate 64;
 2. Mountain Parkway from Interstate 64 to Campton;
 3. Bluegrass Parkway;
 4. Western Kentucky Parkway;
 5. Cumberland Parkway;
 6. Interstate 24;
 7. Audubon Parkway;
 8. United States Route 25 East;
 9. United States Route 460; and
 10. Kentucky Route 150, from Stanford to Mt. Vernon;

(b) North-to-south corridors:

 1. Interstate 75;
 2. Interstate 65;
 3. Green River Parkway;
 4. Pennyrile Parkway;
 5. Purchase Parkway;
 6. Interstate 71;
 7. United States Route 23; and
 8. United States Route 127;

(c) Circumferential corridors:

 1. Interstate 265;
 2. Interstate 275;
 3. Kentucky Route 922;
 4. Kentucky Route 4;

5. United States Route 25; and

6. Interstate 264; and

(d) The following routes:

1. Kentucky Route 32, from Morehead to Flemingsburg;

2. A new route from Flemingsburg to Corinth;

3. United States Route 431, from Owensboro to the Tennessee state line;

4. AA Highway, from Interstate 275 to Quincy, from Quincy to Greenup, and from Vanceburg to Grayson;

5. Kentucky Route 80, from East Bernstadt to Shopville;

6. Kentucky Route 92, from Williamsburg to Monticello;

7. Kentucky Route 90/Kentucky Route 61, from Burnside to Glasgow and from Burksville to the Tennessee state line;

8. United States Route 68, from Maysville to Lexington and from Lexington to Edmonton;

9. United States Route 231, from Bowling Green to Scottsville;

10. United States Route 60, from Wickliffe to Paducah, from Paducah to Henderson, from Henderson to Hawesville, and from Hawesville to Muldraugh;

11. United States Route 51, from Fulton to Wickliffe;

12. United States Route 68/Kentucky Route 80, from Bowling Green to Cadiz, from Cadiz to Hardin, and from Hardin to Mayfield;

13. Kentucky Route 121, from Mayfield to Wickliffe;

14. United States Route 119, from South Williamson to Pikeville, from Pikeville to Jenkins, from Jenkins to Whitesburg, and from Whitesburg to Pineville;

15. United States Route 460, from Pikeville to the Virginia state line;

16. Mountain Parkway/Kentucky Route 114, from Campton to Prestonsburg;

17. Kentucky Route 15, from Campton to Jackson, from Jackson to Hazard, and from Hazard to Whitesburg;

18. Kentucky Route 7, from Grayson to Salyersville;

19. Kentucky Route 11, from Slade to Manchester;

20. United States Route 421, from Ohio River to Interstate 75, from Richmond to Manchester, and from Hyden to the Virginia state line;

21. Daniel Boone Parkway; and

22. United States Route 641.

(2) Corridors may be added to or deleted from the designated corridor system upon recommendation of the Transportation Cabinet and approval of the recommendations by the General Assembly by amendment to this section during a regular session. A recommendation for change shall be submitted no later than the fifteenth day of a regular session. Failure of the General Assembly to take action on the recommendations shall not imply acceptance.

SECTION 3. A NEW SECTION OF KRS CHAPTER 176 IS CREATED TO READ AS FOLLOWS:

(1) (a) Beginning with the recommended changes, additions, and deletions to the most recent enacted biennial highway construction program submitted to the 1994 Regular Session of the General Assembly, the Transportation Cabinet shall present to the General Assembly a separate designated corridor system construction and preconstruction program detailed in the same manner and at the same time as the program submitted according to KRS 176.420(2). Projects set forth in the designated corridor system program shall be included as a separate section of the biennial highway construction program and additional four (4) year construction plan in KRS 176.420(2).

(b) Upon approval by the 1994 Regular Session of the General Assembly of the recommended changes, additions, and deletions to the most recent enacted biennial construction program and additional four (4) year construction plan described in KRS 176.420(2) and (3), the cabinet shall prepare a separate section for the designated corridor system projects scheduled for work during the ensuing biennium. In addition, the funding scheduled for the ensuing biennium for projects in the designated corridor system, shall be placed in the Kentucky highway corridor fund, and reports shall be made to the General Assembly in the same manner as designated in KRS 176.430(5).

(c) The cabinet shall provide to the General Assembly during each regular session, an update involving information related to anticipated costs of completing the projects in the long-range designated corridor system.

(d) The cabinet shall make a separate designation for those items that include minor reconstruction and spot improvements necessary to maintain the functional integrity of the existing system either on an adequate corridor or corridors needing development.

(2) (a) The average percentage of road fund receipts designated for use on corridors in the current and previous two (2) biennial construction plans shall determine the percentage of road fund receipts that shall be appropriated to the Kentucky highway corridor fund in ensuing bienniums.

(b) The cabinet shall make every effort to secure funds, over and above the percentage established in subsection (2)(a) of this section, for the highway corridor fund, including, but not limited to, the use of tolls, intergovernmental agreements, privatization, and any other means of alternative funding in order to accelerate full development of the designated corridor system.

Section 4. KRS 45.245 is amended to read as follows:

The provision of any other law notwithstanding:

(1) The Governor shall include in the executive branch budget recommendation and in the draft budget bill for the executive branch submitted to each regular session of the General Assembly pursuant to KRS 48.100, for the biennium period beginning July 1, 1992, and for each biennium thereafter, the appropriations by each source of funds for a recommended biennial highway construction program.

(2) The Governor shall submit a recommended biennial highway construction program within ten (10) working days after submission of the branch budget recommendations pursuant to KRS 48.100.

(3) The recommended biennial highway construction program shall include:

(a) A complete list and summary description of each specific highway project recommended for funding during the biennium; and

(b) For each project:

1. The county and highway district;
2. The highway department item number for each project which shall remain in effect throughout the entire life of the project, subject to the following conditions:
    a. A project split during its life shall maintain the same item number with a suffix; and
    b. Merged projects shall be identified with a cross reference to the superseded item number;
3. The route number and total miles to be constructed;
4. A project description;
5. The fiscal year each project phase is to commence and all estimated costs of each project phase including administrative costs of the cabinet; and
6. The source of funding to be used.

(4) During the biennium beginning July 1, 1992, and during each biennium thereafter, the amount authorized, from all sources, for expenditure on any project in the highway construction program for that biennium, shall not exceed the estimated cost of the project by more than fifteen percent (15%) as shown in the biennial highway construction program, except as provided in KRS 45.247.

(5) Appropriations from the road fund to the recommended biennial highway construction program shall be based on the revenue estimates pursuant to KRS 48.120. In addition, the cabinet shall provide a list of projects from the four (4) year plan which may be accelerated in the event biennial projects are delayed pursuant to KRS 176.460. This list shall not exceed twenty percent (20%) of the estimated receipts for the biennium. If additional highway construction projects are proposed that exceed revenue estimates pursuant to KRS 48.120 or that require the suspension or modification of an existing statute, the projects shall be separately stated and categorized with the recommended funding source and account.

(6) Projects in the designated corridor system as set out in Section 2 of this Act shall be included in any additional highway construction projects at the percentage of funding as determined pursuant to subsection (2)(a) of Section 3 of this Act.

The Committee Amendment No. 1 to **HB 492** is as follows:

On page 2, line 5, after the semicolon "***;***" delete the word "***and***"; and

On page 2, line 6, after the number "***10.***" and before the word "***Route***" delete the word "***Kentucky***" and insert in lieu thereof: "***United States***", and after the word "***from***" delete the word "***Stanford***" and insert the word "***Bardstown***", and after the semicolon "***;***" insert the word "***and***"; and

On page 2, between lines 6 and 7, insert the following:

"***11. Interstate 66;***"; and

On page 2, line 14, after the semicolon "***;***" delete the word "***and***"; and

On page 2, between lines 15 and 16, insert the following:

"***9. United States Route 41A;***

10. United States Route 31W, from Elizabethtown to Interstate 265 at Valley Station; and

11. Interstate 69;"; and

On page 2, line 17, after the number "***265***" and before the semicolon "***;***" insert the following: "***with a new bridge in eastern Jefferson County***"; and

On page 2, line 21, after the semicolon "***;***" delete the word "***and***"; and

On page 2, between lines 22 and 23, insert the following:

"***7. Owensboro Bypass, United States Route 60 Bypass;***"; and

On page 3, line 14, after "***Cadiz to***" and before the "***,***" delete the word "***Hardin***" and insert the word "***Aurora***", and after the word "***from***" and before the word "***to***" delete the word "***Hardin***" and insert the word "***Murray***"; and

On page 4, line 1, after the semicolon "***;***" delete the word "***and***"; and

On page 4, line 2, after the number "***641***" delete the period "***.***" and insert the following:

"***; and***

23. Kentucky Route 94, from Hickman to the Purchase Parkway;

24. Kentucky Route 56, from the Illinois state line to United States Route 60 at Morganfield;

25. Kentucky Route 61/Kentucky Route 210, from Campbellsville to Elizabethtown;

26. Kentucky Route 34, from Danville to United States Route 27;

27. Kentucky Route 52, from Lancaster to Richmond, and Richmond to Irvine;

28. A southern expressway around Lexington connecting Interstate 64 west of Lexington with the Bluegrass Parkway, United States Route 68, United States Route 27, Interstate 75, and Interstate 64 west of Winchester;

29. United States Route 62, from Georgetown to Cynthiana;

30. Kentucky Route 645/Kentucky Route 40, from Ulysses to Warfield;

31. AA Highway spur from Vanceburg to United States Route 23;

32. United States Route 45, from Mayfield to Interstate 24 at Paducah;

33. United States Route 231, from Scottsville to Bowling Green;

34. United States Route 31E, from the Tennessee state line to Glasgow;

35. Kentucky Route 163, from Edmonton to Tompkinsville;

36. Kentucky Route 101/Kentucky Route 259/Kentucky Route 79, from Smith's Grove to Harned;

37. Kentucky Route 55/Kentucky Route 555/United States Route 421, from Columbia to Milton;

38. United States Route 127, from Frankfort to Interstate 71;

39. United States Route 31E/United States Route 150, from Bardstown to Louisville;

40. United States Route 60, from Frankfort to Versailles;

41. United States Route 68, from Harrodsburg to Lexington;

42. United States Route 27, from the Tennessee state line to Lexington, and Paris to Alexandria;

43. Separate Interstate 71 and Interstate 75 in northern Kentucky to make a cross-county highway;

44. Kentucky Route 205/Kentucky Route 7/Kentucky Route 1, from the Mountain Parkway to Greenup; and

45. Kentucky Route 172 to Kentucky Route 205/Kentucky Route 7/Kentucky Route 1/United States Route 460 to Kentucky Route 23."; and

On page 4, line 6, after the word "***a***" and before the word "***session***" delete the word "***regular***"; and

On page 4, line 13, delete the number "***1994***" and insert in lieu thereof "***1996***"; and

On page 5, line 12, before the word "***in***" delete the word "***corridors***" and insert in lieu thereof the following: "***the routes specified in Section 2 of this Act***".

HB 533, AN ACT relating to driver's license.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 159.051 is amended to read as follows:

(1) When a student age sixteen (16) or seventeen (17) drops out of school or is declared to be academically deficient, the school administrator or his designee shall notify the superintendent of schools of the district in which the student is a resident or is enrolled. The reports shall be made at the end of each semester but may be made earlier in the semester for accumulated absences. A student shall be deemed to have dropped out of school when he has nine (9) or more unexcused absences in the preceding semester. Any absences due to suspension shall be unexcused absences. A student shall be deemed to be academically deficient when he has not received passing grades in at least four (4) courses in the preceding semester. The local school board shall adopt a policy to reflect a similar standard for academic deficiency for students in alternative, special education, or part-time programs.

(2) Within ten (10) days after receiving the notification, the superintendent shall report the student's name and Social Security number to the Transportation Cabinet. As soon as possible thereafter, the cabinet shall notify the student that his operator's license, permit, or privilege to operate a motor vehicle has been revoked or denied and shall inform the student of his right to a hearing before the District Court of appropriate venue to show cause as to the reasons his driver's license should be reinstated. Within fifteen (15) days after this notice is sent, the custodial parent, legal guardian, or next friend of the student may request an ex parte hearing before the District Court. The student shall not be charged District Court filing fees. The notification shall inform the student that he is not required to have legal counsel. Revocation under this subsection shall not be permitted unless the local school district shall operate an alternative education program approved by the Department of Education designed to meet the learning needs of students who are unable to succeed in the regular program.

(3) In order for the student to have his license reinstated, the court shall be satisfied that the license is needed to meet family obligations or family economic consideration which if unsatisfied would create an undue hardship or that the student is the only licensed driver in the household or the student is not considered a dropout or academically deficient pursuant to this section. If the student satisfies the court, the court shall notify the cabinet to reinstate the student's license at no cost. The student, if aggrieved by a decision of the court issued pursuant to this section, may appeal the decision within thirty (30) days to the Circuit Court of appropriate venue. A student who is being schooled at home shall be considered to be enrolled in school.

(4) A student who has had his license revoked under the provisions of this section may reapply for his driver's license as early as the end of the semester during which he enrolls in school and successfully completes the educational requirements. ***A student may also reapply for his driver's license at the end of a summer school semester which results in the student having passed at least four (4) courses during the successive spring and summer semesters, and the courses meet the educational requirements for graduation.*** He shall provide proof issued by his school within the preceding ***sixty (60)*** [~~thirty (30)~~] days that he is enrolled and is not academically deficient.

Section 2. KRS 186.450 is amended to read as follows:

(1) Any person who, except for his lack of instruction in operating a motor vehicle, would otherwise be qualified to obtain a permanent operator's license, may make application for and obtain an instruction permit, to be issued by the Circuit Court clerk in the county of the applicant's residence, and such permit shall be valid for not more than six (6) months. An applicant for relicensing after revocation shall pay the clerk a fee of twenty-five dollars ($25). The twenty-five dollar ($25) fee shall not apply to any person whose license was suspended for failure to meet the conditions described in KRS 186.411 when, within one (1) year of suspension, the driving privileges of such individuals are reinstated and persons reinstated pursuant to KRS 159.051. The permit holder shall have this permit in his possession and be accompanied by a licensed operator occupying the seat beside the operator at all times while operating a motor vehicle upon the highway.

(2) Any person who, except for his lack of instruction in operating a motorcycle or moped, would otherwise be qualified to obtain a permanent motorcycle operator's license, may make application for and obtain an instruction permit, to be issued by the Circuit Court clerk in the county of the applicant's residence, and such permit shall be valid for not more than six (6) months. The permit holder shall have this permit in his possession at all times while operating a motorcycle upon the highway.

(3) The clerk, after determining that the applicant has fully complied with the laws governing the issuance of instruction permits shall, upon the request of the applicant, issue a permanent moped license. Any valid motor vehicle operator license may also be used in the operation of a moped.

(4) Any applicant for a permit who is under the age of eighteen (18) who has not graduated from high school shall provide proof issued by his school within the preceding ***sixty (60)*** [~~thirty (30)~~] days that the applicant is currently enrolled or has been enrolled in the prior semester of school and is not or has not been found academically deficient. ***If*** [~~In the case of~~] a student ***is*** being schooled at home, a statement from his parent or guardian that he is being schooled at home and is not academically deficient shall be provided.

Section 3. KRS 186.470 is amended to read as follows:

(1) The application of any minor under the age of eighteen (18) for an operator's license, motorcycle operator's license, or any instruction permit shall not be granted unless the application is signed by a parent or legal guardian of the applicant. Regardless of which parent signs the application, both parents shall be responsible as provided in KRS 186.590. If the minor has no father, mother, or guardian, an operator's license or instruction permit shall not be granted to the minor unless his application is signed by a person willing to assume the obligation imposed by KRS 186.590 upon a person signing the application of a minor. Such a signature need not be required in the case of the renewal of a minor's license but the signature on the original application shall continue to make the parent, guardian, or other person liable under the provisions of KRS 186.590 on all renewals of the minor's license until he reaches the age of eighteen (18) unless the license, or any renewal thereof, is canceled as provided in subsection (2) of this section.

(2) A parent or a guardian of a minor applicant may file with the cabinet a verified written request that the license of the minor be canceled. Thereupon the license of the minor shall be canceled and the person who signed the application shall be relieved as to subsequent acts of the minor from the liability imposed by subsection (1) of KRS 186.590.

(3) The cabinet upon receipt of satisfactory evidence of the death of the person who signed the application of a minor for a license shall have the license canceled and no new license shall be issued to the minor until a new application, signed and verified, is made as required by this section.

(4) Any applicant for an operator's license who is under the age of eighteen (18) who has not graduated from high school shall provide proof issued by his school within the preceding ***sixty (60)*** [~~thirty (30)~~] days that the applicant is currently enrolled or has been enrolled in the prior semester of school and is not or has not been found academically deficient. ***If*** [~~In the case of~~] a student ***is*** being schooled at home, a statement from his parent or guardian that he is being schooled at home and is not academically deficient shall be provided.

The Committee Amendment No. 1 to **HB 533** is as follows:

On page 1, line 10 after "courses" by inserting:

"***, or the equivalent of four (4) courses,***"; and

On page 2, line 15 after "***courses***" by inserting:

"***, or the equivalent of four (4) courses,***".

SB 85, AN ACT relating to motor carriers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.222 is amended to read as follows:

(1) The secretary of the Transportation Cabinet in respect to highways which are a part of the state-maintained system, by official order, may increase on designated highways or portions thereof, the maximum height, length, and gross weight prescribed in KRS 189.221, if in the opinion of the secretary, the increased height, length, and weight designated by him are justified by the strength, safety, and durability of the designated highways, and the highways do not appear susceptible to unreasonable and unusual damage by reason of the increases and the secretary may establish reasonable classification of state maintained roads and fix a different maximum for each classification. Any increase in the height, length, or width of any motor truck or tractor semitrailer combinations or any other vehicle combinations including any part of the body or load or designation of highways to be used by the vehicles, shall not, in any way, exceed the federal law or regulations thereunder or jeopardize the allotment or qualification for federal aid funds of the Commonwealth of Kentucky or exceed the following dimensions and weights:

(a) Height, thirteen and one-half (13-1/2) feet;

(b) Length, semitrailers, fifty-three (53) feet; trailers, twenty-eight (28) feet; motor trucks, forty-five (45) feet, not to exceed two (2) trailers per truck tractor;

(c) Weight, twenty thousand (20,000) pounds per single axle, with axles less than forty-two (42) inches apart to be considered as a single axle; thirty-four thousand (34,000) pounds on two (2) axles in tandem arrangement which are spaced forty-two (42) inches or more apart and less than ninety-six (96) inches apart; forty-eight thousand (48,000) pounds on three (3) axles which are spaced forty-two (42) inches or more apart and less than one hundred twenty (120) inches apart. No single axle in any arrangement shall exceed twenty thousand (20,000) pounds or ***seven hundred (700)*** [~~six hundred (600)~~] pounds per inch of the aggregate width of all the tires on a single axle, whichever is less. The total gross weight of the vehicle and load shall not exceed eighty thousand (80,000) pounds;

(d) Except on the interstate highway system, a tolerance of not more than five percent (5%) per axle load shall be permitted before a carrier is deemed to have violated paragraph (c) of this subsection. The gross weight shall not exceed eighty thousand (80,000) pounds;

(e) Truck tractor, semitrailer and trailer combinations, and other vehicle combinations may be operated only on the interstate system and on those parts of the federal aid highway system and the state-maintained system which have been designated by the secretary of the Transportation Cabinet by official order as safely allowing same.

(2) Vehicles exclusively engaged in the transportation of motor vehicles, unmanufactured tobacco, or unmanufactured tobacco products may, on those highways which are a part of the state-maintained system and which have been designated by the secretary of the Transportation Cabinet by official order as safely allowing same, attain the maximum lengths as provided by subsection (1)(b) of this section, excluding the usual and ordinary bumper overhang of the transported vehicles;

(3) Vehicles engaged exclusively in the transportation of farm or primary forestry products and registered under KRS 186.050(4) or 186.050(9) and vehicles engaged exclusively in the transportation of ready-mixed concrete shall be excluded from the axle weight provisions, except on interstate highways, and subject only to total gross weight provisions.

(4) Vehicles registered pursuant to KRS 186.050(3)(b) and engaged in the transportation of primary forest products, including, but not limited to, vehicles transporting sawdust, wood chips, bark, slabs, or logs, may exceed the axle, or gross weight provisions as set forth in accordance with subsection (1)(c) of this section by a weight tolerance of ten percent (10%), except on the interstate highway system.

(5) Vehicles designed for and engaged exclusively in the collection and hauling of refuse and registered under KRS 186.050(3)(b) shall be excluded from the axle weight provisions, except when in operation on the federal interstate system, and subject only to total gross weight provisions.

(6) The secretary of the Transportation Cabinet may by order increase the weight and height limits prescribed by this chapter for motor vehicles while being operated exclusively on roads or highways being constructed, reconstructed, or repaired under contract with the Transportation Cabinet by the contractor or subcontractor, agent, or employee thereof.

(7) Notwithstanding any other provisions of this chapter, the secretary of the Transportation Cabinet shall not authorize the operation of any motor vehicle or combination of motor vehicles, upon any part of the federal aid highway system or state parkway system, which exceeds the following dimensions and weights:

(a) Width, one hundred two (102) inches, including any part of the body or load;

(b) Weight, twenty thousand (20,000) pounds per single axle, with axles less than forty-two (42) inches apart to be considered as a single axle; thirty-four thousand (34,000) pounds on two (2) axles in tandem arrangement which are spaced forty-two (42) inches or more apart and less than ninety-six (96) inches apart; forty-eight thousand (48,000) pounds on three (3) axles which are spaced forty-two (42) inches or more apart and less than one hundred twenty (120) inches apart. The total gross weight of the vehicle and load shall not exceed eighty thousand (80,000) pounds. If any federal law or laws or regulations thereunder are hereafter enacted authorizing weights and dimensions in excess of those set out in paragraphs (a) and (b) of this subsection, the secretary of the Transportation Cabinet may by official order increase the maximum weights and dimensions but the increased weights and dimensions shall not exceed those set out in this section.

(8) Except on the interstate highway system, vehicles engaged exclusively in the transportation of crushed stone, fill dirt and rock, soil, bulk sand, coal, phosphate muck, asphalt, concrete, solid waste, tankage or animal residues, livestock, and agricultural products shall be permitted a tolerance of ten percent (10%) of the axle weight provisions before a carrier is deemed to have violated paragraph (1)(c) of this section.

(9) The Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A, relating to the implementation of 23 C.F.R. Part 658 as it relates to state maintained or locally maintained roads. The enforcement of the provisions of KRS 189.221 and this section on locally maintained roads shall not be the responsibility of the law enforcement officers of the Transportation Cabinet, unless the head of the corresponding local government unit has requested, in writing, enforcement assistance from the Transportation Cabinet.

SB 106, AN ACT relating to motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186.010 is amended to read as follows:

(1) "Cabinet," as used in KRS 186.400 to 186.640, means the Transportation Cabinet; except as specifically designated, "cabinet," as used in KRS 186.020 to 186.270, means the Transportation Cabinet only with respect to motor vehicles, other than commercial vehicles; "cabinet," as used in KRS 186.020 to 186.270, means the Department of Vehicle Regulation when used with respect to commercial vehicles.

(2) "Highway" means every way or place of whatever nature when any part of it is open to the use of the public, as a matter of right, license or privilege, for the purpose of vehicular traffic.

(3) "Manufacturer" means any person engaged in manufacturing motor vehicles who will, under normal conditions during the year, manufacture or assemble at least ten (10) new motor vehicles.

(4) "Motor vehicle" means in KRS 186.020 to 186.260, all vehicles, as defined in paragraph (a) of subsection (8) of this section, which are propelled otherwise than by muscular power. As used in KRS 186.400 to 186.640, it means all vehicles, as defined in paragraph (b) of subsection (8) of this section, which are self-propelled. "Motor vehicle" shall not include a moped as defined in this section.

(5) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step-through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour.

(6) "Operator" means any person in actual control of a motor vehicle upon a highway.

(7) ***(a)*** "Owner" means a person who holds the legal title of a vehicle ***or a person who pursuant to a bona fide sale has received physical possession of the vehicle subject to any applicable security interest***.

(b) ~~[If]~~ A vehicle is the subject of an agreement for the conditional sale or lease, with the vendee or lessee entitled to possession of the vehicle, upon performance of the contract terms, for a period of three hundred sixty-five (365) days or more and with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, the conditional vendee or lessee or mortgagor shall be deemed the owner.

(c) A licensed motor vehicle dealer who transfers physical possession of a motor vehicle to a purchaser pursuant to a bona fide sale, and complies with the requirements of KRS 186A.220, shall not be deemed the owner of that motor vehicle solely due to an assignment to his dealership or a certificate of title in the dealership's name. Rather, under these circumstances, ownership shall transfer upon delivery of the vehicle to the purchaser, subject to any applicable security interest.

(8) (a) "Vehicle," as used in KRS 186.020 to 186.260, includes all agencies for the transportation of persons or property over or upon the public highways of this Commonwealth and all vehicles passing over or upon said highways, excepting road rollers, road graders, farm tractors, vehicles on which power shovels are mounted, such other construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways, such vehicles as travel exclusively upon rails, and such vehicles as are propelled by electric power obtained from overhead wires while being operated within any municipality or where said vehicles do not travel more than five (5) miles beyond the city limit of any municipality.

(b) As used in KRS 186.400 to 186.640, "vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human and animal power or used exclusively upon stationary rails or tracks, or which derives its power from overhead wires.

(9) KRS 186.020 to 186.270 apply to motor vehicle licenses. KRS 186.400 to 186.640 apply to operator's licenses.

(10) "Dealer" means any person engaging in the business of buying or selling motor vehicles.

(11) "Commercial vehicles" means all motor vehicles that are required to be registered under the terms of KRS 186.050, but not including vehicles primarily designed for carrying passengers and having provisions for not more than nine (9) passengers (including driver), motorcycles, sidecar attachments, pickup trucks and passenger vans which are not being used for commercial or business purposes and motor vehicles registered under KRS 186.060.

(12) "Resident" means any person who has taken up a place of abode within this state; or any person who has had his actual or habitual place of abode in this state for the larger portion of the twelve (12) months next preceding the date on which his motor vehicle is registered or required to be registered in Kentucky; or any person maintaining a place of abode in this state for gainful employment; provided, however, that the Transportation Cabinet may promulgate administrative regulations exempting any person temporarily maintaining a place of abode in Kentucky, including a full-time student at Kentucky colleges and universities, from any requirement imposed by this chapter upon residents as defined in this chapter. The possession by an operator of a vehicle of a valid Kentucky operator's license shall be prima-facie evidence that the operator is a resident of Kentucky.

Section 2. KRS 186A.220 is amended to read as follows:

(1) Except as otherwise provided in this chapter, when any motor vehicle dealer licensed in this state buys or accepts such a vehicle in trade, which has been previously registered or titled for use in this or another state, and which he holds for resale, he shall not be required to obtain a certificate of title for it, but shall, within fifteen (15) days after acquiring such vehicle, notify the county clerk of the assignment of the motor vehicle to his dealership and pay the required transferor fee.

(2) Upon purchasing such a vehicle or accepting it in trade, the dealer shall obtain from his transferor, properly executed, all documents required by KRS 186A.215, to include the odometer disclosure statement thereon, together with a properly assigned certificate of title.

(3) The dealer shall execute his application for assignment upon documents designated by the Department of Vehicle

Regulation, to the county clerk of the county in which he maintains his principal place of business. Such clerk shall enter the assignment upon the automated system.

(4) The dealer shall retain the properly assigned certificate of title received from his transferor, and may make any reassignments thereon until the forms for dealer assignment on the certificate of title are exhausted. The Department of Vehicle Regulation may, if it deems it warranted, provide a special document to allow for additional dealer assignments without requiring system generated documents.

(5) When he assigns the vehicle to a purchaser for use, he shall deliver the properly assigned certificate of title, and a properly executed vehicle transaction record, to such purchaser, who shall make application for registration and a certificate of title thereon. ***The dealer may, with the consent of the purchaser, deliver the assigned certificate of title, and the executed vehicle transaction record of a new or used vehicle, directly to the county clerk, and on behalf of the purchaser, make application for registration and a certificate of title. In so doing, the dealer shall require from the purchaser proof of insurance as mandated by KRS 304.39-080 before delivering possession of the vehicle. Notwithstanding the provisions of KRS 186.020, 186A.065, 186A.095, 186A.215, and 186A.300, if a dealer elects to deliver the title documents to the county clerk and has not received a clear certificate of title from a prior owner, the dealer shall retain the documents in his possession until the certificate of title is obtained.***

(6) The Department of Vehicle Regulation shall assure that the automated system is capable of accepting instructions from the county clerk that a certificate of title shall not be produced under a dealer registration situation.

Section 3. KRS 138.465 is amended to read as follows:

(1) Any person other than a dealer, as defined in KRS 186.010***(10)***[~~(9)~~], who sells or transfers a motor vehicle in this state shall deliver to the county clerk the certificate of registration and ownership with the assignment form on the reverse side properly executed and shall transfer the vehicle to the new owner within ten (10) days of the date of the sale or transfer of ownership.

(2) Any person who violates subsection (1) of this section shall be subject to the penalties set out in KRS 186.990(2).

SJR 13, A JOINT RESOLUTION directing the Governor to submit a written certification to the United States Secretary of Transportation to comply with Section 159 (a)(3)(B) of Public Law 101-516, stating the opposition of the Kentucky General Assembly to the enactment of the federal "Drug Offender's Driving Privileges Suspension Act of 1990" or a similar qualifying license suspension law for drug offenders.

WHEREAS, Congress passed Public Law 101-516 requiring the United States Secretary of Transportation to withhold five percent (5%) of a state's highway related funds if that state does not meet the requirements of Public Law 101-516 by October 1, 1993, and, in addition, beginning October 1, 1995, and each fiscal year thereafter ten percent (10%) of state highway funds are required to be withheld; and

WHEREAS, five percent (5%) of Kentucky's federal highway funds is approximately $9.4 million and ten percent is approximately $19.3 million; and

WHEREAS, Section 159 (a)(3)(B) of Public Law 101-516 provides that a state has complied with Public Law 101-516 and will not lose federal highway funding if each house of the state legislature has adopted a resolution expressing its opposition to enactment of a law that complies with the major provisions of Public Law 101-516, which requires a six month suspension of the driver's license of any individual convicted of any violation of the Controlled Substances Act or any drug law, regardless of whether a motor vehicle was involved in the offense; and

WHEREAS, to fully comply with Section 159 (a)(3)(B) of Public Law 101-516, the Governor must also submit a written certification to the United States Secretary of Transportation expressing his opposition to the enactment or enforcement of a driver license suspension law similar to Public Law 101-516; and

WHEREAS, after careful examination of Public Law 101-516, the Kentucky General Assembly hereby determines:

1. That driver license revocations pursuant to Public Law 101-516 do not have to be related to the operation of a motor vehicle upon the public highways in Kentucky;

2. That current Kentucky law (KRS Chapter 189A) prohibits a person from driving under the influence of any substance that impairs his ability to operate a motor vehicle and, based upon the number of convictions against the person for the same offense, mandates a person's driver's license be revoked for a period between ninety (90) days and five (5) years, a fine between $200 and $1,000, imprisonment between forty-eight (48) hours and five (5) years, and community labor between ten (10) days and one (1) year;

3. That current Kentucky law (KRS 218A.410) makes a person's car subject to seizure and forfeiture to the state if the motor vehicle has been used to transport, sell, or receive a controlled substance; and

4. That current Kentucky law (218A.991) provides for the suspension of driving privileges for a minimum of one (1) year of persons between the ages of fourteen (14) and eighteen (18) convicted of engaging in prohibited conduct involving the possession, use, sale, or consumption of controlled substances; and

WHEREAS, the Kentucky General Assembly believes that if a person is not deterred from criminal drug activity by the threat of his motor vehicle being seized and forfeited to the state, enactment of Public Law 101-516 requiring the person's driver's license to be suspended for six (6) months will certainly not deter criminal drug activity; and

WHEREAS, the Kentucky General Assembly believes that it is unnecessary to enact the license suspension provisions of Public Law 101-516 because the state has already enacted sufficient laws to deter illegal drug activity; and

WHEREAS, the Kentucky General Assembly believes that the license suspension provisions of Public Law 101-516 would unnecessarily strain limited state financial and manpower resources to enforce, as well as unnecessarily increase the paperwork and bureaucracy of state government;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. That the General Assembly is opposed to the federal government mandating that states enact a law that provides for the suspension or revocation of a person's driver's license based upon a conviction of a drug offense regardless of whether the person operated a motor vehicle at the time of the offense.

Section 2. That the Honorable Brereton C. Jones, Governor of the Commonwealth of Kentucky, is directed to submit a written certification to Federico F. Pena, United States Secretary of Transportation, that the Kentucky General Assembly has adopted this Resolution, as authorized by United States Code Title 23, Section 159(a)(3)(B), expressing its opposition to the additional enactment and enforcement of the federal "Drug Offender's Driving Privileges Suspension Act of 1990" or a similar qualifying license suspension law for drug offenses.

Section 3. That Governor Brereton C. Jones is requested to submit written certification to Secretary Pena expressing his opposition to this federal mandate which is currently addressed by existing Kentucky statutes.

Section 4. That copies of this Resolution be transmitted to Governor Jones, the members of the Kentucky Congressional Delegation, and United States Transportation Secretary Federico Pena, 400 Seventh Street, SW, Washington, DC 20590.

SJR 27, A JOINT RESOLUTION directing the Transportation Cabinet to name a bypass near Mount Washington the Harold Bradley Allgood Memorial Highway, and place appropriate signs.

WHEREAS, Harold Bradley Allgood was an Emergency Medical Technician and Assistant Safety Officer with the Mount Washington Fire Department; and

WHEREAS, Harold Bradley Allgood was tragically killed, at age twenty-one, on November 15, 1993, responding to a rescue while riding the tailboard of a fire department pumper; and

WHEREAS, Harold Bradley Allgood had worked for the Mount Washington Fire Department for six years, first as a junior firefighter, then a firefighter, and finally the Assistant Safety Officer; and

WHEREAS, Harold Bradley Allgood was a member of the Bullitt County Disaster and Emergency Services, the American Red Cross, the American Heart Association, and a former member of the Civil Air Patrol; and

WHEREAS, Harold Bradley Allgood was also Operations Manager and Safety Officer for All County Wheelchair Transport Service, and worked on a daily basis with mentally and physically disabled persons and the elderly; and

WHEREAS, Harold Bradley Allgood was known throughout his community as a caring and compassionate man who was dedicated to serving his fellow citizens in many different ways, and is sorely missed by many who wish to honor his memory;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. That the Transportation Cabinet is directed to name the entire length of the bypass around Mount Washington on Highway 44E, the Harold Bradley Allgood Memorial Highway.

Section 2. That the Transportation Cabinet is directed to place appropriate signs, to be paid for by the family of Harold Bradley Allgood, along the bypass.

Section 3. That the Clerk of the Senate is directed to transmit a copy of this Resolution to Secretary Don Kelly, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40601, and to Judy Allgood-Hodge, Post Office Box 592, Mount Washington, Kentucky 40047.

Floor Amendments (Continued)

Floor Amendment No. 1 to the Committee Substitute to **HB 483**, by Representative R. Smith:

On page 3, line 23, after the word "***agribusiness,***" insert "***resort hotels, golf courses***"; and

On page 5, line 2, after the word "parks;" insert "***resort hotels and golf courses;***".

Motions, Petitions and Communications (Continued)

Representative Sanders moved the adoption of the following **Legislative Citation No. 67**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors Doctor S. E. Farmer in recognition of his retirement. The entire membership joins Representative Richard Sanders, friends and family in honoring the distinguished Doctor S. E. Farmer for his forty-four years of healing service as physician to Edmonson County, Kentucky citizens.

Representative Farrow moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Farrow moved that his vote be changed from "nay" to "yea" on **HB 275**. Agreed.

Representative French moved that the rules be suspended to withdraw **HB 564**. Agreed.

Representative Nesler moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Nesler moved that he be recorded as voting "yea" on **HB 272**. Agreed.

Representative Stumbo announced that the House would convene at 4:00 p.m., February 22, 1994.

The following members filed requests to have their names added as co-sponsors to Bills under rules previously suspended: **HB 272**, Representative Nelson; **312**, Representative Lile; **HB 368**, Representative Riner; **HB 490**, Representative Stengel; **HB 552**, Representative L. Clark; **HB 561**, Representative Bowling.

Floor Amendments (Continued)

Floor Amendment No. 4 to the Committee Substitute to **HB 115**, by Representative Riner:

On page 6, line 21, by deleting all of the line following "(4)" and all of page 6, lines 22 to 27, and all of page 7, lines 1 to 4, and inserting in lieu thereof the following: "***The Education Professional Standards Board shall permanently revoke the certificate of any certified employee who is convicted of or pleads guilty to a felony proscribed by KRS Chapter 510 or 529 if the offense is based on conduct involving the certified employee and a child under twelve (12) years of age.***"; and

On page 14, line 1, by inserting after "***the board.***" the following: "***The board shall permanently revoke the license of any physician who is convicted of or pleads guilty to a felony proscribed by KRS Chapter 510 or 529 if the offense is based on conduct involving the physician and a child under twelve (12) years of age.***"; and

On page 20, line 11, by inserting after "***the board.***" the following: "***The board shall permanently revoke the license of any nurse who is convicted of or pleads guilty to a felony proscribed by KRS Chapter 510 or 529 if the offense is based on conduct involving the nurse and a child under twelve (12) years of age.***"; and

On page 28, line 11, by inserting after "***the board.***" the following: "***The board shall permanently revoke the license or certificate of any licensee or certificate holder who is convicted of or pleads guilty to a felony proscribed by KRS Chapter 510 or 529 if the offense is based on conduct involving the licensee or certificate holder and a child under twelve (12) years of age.***"; and

On page 31, line 20, by inserting after "***the board.***" the following: "***The board shall permanently revoke the license or certificate of any social worker who is convicted of or pleads guilty to a felony proscribed by KRS Chapter 510 or 529 if the offense is based on conduct involving the social worker and a child under twelve (12) years of age.***"

Announcements

The Clerk announced the following meetings:

Capital Projects and Bond Oversight, 1:00 p.m., February 22, 1994

Budget Review Subcommittee on Economic Development, upon adjournment

Natural Resources and Environment, upon adjournment, Room 131

Health and Welfare, one-half hour upon adjournment

Committee on Rules, upon adjournment, Speaker's Office

Adjournment

Representative Stumbo moved that the House adjourn until 9:00 a.m., Friday, February 18, 1994.

On the roll call the vote was **Yeas 80**--Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Bentley, Bondurant, Bowling, Brown, Bryant, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Hatcher, Jensen, Johnson, Kerr, Lee, Lewis, Little, Lyne, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Napier, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riner, Scorsone, Scott, Shacklette, Simpson, B. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 8**--Buis, Farley, Heleringer, LeMaster, Lile, Maggard, Mullinix, Riggs.

The motion to adjourn was adopted.

FRIDAY, FEBRUARY 18, 1994

THIRTY-FIRST LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend David Hilton, First United Methodist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Allen, Bryant, Gedling, Jensen, Keith, Little, McElroy, Nelson and R. Smith.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of February 17, 1994 be dispensed with and the same approved. Agreed.

Senate Message

Announcing passage of **SB 141, SB 152, SB 158, SB 171, HB 185** and **HB 294**.

Message received on **HB 51, HB 93** and **HB 125**: The Senate has passed **HB 51**, with Senate Committee Amendment attached thereto, **HB 93**, with Senate Committee Amendment attached thereto, and **HB 125**, with Senate Committee Amendment attached thereto, and respectfully requests concurrence of this Honorable Body. (Time: 9:05 a.m.)

Introduction of Bills and Resolutions

HB 616, by Representative Barrows: AN ACT relating to school district audits.

HB 617, by Representatives Sanders and Kerr: AN ACT relating to water districts.

HB 618, by Representatives Nelson, Cyrus, Deskins, Maggard, Little and Bentley: AN ACT relating to mining.

HB 619, by Representative Ridley: AN ACT relating to oil and gas.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Appropriations and Revenue: **HB 596, HB 604**

Banking and Insurance: **HB 595, HB 599, HB 611**

Education: **HB 597**

Elections and Constitutional Amendments: **HB 593**

Health and Welfare: **SB 37, HB 600**

Judiciary: **HB 594, HB 601, HB 602, HB 603, HB 607, HB 608, HB 609, HB 610, HB 612, HB 614, HB 615**

Labor and Industry: **HB 605, HB 613**

Natural Resources and Environment: **HB 592**

State Government: **HB 598**

Transportation: **HB 606**

Report of Committees

The Committee on Rules reported the following Consent Bills have been posted for passage in the Regular Orders of the Day, February 22, 1994: **HB 293, HB 452, HB 512**

The Committee on Rules reported that **HB 201, SB 22, HB 187, HB 312, HB 401, HB 420, HB 421, HB 466, HB 504, HB 508, HCR 47, SB 2, SB 12, SB 15, SB 24, SB 50** and **SB 62** have been posted for passage in the Orders of the Day for February 22, 1994.

The Committee on Rules reported that the following Bills have been recommitted:

Appropriations and Revenue: **HB 340, HB 394, SB 11, HB 368, HB 380, HB 458, HB 483**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills and Resolutions have been posted for Committee consideration:

Education: **HB 333, HB 405, HB 438, HB 442, HB 490, HB 549, HB 550, HB 557, HCR 44**

Elections and Constitutional Amendments: **HB 290, HB 118**

Report of Committees (Continued)

The Committee on Health and Welfare reported **HB 250**, with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 250, AN ACT relating to health care reform.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

PART I

KENTUCKY HEALTH POLICY BOARD

SECTION 1. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 15, 37, and 38 of this Act, unless the context requires otherwise:

(1) "Board" means the Kentucky Health Policy Board created pursuant to Section 2 of this Act.

(2) "Facility" means any hospital or other health care facility, whether operated for profit or not, required to be licensed pursuant to KRS Chapter 216B.

(3) "Health care provider" or "provider" means any facility and service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:

  (a) Physicians, osteopaths, and podiatrists licensed pursuant to KRS Chapter 311;

  (b) Chiropractors licensed pursuant to KRS Chapter 312;

  (c) Dentists licensed pursuant to KRS Chapter 313;

  (d) Optometrists licensed pursuant to KRS Chapter 320;

  (e) Physician assistants regulated pursuant to KRS Chapter 311;

  (f) Nurse practitioners licensed pursuant to KRS Chapter 314; and

  (g) Other health care practitioners as determined by the board by administrative regulation promulgated pursuant to KRS Chapter 13A.

(4) "Hospital services" means:

  (a) Inpatient hospital services as enumerated in medicare regulation 42 C.F.R. Sec. 409.10, as it may be amended from time to time;

  (b) Emergency services;

  (c) Outpatient services provided by the hospital; and

  (d) Physician and other services provided in a hospital on an inpatient or outpatient basis.

SECTION 2. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board is hereby created as an independent agency of state government. The goal of the board shall be to control health care costs, improve quality and efficiency, encourage competition, and develop a system of integrated health care delivery which makes necessary health services available to all residents of the Commonwealth. The board shall be attached for administrative purposes to the Cabinet for Human Resources.

(2) The board shall consist of five (5) members appointed by the Governor no later than August 1, 1994, and confirmed by the Kentucky Senate. The members shall be full-time state employees and a chairman shall be appointed by the Governor from among the membership. Three (3) members shall be persons who do not hold, and have not held, any full-time employment with a facility and who are not, and have not been licensed providers. Each of the remaining two (2) members shall either have at least five (5) years experience in the management or operation of a facility or have been a licensed provider for at least five (5) years. Each member shall have a demonstrated interest in the provision of efficient, economical, and quality health care. Compensation for members of the board shall be exempt from the provisions of KRS 64.640. The members shall comply with the provisions of KRS Chapter 11A and any code of ethics for executive branch employees. The Governor may at any time remove any member for cause after furnishing the member with a written copy of the charges against the member and affording the member a public hearing if requested. No member of the board shall accept employment or compensation from any facility or provider, or become a practicing provider within the Commonwealth of Kentucky for two (2) years, following the end of the member's term.

(3) The terms of members of the board shall be four (4) years except that the terms of initial members shall be staggered to end as follows:

(a) Two (2) on June 30, 1995;

(b) One (1) on June 30, 1997; and

(c) Two (2) on June 30, 1998.

(4) At the end of a term, a member shall continue to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed and qualifies. A member who serves (2) consecutive full four (4) year terms shall not be reappointed for four (4) years after completion of those terms.

(5) A majority of the full authorized membership of the board shall constitute a quorum.

(6) The board shall appoint an executive director, to be the chief administrative officer of the board. The executive director shall serve at the pleasure of the board. Under the direction of the board, the executive director shall perform any duty or function that the board requires.

(7) The executive director may employ staff necessary for the performance of the duties of the board. The board's staff shall not be subject to the classified service provided for by KRS 18A.005 to 18A.200.

(8) No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.

SECTION 3. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The board may:

(a) Annually set a target expenditure limit for total state health expenditures with a goal that the rate of increase decline by ten percent (10%) per year until the rate of increase in total state health expenditures is equal to the rate of increase in state personal income.

(b) Promulgate any administrative regulations pursuant to KRS Chapter 13A necessary to carry out its statutory responsibilities;

(c) Appoint temporary volunteer advisory committees, which may include individuals and representatives of interested public or private entities or organizations to carry out its statutory responsibilities;

(d) Apply for and accept any funds, property, or services from any person or government agency to carry out its statutory responsibilities;

(e) By administrative regulation, promulgated pursuant to KRS Chapter 13A, comply with any federal requirement that may be imposed or opportunity that may be presented with regard to any matter under the jurisdiction of the board;

(f) Make agreements with a grantor of funds, or property, or services, including an agreement to make any study, plan, demonstration, or project to carry out its statutory responsibilities;

(g) Develop and implement pilot programs relating to health care costs, quality, or access as it deems appropriate;

(h) Publish and make available information that relates to the health care financing and delivery system that is in the public interest;

(i) Sue and be sued;

(j) Contract with a qualified, independent third party for any service necessary to carry out the powers and duties of the board; however, unless permission is granted specifically by the board, a third party hired by the board shall not release, publish, or otherwise use any information to which the third party has access under its contract;

(k) Establish purchasing cooperatives through which licensed providers may purchase medical supplies, medical equipment, services, or pharmaceuticals at discount prices for the purpose of lowering health care costs to patients.

(l) Financially audit the books and records of each Health Purchasing Alliance created under Section 66 of this Act;

(m) Recommend the initiation of disciplinary proceedings for health care providers before the State Board of Medical Licensure created pursuant to KRS Chapter 311, the State Board of Podiatry created pursuant to KRS Chapter 311, the State Board of Chiropractic Examiners created pursuant to KRS Chapter 312, the Kentucky Board of Dentistry created pursuant to KRS Chapter 313, the Kentucky Board of Nursing created pursuant to KRS Chapter 314, the Kentucky Board of Pharmacy created pursuant to KRS Chapter 315, the Kentucky Occupational Therapy Board created pursuant to KRS Chapter 319A, the Kentucky Board of Optometric Examiners created pursuant to KRS Chapter 320, the State Board of Physical Therapy created pursuant to KRS Chapter 327, and the Kentucky Licensure Board for Specialists in Hearing Aid Instruments created pursuant to KRS Chapter 334, for any violations of any provisions of KRS Chapter 164, 205, 216, 216B, 304, or 314; and

(2) The board shall:

(a) Analyze specific health service costs and benefits, and define and develop a priority listing of minimum health benefits on the basis of the relationships between costs, benefits, and improved quality of life for citizens of the Commonwealth of Kentucky. The board shall use the minimum list of health care benefits to recommend to the 1996 Regular Session of the General Assembly a plan for the implementation and funding of a universal access plan for all Kentuckians;

(b) Periodically participate in or conduct analyses and studies that relate to:

1. Health care costs;

2. Health care quality or outcome;

3. Health providers and health services; or

4. Epidemiologic studies.

(c) Prescribe one (1) standardized uniform health claim form and one (1) medical necessity form which shall be used when processing any health insurance claim and workers' compensation health claim made in this state.

1. The board shall promulgate an administrative regulation, pursuant to KRS Chapter 13A, to carry out the provisions of this paragraph.

2. Any person who violates this paragraph by failing to use or accept the standardized uniform health claim form or medical necessity form shall be subject to forfeiture of its license to do business in this Commonwealth and a civil fine not to exceed one thousand dollars ($1,000) for each violation;

(d) Collect, analyze, and disseminate county specific data from health care providers on maximum fees charged for health care procedures as described under Sections 11 to 15 of this Act;

(e) Develop, update, and recommend implementation of parameters for clinical practice for use by health care providers as described under Section 16 of this Act;

(f) Compile and publish a list from information supplied by each health care provider of equipment, health facilities, and health services in which the provider has five percent (5%) or more ownership or financial interest as described under Section 37 of this Act;

(g) Authorize pilot projects for twenty-four (24) hour health coverage as set forth under Section 38 of this Act;

(h) Approve or disapprove certificate-of-need applications under KRS Chapter 216B;

(i) Establish a mechanism for biennial review of projects for compliance with the terms of the granted certificate of need as set forth under Section 45 of this Act;

(j) Certify and may decertify each of two (2) health purchasing alliances for the Commonwealth pursuant to Section 69 of this Act;

(k) Annually review the performance of each health purchasing alliance;

(l) Supervise the health purchasing alliances to protect against violation of antitrust laws as provided under Section 70 of this Act

(m) Define standard benefit plans, as provided under Section 67 of this Act, on which requests for proposals are submitted to the health purchasing alliances by the accountable health plans;

(n) Inform Kentucky residents of the existence and provisions of the five (5) standard benefits plans available, as provided under Section 78 of this Act;

(o) Develop and approve a risk assessment and adjustment methodology for use by the health purchasing alliances under Section 67 of this Act;

(p) Approve supplemental benefit plans as provided under Section 67 of this Act;

(q) Develop an underserved area physician respite program as provided under Section 92 of this Act;

(r) Within ninety (90) days after the end of each facility's fiscal year or more often as the board determines, prepare from the information filed with the board any summary, compilation, or other supplementary report required by the board;

(s) Set deadlines for the filing of statutorily required reports and make each required report filed and each summary, compilation, or supplementary report, except for privileged medical information, available for public inspection at the office of the board during regular business hours and each summary and compilation available to any agency or person on request and upon payment to the board of a reasonable fee for distribution of an electronic or printed copy of the information;

(t) Promulgate administrative regulations pursuant to KRS Chapter 13A that relate to meetings, minutes which shall be kept of each meeting, and transactions of the board;

(u) Prepare annually a budget proposal that includes the estimated income of the board and proposed expenses for its administration and operation;

(v) On or before October 1 of each year, submit to the Governor, Legislative Research Commission, and Interim Joint Committees on Appropriations and Revenue and Health and Welfare an annual report on the operations and activities of the board during the preceding fiscal year, including:

1. A copy of each summary, compilation, and supplementary report deemed relevant by the board; and

2. Any other fact, suggestion, or policy recommendation that the board considers necessary;

(3) The board may promulgate administrative regulations that impose civil fines not to exceed one thousand dollars ($1,000) for each violation for failure to file a report as required. The amount of any fine imposed shall not be included in the costs of a facility in regulating its rates.

SECTION 4. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The power of the secretary for human resources over plans, proposals, and projects of units in the cabinet does not include the power to disapprove or modify any decision or determination that the board makes under powers specifically delegated by law to the board.

(2) The power of the secretary for human resources to transfer by administrative regulation, administrative order, or written directive, any staff, functions, or funds of units in the cabinet does not apply to any staff, function, or funds of the board.

PART II

HEALTH DATA COLLECTION

SECTION 5. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

As used in Sections 5 to 15 of this Act, unless the context requires otherwise:

(1) "Ambulatory facility" means a facility, including an ambulatory surgical facility, ambulatory care clinic, alternative birth center, mobile health service, or a specialized medical technology service, which is not part of a hospital, and which is licensed pursuant to KRS Chapter 216B, and which provides one (1) or more major ambulatory procedures to patients not requiring hospitalization.

(2) "Charge" means all amounts billed by a hospital or ambulatory facility, including charges for all ancillary and support services or procedures, prior to any adjustment for bad debts, charity contractual allowances, administrative or courtesy discounts, or similar deductions from revenue. However, if necessary to achieve comparability of information between providers, charges for the professional services of hospital-based or ambulatory facility-based physicians shall be excluded from the calculation of charge.

(3) "Hospital" means a facility licensed pursuant to KRS Chapter 216B as either an acute care hospital, psychiatric hospital, rehabilitation hospital, or chemical dependency treatment facility.

(4) "Procedures" means those surgical, medical, radiological, diagnostic, or therapeutic, procedures performed by a provider, as periodically determined by the Kentucky Health Policy Board in administrative regulations promulgated pursuant to KRS Chapter 13A as those for which reports to the Kentucky Health Policy Board shall be required. "Procedures" also includes procedures that are provided in hospitals or other licensed ambulatory facilities, or those which require the use of special equipment, including fluoroscopic equipment, computer tomographic scanners, magnetic resonance imagers, mammography, ultrasound equipment, or any other new technology as periodically determined by the Kentucky Health Policy Board.

(5) "Quality" means the extent to which a provider renders care which obtains for patients optimal health outcomes.

(6) "Risk-adjusted" means mathematically modified to remove the effects of differences among providers in their patients' severity of illness or other factors that are not the result of the providers' treatment of the patients, but that are likely to affect the charges or quality of care.

SECTION 6. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board shall collect, analyze, and disseminate information on the cost, quality, and outcomes of health services provided by health facilities and health care providers in the Commonwealth.

(2) The executive director of the Kentucky Health Policy Board shall serve as chief administrative officer for the health data collection functions of Sections 5 to 10 of this Act.

(3) No member of the Kentucky Health Policy Board or employee thereof shall be subject to any personal liability for any loss sustained or damage suffered on account of any action or inaction under Sections 5 to 10 of this Act.

SECTION 7. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) For the purposes of carrying out the provisions of Sections 5 to 10 of this Act, the Kentucky Health Policy Board may:

(a) Appoint temporary volunteer advisory committees, which may include individuals and representatives of interested public or private entities or organizations;

(b) Apply for and accept any funds, property, or services from any person or government agency;

(c) Make agreements with a grantor of funds or services, including an agreement to make any study allowed or required under Sections 5 to 10 of this Act; and

(d) Contract with a qualified, independent third party for any service necessary to carry out the provisions of Sections 5 to 10 of this Act; however, unless permission is granted specifically by the Kentucky Health Policy Board, a third party hired by the Kentucky Health Policy Board shall not release, publish, or otherwise use any information to which the third party has access under its contract.

(2) For the purposes of carrying out the provisions of Sections 5 to 10 of this Act, the Kentucky Health Policy Board shall:

(a) Publish and make available information that relates to the health care financing and delivery system that is in the public interest;

(b) Periodically participate in or conduct analyses and studies that relate to:

1. Health care costs;

2. Health care quality and outcomes; and

3. Health care providers and health services;

(c) Promulgate administrative regulations pursuant to KRS Chapter 13A that relate to its meetings, minutes, and transactions related to Sections 5 to 10 of this Act; and

(d) Prepare annually a budget proposal that includes the estimated income and proposed expenditures for the administration and operation of Sections 5 to 10 of this Act.

(3) The Kentucky Health Policy Board may promulgate administrative regulations pursuant to KRS Chapter 13A that impose civil fines not to exceed five hundred dollars ($500) for each violation for failure to file a report as required. The amount of any fine imposed shall not be included in the allowed costs of a facility for medicare or medicaid reimbursement.

SECTION 8. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board shall establish by promulgation of administrative regulations pursuant to KRS Chapter 13A, no later than September 1, 1994, those data elements required to be submitted to the Kentucky Health Policy Board by all licensed hospitals and ambulatory facilities, including a timetable for submission and acceptable data forms which shall include the uniform health claim form pursuant to KRS 304.14-135 or any other universal health claim form to be determined by the Kentucky Health Policy Board. Thereafter, every hospital and ambulatory facility shall be required to report, on a periodic basis, information regarding the charge for and quality of the procedures and health care services performed therein, and as stipulated by administrative regulations promulgated pursuant to KRS Chapter 13A. The Kentucky Health Policy Board may conduct statistical surveys of a sample of hospitals, ambulatory facilities, or other providers in lieu of requiring the submission of information by all hospitals, ambulatory facilities, or providers.

(2) The Kentucky Health Policy Board shall require for submission to the board by any group of providers, including those categories within the definition of provider contained in Section 1 of this Act and any further categories determined by the board, at the beginning of each fiscal year after January 1, 1995, and within the limits of the state, federal, and other funds made available to the board for that year, and as provided by board promulgation of administrative regulations pursuant to KRS Chapter 13A, the following:

(a) A list of medical conditions, health services, and procedures for which charge and quality data shall be collected and published at specified time intervals and in a specified manner;

(b) A timetable for filing data;

(c) A list of data elements that are necessary to enable the board to analyze and disseminate risk-adjusted charge, quality, and outcome information, including mortality and morbidity data;

(d) A format for data submission which shall include use of the uniform health claim form pursuant to KRS 304.14-135 or any other universal health claim form to be determined by the Kentucky Health Policy Board, and which may be in the form of magnetic computer tape, computer diskettes, or other electronic media, or through an electronic network, or in the form of hard copy;

(e) Procedures to allow health care providers at least thirty (30) days to review information generated from any data required to be submitted by them, with any reports generated by the board to reflect valid corrections by the provider before the information is released to the public; and

(f) Procedures pertaining to the confidentiality of data collected.

(3) The board shall coordinate its data-gathering activities with other data-collection activities conducted by the Cabinet for Human Resources and the Department of Insurance, as well as other state agencies which collect health-related service, utilization, financial, and health care personnel data, to prevent duplicate filing requirements.

(4) The board shall conduct outcome analyses and effectiveness studies and prepare other reports pertaining to issues involving health care charges and quality.

(5) The board may independently audit any data required to be submitted by providers as needed to corroborate the accuracy of the submitted data. Any audit may be at the expense of the board and shall, to the extent practicable, be coordinated with other audits performed by state agencies.

(6) The board may initiate activities set forth in subsection (1) or (2) of this section at any time after the effective date of this Act.

SECTION 9. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The following types of data shall be deemed as relating to personal privacy and, except by court order, shall not be published or otherwise released by the Kentucky Health Policy Board or its staff and shall not be subject to inspection under KRS 61.870 to 61.884;

(a) Any data, summary of data, correspondence, or notes that identify or could be used to identify any individual patient or member of the general public, unless the identified individual gives written permission to release the data or correspondence; and

(b) Any correspondence or related notes from or to any employee or employees of a provider if the correspondence or notes identify or could be used to identify any individual employee of a provider, unless the corresponding persons grant permission to release the correspondence.

(2) Health care providers submitting required data to the board shall not be required to obtain individual permission to release the data, except as specified in subsection (1) of this section, and, if submission of the data to the board complies with pertinent administrative regulations promulgated pursuant to KRS Chapter 13A, shall not be deemed as having violated any statute or administrative regulation protecting individual privacy.

(3) No less than sixty (60) days after the annual report or reports are published and except as otherwise provided, the board shall make all aggregate data which does not allow disclosure of the identity of any individual patient, and which was obtained for the annual period covered by the reports, available to the public. The aggregate data shall be made available in both printed format and in a standard electronic format which is readable by commonly available software for personal computers. Single copies of the printed data shall be made available to individuals at no cost. The board may impose a fee no greater than that necessary to cover its costs for providing electronic or multiple printed copies of the data. At least one (1) printed and one (1) electronic copy of the aggregate data shall be provided without charge to the Legislative Research Commission.

(4) Collection of data about individual patients shall be in a nonidentifying numeric form and shall not include a patient's name or Social Security number. Any person who receives information identifying a patient through error or any other means shall return all copies of the information immediately.

(5) All data and information collected shall be kept in a secure location and under lock and key when specifically responsible personnel are absent.

(6) Only designated board staff shall have access to raw data and information. The designated staff shall be made aware of their responsibilities to maintain confidentiality. Staff with access to raw data and information shall sign a statement indicating that the staff person accepts responsibility to hold that data or identifying information in confidence and is aware of penalties under state or federal law for breach of confidentiality. Data which, because of small sample size, breaches the confidence of individual patients, shall not be released.

(7) Any employee of the board or member of the board who violates any provision of this section shall be fined not more than five hundred dollars ($500) for each violation or be confined in the county jail for not more than six (6) months, or both, and shall be removed and disqualified from office or employment.

SECTION 10. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board shall annually, on or before July 1, prepare and publish, in understandable language with sufficient explanation to allow consumers to draw meaningful comparisons, a report or reports on health care charges, quality, and outcomes which includes diagnosis-specific or procedure-specific comparisons for each hospital and ambulatory facility, differentiated by payor if relevant, and for other provider groups as relevant data becomes available.

(2) The board shall annually, on or before October 1, submit to the Interim Joint Committees on Appropriations and Revenue and Health and Welfare and to the Governor a report on the operations and activities of the board under Sections 5 to 10 of this Act during the preceding fiscal year, including a copy of each study or report required or authorized under Sections 5 to 10 of this Act and any recommendations relating thereto.

(3) The board shall report at least biennially, no later than October 1 of each odd-numbered year, to the Interim Joint Committees on Appropriations and Revenue and Health and Welfare and to the Governor on matters pertaining to comparative health care charges, quality, and outcomes, the effectiveness of its activities relating to educating consumers and containing health care costs, including the implementation of Sections 11 to 15 of this Act, and any recommendations regarding its data collection and dissemination activities.

(4) The board shall report at least biennially, no later than October 1 of each odd-numbered year, on the special health needs of the minority population in the Commonwealth as compared to the population in the Commonwealth as compared to the population at large. The report shall be transmitted to the Interim Joint Committees on Appropriations and Revenue and Health and Welfare and to the Governor and shall contain an overview of the health status of minority Kentuckians, shall identify the diseases and conditions experienced at disproportionate mortality and morbidity rates within the minority population, and shall make recommendations to meet the identified health needs of the minority population.

PART III

FEE DISCLOSURE FOR PROVIDERS

SECTION 11. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds that one of the factors affecting the increasing cost of health care services is a lack of consumer knowledge of health care costs prior to obtaining treatment. Therefore, it is the purpose of Sections 11 to 15 of this Act to promote health care cost awareness among health care consumers and providers, to encourage competitive health care pricing, and to improve the quality of health care in the Commonwealth through the public disclosure of fees charged by licensed health care providers as set forth under Section 13 of this Act.

SECTION 12. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

As used in Sections 11 to 15 of this Act:

(1) "Health care recipient" means any individual who receives, or should have received, health care from a health care provider.

(2) "Conspicuous place" means a waiting room reception area, admission room, or other area where a health care recipient can readily observe a health care charge posting.

SECTION 13. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) All physicians, osteopaths and podiatrists licensed under KRS Chapter 311, all dentists licensed under KRS Chapter 313, all optometrists licensed under KRS Chapter 320, all psychologists licensed under KRS Chapter 319, and all chiropractors licensed under KRS Chapter 312, shall post in a conspicuous place a listing of the maximum fee charged for each of the twenty-five (25) health care procedures that the provider performs most often and shall make available upon request a quotation of the maximum fee charged for all other health care procedures the provider performs.

(2) All pharmacies granted permits under KRS Chapter 315 shall post in a conspicuous place a listing of the maximum retail selling price of the fifty (50) most commonly dispensed prescription drugs or medications at the pharmacy and shall make available upon request a quotation of the maximum retail selling price of other over-the-counter and prescription drugs and medications sold at the pharmacy.

(3) All hospitals and other health care facilities licensed under KRS Chapter 216B and all drug and alcohol treatment centers licensed under KRS Chapter 222 shall post in a conspicuous place the following:

- *(a) A statement of the maximum daily charge for room and board, inclusive of all nursing services, by level of care; and*
- *(b) A statement of the average daily charge for all other nonnursing services incurred by health care*

recipients, by level of care. The average daily charge posted shall be based on data from the previous calendar year and shall be updated on or before July 1 of each year. A statement of the maximum charge for all other health care procedures shall be made available upon request.

(4) All other health care providers not subject to subsections (1) to (3) of this section shall post in a conspicuous place a statement of the maximum fee or charge for the ten (10) health care procedures the provider performs most frequently and shall make available upon request a statement of the maximum fee charged for all other health care procedures.

(5) Notwithstanding anything in this section to the contrary, a health care provider who does not have a suitable area in which to make the required posting shall furnish, upon request, the required information in writing to each health care recipient. The information given to each health care recipient shall be in at least ten (10) point black type on a white background.

(6) The posting of a statement of maximum charges or fees under subsection (1) to (4) of this section shall be done in eighteen (18) point black type or larger and displayed on a white background.

(7) Notwithstanding any other contrary provision of law, no health care provider shall charge for or receive payment or reimbursement in any amount which is in excess of the maximum amount posted or quoted to a recipient for a health care procedure, pursuant to Sections 11 to 15 of this Act.

SECTION 14. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) By July 1 of each year, all health care providers shall submit to the Kentucky Health Policy Board, a copy of the most recent posting prepared pursuant to Section 13 of this Act and a listing of the maximum fees charged for all other health care procedures.

(2) The board shall collect, analyze, and disseminate the data, and shall develop county specific reports that are to be made available in pamphlet form that are reasonably understandable and will allow for valid comparisons.

(3) The board may promulgate administrative regulations under KRS Chapter 13A to implement this section, including provisions for the standardization of the form on which health care providers shall submit charge or fee data and the content and form of other related data.

SECTION 15. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

Any health care provider who willfully violates any of the provisions of Sections 11 to 15 of this Act shall be fined no less than one hundred dollars ($100) per day for failure to post or distribute the required list of fees charged and one thousand dollars ($1,000) per month for failure to submit the required data to the board.

PART IV

QUALITY IMPROVEMENT

SECTION 16. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

For the purpose of improving and assessing the quality of clinical care, the Kentucky Health Policy Board, created by Section 2 of this Act, through the various professional licensure boards and any volunteer advisory committees deemed necessary by the board, shall develop, update, and recommend implementation of parameters for clinical practice for use by health care providers as defined in Section 1 of this Act. The board shall adopt any parameters for clinical practice as developed and updated by the federal Agency for Health Care Policy Research. The board may adopt other parameters for clinical practice which are developed by qualified bodies, as determined by the board, with periodic updating based on data collected during the application of the parameters. Outcome measures shall be developed by the board in conjunction with the provider community. After these measures have been established they shall be disseminated to the various professional licensure boards.

PART V

PROVIDER ARBITRATION AND MEDIATION

SECTION 17. KRS CHAPTER 417A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

The following provisions shall apply to actions prior to filing a lawsuit against a health care provider alleging personal injury or wrongful death:

(1) Any person, or the personal representative of a deceased person, aggrieved by reason of any action or inaction of a health care provider may, in person or by counsel, file with the clerk of the Circuit Court a preliminary complaint which alleges the names and addresses of the health care provider or providers by whom the party claims to have been injured and sets forth sufficient facts to establish where, when, and how the patient was injured, and requests mediation prior to submission of a formal complaint. Upon filing the preliminary complaint the clerk of the court shall notify the health care provider or providers of the allegation and request to mediate. Upon receipt of written agreement by the health care provider or providers, a mediation process shall be initiated.

(2) The filing of the preliminary complaint shall initiate the mediation process pursuant to Section 18 of this Act, and

shall toll the statute of limitations so long as the preliminary complaint is filed within the period allowed for filing a complaint against a health care provider.

(3) The notification issued against the health care provider or providers shall state that the subject matter of the preliminary complaint shall be submitted to mediation; shall identify the mediator; and shall state the time and place of the mediation which shall be scheduled no sooner than thirty (30) days following the filing of the preliminary complaint nor later than sixty (60) days from the filing of the preliminary complaint.

(4) The health care provider or providers may file a responsive pleading to a preliminary complaint within a time allowed by the court.

(5) If the aggrieved party is not represented by counsel, then the health care provider or providers shall be encouraged to respond to mediation without counsel, but may engage counsel at the health care provider's option.

(6) If the mediation does not result in a resolution of the dispute, the aggrieved party has ninety (90) days after the mediator files a report with the court in which to file a complaint for lawsuit, within the Kentucky Rules of Civil Procedure, and to issue summons to be served upon the health care provider or providers for that purpose.

(7) If the mediation does not result in the resolution of the dispute and the aggrieved party files a complaint under the Rules of Civil Procedure, then the mediation process required under Section 18 shall be waived.

SECTION 18. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

The following provisions shall apply to any action filed in Circuit Court by a patient or patient's representative against a health care provider alleging personal injury or wrongful death:

(1) Upon filing of a complaint in a personal injury action alleging negligence of a health care provider, the plaintiff's attorney shall file an affidavit stating as follows:

(a) That the plaintiff's attorney has gathered all pertinent medical records and has had those records reviewed by an actively practicing physician of the same specialty or subspecialty as the plaintiff and who is qualified to render opinions on the appropriate standard of care under the same or similar circumstances, and that that person, after reviewing the records, has given the opinion, predicated upon reasonable medical probability, that there was a departure from the standard of care and that the departure was a substantial factor in causing the injury or death; or

(b) That, because of significant time constraints posed by the applicable statute of limitations, the plaintiff's attorney has not had time to do the acts required in paragraph (a) of this subsection, in which case the plaintiff's attorney shall within ninety (90) days of the date of the filing of the complaint file the required affidavit, with the time for the health care provider and any other defendants to file a responsive pleading not to commence until after the affidavit is filed.

(2) The complaint shall be dismissed at the cost of the plaintiff and any other sanctions as the trial court deems appropriate may be assessed against the plaintiff and plaintiff's attorney for failure to comply with the provisions of paragraph (a) or (b) of subsection (1) of this section.

(3) In all actions covered by this section the case shall be referred to mediation as follows:

(a) After the expiration of ninety (90) days from the date of service of summons upon the health care provider, or at an earlier time as the health care provider may agree, the trial court shall order the parties to mediation which mediation shall be held no later than one hundred and eighty (180) days from the date of service of summons upon the health care provider or at an earlier date as the parties may agree;

(b) The parties may serve interrogatories, requests for documents, requests for admissions, and obtain medical records by agreement or subpoena prior to mediation without leave of court, but any depositions to be taken shall be taken only with leave of court upon a showing of good cause, or by agreement of the parties;

(c) The parties shall attend a mediation conference on a date and at a time certain with the following persons required to be present:

1. The parties in the case of individuals, or the duly-appointed personal representative of an estate, or in the case of a corporate entity, a duly-authorized representative with authority to settle;

2 Each party's counsel of record, if any;

3. A representative of each party's insurer who is not the counsel for the health care provider and who has authority to settle at any amount up to the total liability covered provided without further consultation; and

4. Other persons as the trial court may order, or the parties may agree, including but not limited to factual and expert witnesses.

(d) The mediation conference shall be at a time and place set by order of the court in which the action is pending and shall be conducted by a mediator appointed by the court to consider the possibility of settlement, the simplification of issues, and any other matters which the mediator and the parties determine may aid in the

handling of the disposition of the proceedings. The mediator may schedule additional conferences necessary to complete the process and mediation shall continue until the parties have reached a settlement, until they are unwilling to proceed further, or until the mediator determines that further efforts would be futile. The mediator shall report to the court whether or not mediation was successful, or if further mediation might be considered after additional discovery, but the mediator shall not make findings of facts, nor shall the mediator assign blame to any party for the failure of the mediation process.

(e) If any party fails to appear at a duly-noticed and scheduled mediation conference without good cause, the trial court shall upon motion impose sanctions against the party or counsel, or both, which sanctions may include an award of attorney's fees and other reasonable costs and expenses.

1. At least ten (10) days prior to the mediation conference, each party shall submit to the mediator a written statement of the case. The statement shall be confidential and shall not be disclosed to the other party or parties without first obtaining permission of the party presenting the statement. Each statement shall contain the following information:

a. When and by whom the patient was treated and the nature of that treatment;

b. The alleged propriety or impropriety of the treatment and the nature and extent of the patient's injuries and damages; and

c. The amount, if any, that the parties would be willing to settle the matter at that stage of the proceeding.

2. Each party shall provide copies of the medical records believed by that party to be relevant, to the mediator and to all other parties.

3. Upon conclusion of the mediation conference the mediator shall return to the parties the written statements of the case, unless otherwise agreed by the parties.

(4) The procedure for mediation shall be as follows:

(a) All persons required by paragraph (c) of subsection (3) of this section shall be present with the mediator presiding;

(b) The plaintiff if an individual, the personal representative of the patient's estate, or the attorney representing the plaintiff may present the facts, and if the party states the facts, the attorney may elaborate upon them or make positional or conclusionary statements regarding the facts;

(c) The defendant, or, in the case of a corporate entity, the representative of that health care provider, or the attorney for the health care provider may make statements of facts as deemed necessary and the attorney for each health care provider may make additional statements or make positional or conclusionary statements regarding the facts; and

(d) The mediator shall discuss the facts with all parties and their attorneys to determine the areas of conflict and shall confer with them as the mediator deems proper in accordance with the mediator's training and experience, with the intent and purpose of reaching a compromise on all or as many of the issues as is possible.

(5) Except as otherwise provided for in this section, all mediation documents and mediation communications are privileged and confidential and shall not:

(a) Be disclosed;

(b) Be subject to disclosure through discovery or any other process;

(c) Be admissible into evidence in any judicial or administrative proceeding; or

(d) Be considered a public record.

(6) Any party may, during the mediation process, name an expert witness, but no party may depose that expert unless the party identifying the expert later advises that the expert will be called as a witness at the trial. The opposing party shall not later designate the expert as a witness, nor may the witness be examined concerning any report that may have been furnished during the mediation process, unless the party producing the witness intends to offer the report into evidence.

(7) There is no privilege and no restriction on release of information considered privileged or confidential under subsection (5) of this section if:

(a) All parties consent in writing;

(b) The mediation communication or mediation document gives the mediator knowledge of or a reasonable cause to suspect a child has been abused or neglected, but only to the extent and for the specific purpose the communication or document is required to be disclosed; or

(c) The mediation communications were made in furtherance of the commission of a crime or fraud or as part

of a plan to commit a crime or fraud, but only to the extent and for the specific purpose the communication or document is required to be disclosed.

(8) Guidelines and procedures for medical negligence mediation under this section, including mediator qualifications and mediation training, shall be developed by the Supreme Court of Kentucky and issued as rules.

(9) The Supreme Court of Kentucky shall, by rule, set a fee schedule for mediation services under this section.

(10) The trial court shall, utilizing the fee schedule, set a reasonable fee for the mediator based upon the complexity of issues and the time required for mediation. This fee shall be assessed among the parties on a pro rata basis. The court in which the action is pending may, utilizing the fee schedule, upon motion, increase the mediator's fee due to the complexity of the case, or the time involved.

(11) The mediators shall successfully complete mediation training in a program approved by the Administrative Offices of the Courts.

(12) Nothing contained in this section shall be construed to limit or prohibit the trial court, upon the motion of all parties, from referring a pending case against a health care provider to mediation at any time prior to the entry of a final judgment and any subsequent referral to mediation after the initial mediation conference shall be in accordance with the provisions of this section.

(13) In any action brought against a health care provider under this section, the trial court may, after an evidentiary hearing, award attorney's fees and expenses if the court finds as fact that:

(a) The claim or defense is totally without merit; and

(b) The party against which the award is made persisted in the claim or defense after it was known that the claim or defense was without merit, after having been placed upon notice by the opposing party.

SECTION 19. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

Notwithstanding any of the provisions of this chapter to the contrary, the provisions of Section 20 of this Act shall be applicable to the arbitration of a dispute, controversy, or issue arising out of or resulting from injury to, or the death of, a person caused by an error, omission, or negligence in the performance of professional services by a health care provider in Kentucky.

SECTION 20. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) Any person who receives allegedly negligent health care from a health care provider shall have the option to execute an agreement to arbitrate a dispute, controversy, or issue arising out of the allegedly negligent health care or treatment, in lieu of civil action.

(2) Arbitration shall not commence without the voluntary agreement of the claimant and all defendants. The agreement to arbitrate shall not be valid if executed prior to receipt of medical services or treatment which are at issue in the arbitration.

(3) The form of the agreement shall be established by the Supreme Court and shall be accompanied by an information brochure developed by the Administrative Office of the Courts which clearly details the agreement provisions including, but not limited to, the limit on damages of five hundred thousand dollars ($500,000).

SECTION 21. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) In a proceeding pursuant to Sections 19 to 36 of this Act:

(a) The parties may be represented by counsel, be heard, present evidence material to the controversy, and cross-examine any witness;

(b) The prevailing standard of duty, practice, or care applicable in a civil action shall be the standard applied in the arbitration, except as provided by Section 36 of this Act; and

(c) Damages shall be limited in total value to five hundred thousand dollars ($500,000).

(2) A party may appear without counsel and shall be advised of this right and the right to retain counsel in a manner calculated to inform the person of the nature and complexity of a proceeding by a simple concise form to be distributed by the Administrative Office of the Courts.

(3) Actions commenced under this section shall be in accordance with KRS 413.140.

SECTION 22. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) The arbitration process shall administer the proceeding without charge to the claimant. The administrative expense shall be one hundred fifty dollars ($150) per party per case, or as may be agreed by the parties and the Administrative Office of the Courts.

(2) An arbitration under Sections 19 to 36 of this Act shall be heard by a panel of three (3) arbitrators. The first panel member shall be an attorney who shall be chosen by the plaintiff from a list of three (3) volunteers submitted to the Administrative Office of the Courts by the Kentucky Academy of Trial Attorneys, pursuant to subsection (3) of this section. The second panel member shall be a physician, from the defendant's medical specialty, who shall be chosen

by the defendant from a list of three (3) volunteer physicians submitted to the Administrative Office of the Courts by the Kentucky Medical Association, pursuant to subsection (3) of this section. The third panel member shall be a person chosen by agreement of the physician and attorney panel members from a list of experienced arbitrators who are Kentucky residents. The third panel member shall also serve as chairperson of the panel and shall determine hearing dates and locations.

(3) The third panel member of the panel shall be a qualified experienced arbitrator selected from a pool of candidates generated by the Administrative Office of the Courts. The Administrative Office of the Courts shall send simultaneously to each party an identical list of three (3) arbitrator candidates together with a brief biographical statement on each candidate. A party may strike from the list any name which is unacceptable and shall number the remaining names in order of preference. When the lists are returned, they shall be compared and the first mutually agreeable candidate in each category shall be invited to serve.

(4) Where no mutually agreed upon arbitrator is selected, the Administrative Office of the Courts shall generate a second list for consideration pursuant to the process defined in subsection (3) of this section. Where no mutually agreed upon arbitrator is selected from the second list, the Administrative Office of the Courts shall randomly select the arbitrator.

(5) The parties shall be restricted to the list of panel candidates submitted to them for consideration.

(6) The physician panel member shall not reside in the area development district where the defendant physician practices or resides, except upon agreement of the plaintiff and defendant.

(7) The attorney panel member shall not reside in the area development district where the plaintiff's attorney practices or resides, except on agreement of the defendant and plaintiff.

(8) The Administrative Office of the Courts, through its director or the director's designee, shall operate the arbitration process, with the initial claims filed with the Administrative Office of the Courts.

(9) All fees pursuant to subsection (1) of this section shall be submitted to the Administrative Office of the Courts to defray related expenses.

(10) Panel members shall be paid at the rate of one hundred dollars ($100) per day plus an amount for necessary expenses, as determined by the Administrative Office of the Courts.

SECTION 23. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Medical Association and the Kentucky Association of Trial Attorneys shall make an initial screening for bias and shall require a candidate for a particular case to attest and complete a current personal disclosure statement. In addition to other relevant information, the statement shall disclose any personal acquaintance with any of the parties or their counsel and the nature of the acquaintance. If the statement reveals facts which suggest the possibility of partiality, the Kentucky Medical Association or the Kentucky Association of Trial Attorneys shall communicate those facts to the Administrative Office of the Courts. The Administrative Office of the Courts shall make a final screening for bias and may eliminate from consideration any candidate determined to be unreasonably partial. The Administrative Office of the Courts shall communicate any facts regarding the possibility of the partiality of any arbitrator candidate to the defendant and claimant.

(2) Any party may propound reasonable questions to an arbitrator candidate if the questions are propounded within ten (10) days of the receipt of the candidate's name. Questions shall be propounded through the Administrative Office of the Courts, and the candidate shall respond to the Administrative Office of the Courts within ten (10) days of receipt.

(3) A party shall not communicate with a candidate directly or indirectly except through the Administrative Office of the Courts, the Kentucky Medical Association, or the Kentucky Association of Trial Attorneys any time after the filing of the request for arbitration. Any candidate who is aware of a communication shall immediately notify the Administrative Office of the Courts.

SECTION 24. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) A minor child shall be bound by a written agreement to arbitrate disputes, controversies, or issues upon the execution of an agreement on his behalf by a parent or legal guardian. The minor child shall not subsequently disaffirm the agreement.

(2) In cases involving a common question of law or fact, if a number of defendants are involved, the disputes, controversies, and issues shall be consolidated into a single arbitration proceeding if the consolidation is consistent with the Kentucky Rules of Civil Procedure.

(3) A person who is not a party to the arbitration agreement may join in the arbitration or be joined at the request of any party with all the rights and obligations of the original parties. Each party to an arbitration under Sections 19 to 36 of this Act shall be required to arbitrate with all parties, whether the parties are original or joined pursuant to this section.

SECTION 25. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) Prior to the institution of a proceeding or claim by a patient, any offer of reparations and all communications

incidental thereto made in writing to a patient by a health care provider or hospital is privileged and shall not be used by any party to establish the liability or measure of damages attributable to the offeror.

(2) An offer of reparations shall provide that a patient has thirty (30) days to accept or reject the offer, or a lesser period of time as may be necessitated by the condition of the health of the patient.

(3) After any rejection or the lapse of the applicable time, any party may request binding arbitration.

(4) Any offer to a patient shall include a statement that the patient may consult legal counsel before rejecting or accepting the offer.

(5) If a potential claim is identified by a health care provider or hospital where, in its judgment, reparations are not appropriate, the provider may, at its option, file a request for arbitration which shall identify the potential claim and deny liability.

SECTION 26. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) After the appointment of the panel, the parties to the arbitration may take depositions and obtain discovery regarding the subject matter of the arbitration and use and exercise the same rights, remedies, and procedures, and be subject to the same duties, liabilities, and obligations in the arbitration with respect to the subject matter thereof, as if the subject matter of the arbitration were pending in a civil action in Circuit Court.

(2) The panel shall conclude the entire proceeding as expeditiously as possible.

(3) Discovery shall commence no earlier than twenty (20) days after all parties have received a copy of the agreement to arbitrate and shall be completed within five (5) months after the date that the last party received a copy of the agreement to arbitrate.

(4) A party may be granted an extension of time to complete discovery upon a showing that the extension is not the result of neglect and that the extension is necessary in order to avoid substantial prejudice to the rights of the party.

SECTION 27. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) The name of any expert witnesses who will be called at the arbitration shall be disclosed to the opposing party, who may depose the witness.

(2) Any party may also provide discovery of that party's expert witnesses by the written interrogatory procedure provided in the Kentucky Rules of Civil Procedure. A party may disclose without request or shall disclose, upon request, the name of each expert the party expects to call at the hearing, the subject matter on which the expert will testify, the substance of facts and opinions to which the expert will testify, and a summary of the grounds for each opinion.

(3) If a party is provided or requests the discovery procedure in subsection (2) of this section and the provision or request occurs prior to the date on which an expert is noticed for deposition or other discovery is commenced under prevailing civil practice, any further discovery of the expert by any other party by deposition or otherwise shall obligate the other party to compensate the expert for time and expenses in a reasonable amount as may be determined by the panel.

SECTION 28. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) An arbitration hearing established pursuant to Sections 19 to 36 of this Act shall adhere to the Kentucky Rules of Civil Procedure.

(2) Testimony shall be taken under oath and a record of the proceedings shall be made by a tape recording. Any party, at that party's expense, may have transcriptions or copies of the recording made or may provide for a written transcript of the proceedings. The cost of any transcription ordered by the panel for its own use shall be deemed part of the cost of the proceedings.

(3) Expert testimony shall not be required; but if expert testimony is used, it shall be admitted under the same circumstances as in a civil trial and be subject to cross-examination.

(4) The party with the burden of establishing a standard of care and breach thereof shall establish standards, either by the introduction of expert testimony or by other competent proof of the standard and breach thereof, which may include the use of works as provided in subsection (5) of this section.

(5) Authoritative, published works on the general and specific subjects in issue may be admitted and argued from, upon prior notice to all other parties.

(6) The panel shall accord that weight and probative worth to expert evidence which it deems appropriate. The panel may call a neutral expert on its own motion, which expert witness shall be subject to cross-examination by the parties. The cost of the expert shall be deemed a cost of the proceeding.

SECTION 29. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

The panel or its chairperson in the arbitration proceeding shall, upon application by a party to the proceeding, and may upon its own determination, issue a subpoena requiring a person to appear and be examined with reference to a matter within the scope of the proceeding, and to produce books, records, or papers pertinent to the proceeding. In case of

disobedience to the subpoena, the chairperson or a majority of the arbitration panel in the arbitration proceeding may petition the Circuit Court of the county in which the witness resides or the Circuit Court of the county in which the inquiry is being held to require the attendance and testimony of the witness and the production of books, papers, and documents. A Circuit Court, in case of contumacy or refusal to obey a subpoena, may issue an order requiring the person to appear and to produce books, records, and papers and give evidence related to the matter in question, or which may give rise to matters relevant to the issues in question. Failure to obey the order of the court may be punished by the court as contempt.

SECTION 30. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) On application of a party to the arbitration, the panel or its chairperson may order the deposition of a witness to be taken for use as evidence and not for discovery if the witness cannot be compelled to attend the hearing or if exceptional circumstances exist making it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be taken. The deposition shall be taken in the manner prescribed by law or court rule for the taking of depositions in civil actions.

(2) In addition to the power of determining the merits of the arbitration, the panel may enforce the rights, remedies, procedures, duties, liabilities, and obligations of discovery by the imposition of the same terms, conditions, consequences, liabilities, sanctions, and penalties as may be imposed in like circumstances in a civil action by a Circuit Court of the Commonwealth, except the power to order the arrest or imprisonment of a person.

(3) For the purpose of enforcing the duty to make discovery, to produce evidence or information, including books and records, and to produce persons to testify at a deposition or at a hearing, and to impose terms, conditions, consequences, liabilities, sanctions, and penalties upon a party for violation of a duty, a party shall be deemed to include every affiliate of the party as defined in subsection (4) of this section. For that purpose, the personnel of an affiliate shall be deemed to be the officers, directors, managing agents, agents, and employees of that party to the same degree as each of them, respectively, bears that status to the affiliate; and the files, books, and records of an affiliate shall be deemed to be in the possession and control of, and capable of production by, the party.

(4) As used in this section, "affiliate" of the party to the arbitration means and includes a party or person for whose immediate benefit the action or proceeding is prosecuted or defended or an officer, director, administrator, member, agent, employee, or managing agent of that party or person.

SECTION 31. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) Except for the parties to the arbitration and their agents, officers, and employees, all witnesses appearing pursuant to subpoena shall be entitled to receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in the Circuit Court. The fee and mileage of a witness subpoenaed upon the application of a party to the arbitration shall be paid by that party. The fee and mileage of a witness subpoenaed solely upon the determination of the arbitrator or the majority of a panel of arbitrators shall be paid in the manner provided for the payment of the arbitrator's expenses.

(2) The cost of each arbitrator's fees and expenses, together with any administrative fee, may be assessed against any party in the arbitration decision or may be assessed among parties in the proportions determined in the arbitration decision.

SECTION 32. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) A majority of the panel of arbitrators may grant any relief found to be equitable and just, including money damages, provision for hospitalization, medical, or rehabilitative procedures, support, or any combination thereof.

(2) The panel may order submission of written briefs within thirty (30) days after the close of hearings. In written briefs, each party may summarize the evidence and testimony and may propose a comprehensive award of remedial or compensatory elements.

(3) The panel shall render its decision within thirty (30) days after the close of the hearing or the receipt of briefs, if ordered.

(4) The decision in the arbitration proceeding shall be in writing and shall be signed by the chairperson or by the majority of the panel. The decision shall include a determination of all the questions submitted to arbitration by each party, the resolution of which is necessary to determine the dispute, controversy, or issue.

SECTION 33. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) In addition to the decision, the panel shall render a written opinion which states its reasoning for the finding of liability or nonliability, and the reasoning for the amount and kind of any award. A panel member who disagrees with the majority may write a dissenting opinion.

(2) The panel shall determine the degree to which each defendant party was at fault for the total damages accruing to any other party to the arbitration, considering all sources of damage involving parties to the arbitration, but excluding the damages attributable to persons not parties to the arbitration.

(3) The panel shall prepare a schedule of contributions according to the relative fault of each party, which schedule shall be binding as between those parties, but that determination shall not affect a claimant's right to recover jointly

and severally from all parties where that right otherwise exists in the law.

SECTION 34. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) In the case of an award, any element of which includes remedial services, contracts, annuities, or other noncash award element, the panel shall determine the current cash value of each element of the award and shall also determine a total current cash value of the entire award, which shall not exceed five hundred thousand dollars ($500,000).

(2) An award of remedial surgery or care shall not require that the patient undergo that treatment or care by the health care provider whose conduct resulted in the award.

(3) A claimant may refuse to accept the benefits of an award for remedial surgery or other noncash award element, and the refusal shall not affect the claimant's right to receive any other part of the award, nor shall the refusal entitle the claimant to payment of the current cash value of the portion refused.

SECTION 35. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) The Administrative Office of the Courts shall transmit to the commissioner of insurance and the applicable licensing board of any defendant party a copy of the demand for arbitration within ten (10) days of filing. A copy of the decision and opinion of the panel shall be transmitted to the same parties within ten (10) days of the filing of the decision and opinion. The decision and opinion shall be filed for informational purposes and the making or filing of the decision and opinion shall not of itself be a ground for discipline.

(2) The commissioner of insurance shall by July 1, on odd numbered years, compile a report of the total number and type of demands for arbitration and the nature of the decisions and opinions reached and shall transmit the report to the Governor, Legislative Research Commission, Interim Joint Committees on Banking and Insurance and Health and Welfare, and the Kentucky Health Policy Board.

SECTION 36. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) In each action brought against a physician relating to alleged negligence, the arbitration panel created pursuant to Section 22 of this Act, shall consider separately, and render a decision within thirty (30) days, any claim that the plaintiff's allegations were without probable cause or merit or were frivolous. For the purposes of this section, "frivolous" allegations means those allegations found by the arbitration panel to be so totally lacking in merit that the allegation appears to have been made in bad faith.

(2) A claim that an allegation was frivolous or was made without probable cause or merit shall be made by the defendant and asserted in the defendant's initial response to the claim, or the recourse established under this section shall be waived.

(3) If a claim that an allegation was frivolous or was made without probable cause or merit is found to be correct by the arbitration panel, the plaintiff shall pay all associated costs and defendant's attorney fees and other expenses, as determined to be reasonable by the arbitration panel.

(4) If a claim of frivolous allegation or of an allegation without probable cause or merit is found to be incorrect by the arbitration panel, the defendant shall pay all associated costs and the plaintiff's attorney fees and other expenses, incurred to consider the claim, as determined to be reasonable by the arbitration panel.

(5) For the purposes of this section, the standard of proof in arbitration panel hearings shall be whether the physician rendered care consistent with applicable practice parameters which existed at the time of service. "Applicable practice parameters" means those guidelines or parameters adopted by the national specialty board governing the procedure or by the federal Agency for Health Care Policy and Research or by other agencies as accepted by the arbitration panel or court.

PART VI

SELF-REFERRAL RESTRICTIONS

SECTION 37. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) For the purposes of this section:

- *(a) "Refer" means a request by a licensed provider, excluding health facilities, to another provider for an item, service, or procedure affecting a patient, including a request for a consultation with another provider, and any test or procedure ordered by or to be performed by or under the supervision of another provider, including but not limited to diagnostic, rehabilitation, hospital, and clinical laboratory services;*
- *(b) "Third-party payor" means the board, any insurance company or health maintenance organization licensed under KRS Chapter 304, the Cabinet for Human Resources, the Department for Medicaid Services, the Department for Health Services, and any other person or governmental entity which is responsible for payment of health services; and*
- *(c) "Financial interest" means the ownership equity of an individual, including any ownership interest held by the individual's spouse, child, brother, sister, father, mother, aunt, uncle, father-in-law, mother-in-law,*

brother-in-law, or sister-in-law.

(2) Each health care provider, excluding health facilities, as defined in Section 1 of this Act shall annually provide to the Kentucky Health Policy Board, no later than January 1, a list of all major medical equipment, health facilities, and health services in which the health care provider has five percent (5%) or more ownership or financial interest. The Kentucky Health Policy Board shall compile the list and make it available to the public and to requesting health care providers. The board shall annually prepare a report on this information for the public in a manner to be determined by the board.

(3) No provider, excluding health facilities, may refer a patient to any other provider, health facility, or health service in which the provider has a greater than five percent (5%) financial interest, or in which remuneration of any kind is given as a direct or indirect result of the referral.

(4) No provider, excluding health facilities, who has been referred a patient in violation of subsection (2) of this section shall bill or collect from the patient or any third-party payor for the services rendered.

PART VII

TWENTY-FOUR HOUR HEALTH COVERAGE

SECTION 38. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) By January 1, 1995, the Kentucky Health Policy Board shall promulgate administrative regulations pursuant to KRS Chapter 13A authorizing the establishment by March 1, 1995, of pilot projects for twenty-four (24) hour health coverage. The total number of participants in the pilot projects cannot exceed five percent (5%) of all insured persons who are covered both by workers compensation and general health insurance. The administrative regulations for the pilot projects shall provide that:

- ***(a) A twenty-four (24) hour policy may cover general health care for purposes of general health insurance, auto insurance, workers' compensation, or health care normally covered by any line of insurance written in the Commonwealth;***
- ***(b) A twenty-four (24) hour coverage policy shall not contain deductibles or copayments for medical services or treatment for work-related injuries or diseases; and***
- ***(c) There shall be no transfer of liabilities or expenses between or among particular lines of insurance whose medical or health components have been combined into a twenty-four (24) hour coverage for health care.***

(2) No policy for twenty-four (24) hour coverage shall become effective until it is reviewed and approved by the board, in consultation with the commissioner of the Department of Insurance.

(3) Notwithstanding any other provision of the Kentucky Revised Statutes to the contrary, each insurer authorized or licensed to write insurance in the Commonwealth shall provide any information requested by the board for the purpose of developing a twenty-four (24) hour health policy.

(4) The purchase of a twenty-four (24) hour health policy shall not constitute an exemption from statutory provisions which require other nonmedical insurance coverage. However, an insurance carrier shall reduce its premium for insurance coverage written without the medical or health care component. Notwithstanding the provisions of Subtitle 13 of KRS Chapter 304, the premium reduction required in this subsection shall be subject to the approval of the commissioner of the Department of Insurance.

(5) If an employer obtains a twenty-four (24) hour health insurance policy, pursuant to this section, to secure payment of compensation for medical care and treatment under KRS Chapter 342, the employer shall also procure an insurance policy which shall provide indemnity benefits to ensure that the total coverage afforded by both the twenty-four (24) hour insurance policy and the policy providing indemnity benefits, shall provide the total compensation required by KRS Chapter 342.

(6) The participants in a pilot project for twenty-four (24) hour health coverage shall comply with periodic reporting requirements of the Kentucky Health Policy Board.

(7) Each insurer authorized or licensed to write insurance in the Commonwealth shall cooperate with the board and shall provide any information requested by the board for the purpose of studying twenty-four (24) hour health policy.

(8) Each agency of state government shall cooperate with the board if requested to provide information for the purposes of this section.

Section 39. KRS 342.020 is amended to read as follows:

(1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employee may select the physician to treat ***the*** [~~this~~] injury, and the hospital in which ***treatment may be rendered*** [~~he shall be treated~~]. The employer, or an insurer on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider

of such services within thirty (30) days of receipt of a statement for services. The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter if appropriate as long as medical services are rendered.

(2) ***Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, medical services and treatment provided under this chapter shall not be subject to copayments or deductibles.***

(3) When a compensable injury or occupational disease results in the amputation of an arm, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, the employer shall initially pay for, in addition to the other medical, surgical, and hospital treatment enumerated in subsection (1) and this subsection, a modern artificial member and, where required, proper braces.

(4)[~~(3)~~] Upon motion of the employer, with sufficient notice to the employee for a response to be filed, if it is shown to the satisfaction of the administrative law judge by affidavits or testimony that, because of the physician selected by the employee to treat ***the*** [~~his~~] injury or disease, or because of the hospital selected by the employee in which ***treatment is being rendered*** [~~he is being treated~~], that the employee is not receiving proper medical treatment and ***the*** [~~his~~] recovery is being substantially affected or delayed; or that the funds for [~~his~~] medical expenses are being spent without reasonable benefit to the employee; or that because of the physician selected by the employee or because of the type of medical treatment being received by the employee that the employer will substantially be prejudiced in any compensation proceedings resulting from the employee's injury or disease; then the administrative law judge may allow the employer to select a physician to treat the employee and the hospital or hospitals in which the employee is treated for ***the*** [~~his~~] injury or disease. No action shall be brought against any employer subject to this chapter by any person to recover damages for malpractice or improper treatment received by any employee from any physician, hospital, or attendant thereof.

(5)[~~(4)~~] An employee who reports an injury alleged to be work-related or files an application for adjustment of a claim shall execute a waiver and consent of any physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding any other provision in the Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, workers' compensation insurer, special fund, uninsured employers' fund, or the administrative law judge, provide the requesting party with any information or written material reasonably related to any injury for which the employee claims compensation.

Section 40. KRS 342.375 is amended to read as follows:

Every policy or contract of workers' compensation insurance under this chapter, issued or delivered in this state, shall cover the entire liability of the employer for compensation to ***each employee*** [~~every one of his employees~~] subject to this chapter, except as otherwise provided in KRS 342.345 ***or Sections 38 to 39 of this Act***. However, if specifically authorized by the commissioner, a separate insurance policy may be issued for a specified plant or work location if the liability of ***the*** [~~such~~] employer under this chapter to ***each employee*** [~~all his other employees~~] subject to this chapter is otherwise secured and provided that no employee transferred from one plant or work location to another within the employment of the same employer shall thereby lose any benefit rights accumulated under the average weekly wage concept.

PART VIII

CERTIFICATE OF NEED

Section 41. KRS 216B.010 is amended to read as follows:

The General Assembly finds that the licensure of health facilities***,*** [~~and~~] health services***, and health care providers*** is a means to insure that the citizens of this Commonwealth will have safe, adequate***,*** and efficient medical care; that the proliferation of unnecessary health care facilities, health services and major medical equipment results in costly duplication and underuse of such facilities, services and equipment; and that such proliferation increases the cost of quality health care within the Commonwealth. Therefore, it is the purpose of this chapter to ***fully authorize and empower the Kentucky Health Policy Board to perform any certificate-of-need function and other statutory functions necessary to improve the quality and increase access to health care facilities, services, and providers, and to create a cost-efficient health care delivery system for the citizens of the Commonwealth. The Kentucky Health Policy Board may recommend to the Kentucky General Assembly methods to increase access to health care facilities, services, and providers*** [~~provide for the establishment of the Commission for Health Economics Control in Kentucky for the purpose of acting on applications for certificates of need~~].

Section 42. KRS 216B.015 is amended to read as follows:

Except as otherwise provided, for purposes of this chapter, the following definitions shall apply:

(1) "Administrative regulation" means a regulation adopted and promulgated pursuant to the procedures in KRS Chapter 13A.

(2) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health facilities which, prior to receipt by the agency of the proposal being reviewed, have formally

indicated an intention to provide similar services in the future; the cabinet and third-party payors who reimburse health facilities for services in the health service area in which the project is proposed to be located.

(3) "Applicant" means ***any physician's office requesting a major medical equipment expenditure of five hundred thousand dollars ($500,000) or more or*** any person, health facility, or health service requesting a certificate of need or license***, from the Kentucky Health Policy Board***.

(4) ***"Board" means the Kentucky Health Policy Board created by Section 2 of this Act.***

(5) "Cabinet" means the Cabinet for Human Resources.

(6)[~~(5)~~] "Capital expenditure" means an expenditure made by or on behalf of a health facility which:

(a) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance or is not for investment purposes only; or

(b) Is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part thereof.

(7)[~~(6)~~] "Capital expenditure minimum" means one million five hundred thousand dollars ($1,500,000) beginning ***with the effective date of this section*** [~~July 15, 1990,~~] and as adjusted annually thereafter. In determining whether an expenditure exceeds the expenditure minimum, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the improvement, expansion, or replacement of any plant or any equipment with respect to which the expenditure is made shall be included. Donations of equipment or facilities to a health facility which if acquired directly by the facility would be subject to review under this chapter shall be considered a capital expenditure, and a transfer of the equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review.

(8)[~~(7)~~] "Certificate of need" means an authorization by the ***board*** [~~commission to proceed~~] to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service as covered by this chapter.

[~~(8) "Commission" means the Commission for Health Economics Control in Kentucky.~~

~~(9) "Committee" means the Kentucky Health Care Cost Containment Advisory Committee.~~]

(9)[~~(10)~~] "Formal review process" means the ninety (90) day certificate of need review conducted by the ***board*** [~~commission~~].

(10)[~~(11)~~] "Health facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include, but shall not be limited to, health facilities and health services commonly referred to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, tuberculosis hospitals, skilled nursing facilities, nursing facilities, nursing homes, personal care homes, intermediate care facilities, family care homes, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance services, nonemergency health transportation services, hospices, community mental health and mental retardation centers, home health agencies, kidney disease treatment centers and freestanding hemodialysis units, health maintenance organizations, and others providing similarly organized services regardless of nomenclature.

(11)[~~(12)~~] "Health services" means clinically related services provided within the Commonwealth to two (2) or more persons, including, but not limited to, diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services.

(12)[~~(13)~~] "Major medical equipment" means equipment which is used for the provision of medical and other health services and which costs in excess of the medical equipment expenditure minimum[~~, except that the term does not include medical equipment acquired by or on behalf of a medical laboratory~~]. For purposes of this ***subsection*** [~~paragraph~~], "medical equipment expenditure minimum" means one million five hundred thousand dollars ($1,500,000) beginning ***with the effective date of this section*** [~~July 15, 1990,~~] and as adjusted annually thereafter. In determining whether medical equipment has a value in excess of the medical equipment expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included.

(13)[~~(14)~~] "Nonsubstantive review" means an expedited review conducted by the ***board*** [~~cabinet~~] of an application for a certificate of need as authorized under KRS 216B.095.

(14)[~~(15)~~] "Nonclinically related expenditures" means expenditures for:

(a) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a substantial change in beds, a substantial change in a health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility; or

(b) Projects which do not involve the provision of direct clinical patient care including, but not limited to, the following:

1. Parking facilities;

2. Telecommunications or telephone systems;
3. Management information systems;
4. Ventilation systems;
5. Heating or air conditioning, or both;
6. Energy conservation; or
7. Administrative offices.

(15)[~~(16)~~] "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record.

(16)[~~(17)~~] "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a group, state, or political subdivision or instrumentality including a municipal corporation of a state.

(17)[~~(18)~~] "Record" means, as applicable in a particular proceeding:

(a) The application and any information provided by the applicant at the request of the cabinet or the ***board*** [~~commission~~];

(b) Any information provided by a holder of a certificate of need or license in response to a notice of revocation of a certificate of need or license;

(c) Any memoranda or documents prepared by or for the cabinet or the ***board*** [~~commission~~] regarding the matter under review which were introduced at any hearing;

(d) Any staff reports or recommendations prepared by or for the cabinet or the ***board*** [~~commission~~];

(e) Any recommendation or decision of the ***board*** [~~cabinet~~];

(f) Any testimony or documentary evidence adduced at a hearing;

(g) The findings of fact and opinions of the ***board*** [~~commission~~] or the findings of fact and recommendation of the hearing officer; and

(h) Any other items required by administrative regulations promulgated by the ***board*** [~~commission~~].

(18)[~~(19)~~] "Secretary" means the secretary of the Cabinet for Human Resources.

(19)[~~(20)~~] "State health plan" means the document prepared***, under the direction of the board*** triennially, updated annually, [~~and duly adopted by the state health planning council~~] and approved by the Governor.

[~~(21) "State Health Planning Council" means the Council for Health Services established under KRS 194.090.~~]

(20)[~~(22)~~] "Substantial change in a health service" means:

(a) The addition of a health service for which there are review criteria and standards in the state health plan;

(b) The addition of a health service subject to licensure under this chapter; or

(c) The reduction or termination of a health service which had previously been provided in the health facility.

(21)[~~(23)~~] "Substantial change in bed capacity" means the addition, reduction, relocation, or redistribution of beds by licensure classification within a health facility.

(22)[~~(24)~~] "Substantial change in a project" means a change made to a pending or approved project which results in:

(a) A substantial change in a health service, except a reduction or termination of a health service;

(b) A substantial change in bed capacity, except for reductions;

(c) A change of location; or

(d) An increase in costs greater than the allowable amount as prescribed by regulation.

(23)[~~(25)~~] "To acquire" means to obtain from another by purchase, transfer, lease, or other comparable arrangement of the controlling interest of a capital asset or capital stock, or voting rights of a corporation. An acquisition shall be deemed to occur when more than fifty percent (50%) of an existing capital asset or capital stock or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one person from another person.

(24)[~~(26)~~] ***"To batch"*** [~~To "batch"~~] means to review in the same review cycle and, if applicable, give comparative consideration to all filed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area.

(25)[~~(27)~~] "To establish" means to construct, develop, or initiate a health facility.

(26)[~~(28)~~] "To obligate" means to enter any enforceable contract for the construction, acquisition, lease, or financing of a capital asset. A contract shall be considered enforceable when all contingencies and conditions in the contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract.

(27)[~~(29)~~] "To offer" means, when used in connection with health services, to hold a health facility out as capable of providing, or as having the means of providing, specified health services.

Section 43. KRS 216B.020 is amended to read as follows:

(1) The provisions of this chapter that relate to the issuance of a certificate of need shall not apply to family care homes; state veterans' nursing homes; services provided on a contractual basis in a rural primary-care hospital as provided under KRS 216.380; community mental health centers for services as defined in KRS Chapter 210; primary care centers; rural health clinics; private duty nursing services licensed as nursing pools; group homes; end stage renal disease dialysis facilities, freestanding or hospital based; swing beds; special clinics, including, but not limited to, wellness, weight loss, family planning, disability determination, speech and hearing, counseling, pulmonary care, and other clinics which only provide diagnostic services with equipment not exceeding the major medical equipment cost threshold and for which there are no review criteria in the state health plan; nonclinically related expenditures; the relocation of hospital administrative or outpatient services into medical office buildings which are on or contiguous to the premises of the hospital or the following health services provided on site in an existing health facility when the cost is less than six hundred thousand dollars ($600,000) and the services are in place by December 30, 1991: psychiatric care where chemical dependency services are provided, level one (1) and level two (2) of neonatal care, cardiac catheterization, and open heart surgery where cardiac catheterization services are in place as of July 15, 1990. The provisions of this section shall not apply to nursing homes, personal care homes, intermediate care facilities, and family care homes; or nonconforming ambulance services as defined by administrative regulation. These listed facilities or services shall be subject to licensure, when applicable.

(2) [~~The provisions of this chapter that relate to the issuance of a certificate of need shall not apply, after September 15, 1991, to licensed acute care hospitals, as defined by administrative regulation, in counties with more than 3,000 acute care hospital beds, except as these provisions relate to rehabilitation beds and long term care beds.~~

~~(3)~~] Nothing in this chapter shall be construed to authorize the licensure, supervision, regulation, or control in any manner of:

(a) Private offices and clinics of physicians, dentists, and other practitioners of the healing arts ***unless the physician's office meets the criteria set forth in subsection (3) of Section 42 of this Act***;

(b) Office buildings built by or on behalf of a health facility for the exclusive use of physicians, dentists, and other practitioners of the healing arts; ***unless the physician's office meets the criteria set forth in subsection (3) of Section 42 of this Act,*** except no capital expenditure or expenses relating to any such building shall be chargeable to or reimbursable as a cost for providing inpatient services offered by a health facility;

(c) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees, if the facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four (24) hours;

(d) Establishments, such as motels, hotels, and boarding houses, which provide domiciliary and auxiliary commercial services, but do not provide any health related services and boarding houses which are operated by persons contracting with the United States Veterans Administration for boarding services;

(e) The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination and recognized by that church or denomination; and

(f) On-duty police and fire department personnel assisting in emergency situations by providing first-aid or transportation when regular emergency units licensed to provide first-aid or transportation are unable to arrive at the scene of an emergency situation within a reasonable time.

(3)[~~(4)~~] An existing facility licensed as skilled nursing, intermediate care, or nursing home shall notify the cabinet of its intent to change to a nursing facility as defined in Public Law 100-203. A certificate of need shall not be required for conversion of skilled nursing, intermediate care, or nursing home to the nursing facility licensure category.

Section 44. KRS 216B.035 is amended to read as follows:

(1) The ***board*** [~~secretary~~] shall ***hire any*** [~~provide the commission such~~] administrative staff [~~assistance as may be~~] required by the ***board*** [~~commission~~] to carry out its duties and functions under the provisions of this chapter.

(2) The chairman shall keep a full and true record of all the proceedings of the ***board*** [~~commission~~], of all books and papers ordered filed by the ***board*** [~~commission~~], and of all exemptions and certificates of need issued by the ***board*** [~~commission~~], and shall be responsible to it for the safe custody and preservation of all documents in its office. Under the direction of the ***board*** [~~commission~~], the ***executive director*** [~~chairman~~] shall have general charge of its office, superintend its clerical business***,*** and perform such other duties as the ***board*** [~~commission~~] prescribes. ***The executive director and chairman*** [~~He~~] may administer oaths in all parts of the state, where the exercise of that power is properly incidental to the performance of ***their*** [~~his~~] duties or those of the ***board*** [~~commission~~].

Section 45. KRS 216B.040 is amended to read as follows:

(1) The ***board*** [~~commission~~] shall have four (4) separate and distinct functions ***in administering this chapter***:

(a) To approve or deny certificates of need in accordance with the provisions of this chapter, except as to those applications which have been granted nonsubstantive review status by the chairman;

(b) To issue and to revoke certificates of need;

(c) To provide a due process hearing and issue a final determination on all actions by the cabinet to deny, revoke, modify, or suspend licenses of health facilities and health services issued by the cabinet; and

(d) To enforce, through legal actions on its own motion, the provisions of this chapter and its orders and decisions issued pursuant to its functions.

(2) The ***board*** [~~commission~~] shall:

(a) ***Promulgate*** [~~Issue~~] administrative regulations ***pursuant to the provisions of KRS Chapter 13A***[~~through the secretary~~]:

1. To establish the certificate of need review procedures, including but not limited to, application procedures, notice provisions, procedures for review of completeness of applications, and timetables for review cycles.

2. To establish criteria for issuance and denial of certificates of need which shall be limited to the following considerations:

a. Consistency with plans. ***Each proposal approved by the board shall*** [~~The proposals may~~] be consistent with the state health plan***, subject to biennial budget authorizations and limitations, and with consideration given to the proposal's impact on health care costs in the Commonwealth***. The state health plan shall contain a need assessment for long-term care beds, which shall be based on a statistically valid analysis of the present and future needs of the state as a whole and counties individually. The need assessment shall be applied uniformly to all areas of the state. The methodology shall be reviewed and updated on an annual basis. The fact that the state health plan shall not address the specific type of proposal being reviewed shall not constitute grounds for disapproval of the proposal;

b. Need and accessibility. The proposal shall meet an identified need in a defined geographic area and be accessible to all residents of the area. A defined geographic area shall be defined as the area the proposal seeks to serve, including its demographics, and shall not be limited to geographical boundaries;

c. Interrelationships and linkages. The proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state, accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system;

d. Costs, economic feasibility, and resources availability. The proposal, when measured against the cost of alternatives for meeting needs, shall be judged to be an effective and economical use of resources, not only of capital investment, but also ongoing requirements for health manpower and operational financing;

e. Quality of services. The applicant shall be prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements assuring the provision of quality health care services***, as established by the board*** [~~and~~];

f. Hospital based skilled nursing, intermediate care and personal care beds shall [~~not~~] be considered by the ***board*** [~~commission~~] in determining the need for freestanding long-term care beds.

(b) Conduct public hearings, as requested, in respect to certificate of need applications, revocations of certificates of need, and denials, suspensions, modifications, or revocations of licenses.

(3) The ***board*** [~~commission~~] may:

(a) Issue other administrative regulations [~~through the secretary~~] necessary for the proper administration of ***this chapter*** [~~its functions~~];

(b) Administer oaths, issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the ***board*** [~~commission~~], and the process shall extend to all parts of the Commonwealth. Service of process in all proceedings brought before or initiated by the ***board*** [~~commission~~] may be made by certified mail, or in the same manner as other process in civil cases, as the ***board*** [~~commission~~] directs;

(c) Establish by ***promulgation of*** administrative regulation ***under KRS Chapter 13A*** reasonable application fees for certificates of need;

(d) Appoint technical advisory committees as are deemed necessary to administer its functions under the provisions of this chapter; [~~and~~]

(e) Establish a mechanism for issuing advisory opinions to prospective applicants for certificates of need regarding the requirements of a certificate of need***; and***

(f) Establish a mechanism for biennial review of projects for compliance with the terms of the certificate of need.

Section 46. KRS 216B.042 is amended to read as follows:

(1) The cabinet shall:

(a) Establish by ***promulgation of*** administrative regulation under KRS Chapter 13A reasonable application fees for licenses and ***promulgate*** [~~issue~~] other administrative regulations necessary for the proper administration of the licensure function;

(b) Issue, deny, revoke, modify, or suspend licenses or provisional licenses in accordance with the provisions of this chapter; and

(c) Establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. These regulations, under KRS Chapter 13A, shall include, but need not be limited to:

1. Patient care standards and safety standards, minimum operating standards, minimum standards for training, required licenses for medical staff personnel, and minimum standards for maintaining patient records;
2. Licensure application and renewal procedures; and
3. Classification of health facilities and health services according to type, size, range of services, and level of care.

(2) The cabinet ***or board*** may authorize its agents or representatives to enter upon the premises of any health care facility for the purpose of inspection, and under the conditions set forth in administrative regulations promulgated ***under KRS Chapter 13A*** by the ***board or*** [~~commission and~~] the cabinet.

(3) The board may revoke licenses or certificates of need for specific health facilities or health services or recommend the initiation of disciplinary proceedings for health care providers on the basis of the violation of any provisions of this chapter.

Section 47. KRS 216B.045 is amended to read as follows:

Every order, decision, finding, license or certificate issued or approved by the ***board*** [~~commission~~] or cabinet under any of the provisions of this chapter shall be in writing and shall be entered on the records of the ***board*** [~~commission~~] or cabinet.

Section 48. KRS 216B.050 is amended to read as follows:

The ***board*** [~~commission~~] or cabinet may compel obedience to its lawful orders by mandamus, injunction***,*** or other proper proceedings in the Franklin Circuit Court or any other Circuit Court of competent jurisdiction. Every order entered by the ***board*** [~~commission~~] or cabinet shall continue in force until the expiration of the time, if any, named by the ***board*** [~~commission~~] or cabinet in the order, or until revoked or modified.

Section 49. KRS 216B.055 is amended to read as follows:

Notice of decisions and orders made by the ***board*** [~~commission~~] or cabinet under the provisions of this chapter shall be made by certified mail addressed to the last known address on file with the cabinet or ***board*** [~~commission~~], or by personal service. ***The*** [~~Such~~] notice shall be mailed or personal service shall be obtained no later than fifteen (15) working days after the decision or order. Notice shall be complete and effective upon mailing.

Section 50. KRS 216B.061 is amended to read as follows:

(1) Unless otherwise provided in this chapter, no person shall do any of the following without first obtaining a certificate of need:

(a) Establish a health facility;

(b) Obligate a capital expenditure which exceeds the capital expenditure minimum;

(c) Make a substantial change in the bed capacity of a health facility;

(d) Make a substantial change in a health service;

(e) Make a substantial change in a project;

(f) Acquire major medical equipment;

(g) Alter a geographical area or alter a specific location which has been designated on a certificate of need or license;

(h) Transfer an approved certificate of need for the establishment of a new health facility or the replacement of a licensed facility.

(2) No person shall separate portions of a single project into components in order to evade any expenditure minimum set forth in this chapter. For purposes of this chapter, the acquisition of one (1) or more items of functionally related diagnostic or therapeutic equipment shall be considered as one (1) project.

(3) No person shall have ex parte contact with any member of the ***board*** [~~commission~~] regarding a certificate of need application from the commencement of the review cycle to the final decision. ***If*** [~~In the event~~] an ex parte contact occurs,

it shall be promptly made a part of the record.

(4) No person shall obligate a capital expenditure in excess of the amount authorized by an existing certificate of need unless ***the person*** [~~he~~] has received an administrative escalation from the ***board*** [~~commission~~] as prescribed by regulation.

(5) No person shall proceed to obligate a capital expenditure under an approved certificate of need if there has been a substantial change in the project.

(6) A certificate of need shall be issued for a specific location and, when applicable, for a designated geographical area.

Section 51. KRS 216B.062 is amended to read as follows:

(1) Applications for certificates of need shall be submitted according to timetables established by the ***board*** [~~commission~~] by ***promulgation of*** administrative regulation***, pursuant to the provisions of KRS Chapter 13A***. Once an application has been deemed complete pursuant to the ***board's administrative*** [~~commission's adopted~~] regulations, notice shall be given as provided by the regulations of the beginning of the review, the proposed review schedule, and the right to request a hearing. The review shall be deemed to commence on the date of notice. No review shall take longer than ninety (90) days from the commencement of the review unless the applicant agrees to a deferral of action.

(2) Applications proposing the same or similar types of services, facilities, or equipment shall be batched for review purposes, excluding those granted nonsubstantive review status. The ***board*** [~~commission~~] shall by ***promulgation of administrative*** regulation ***under KRS Chapter 13A*** establish appropriate batching groups to assure that applications for each type of service, facility, or equipment will be eligible for consideration at set intervals. In each review batch, the ***board*** [~~commission~~] shall review and, if appropriate, compare all timely filed applications proposing similar types of services, facilities, or equipment in the same health service areas.

Section 52. KRS 216B.065 is amended to read as follows:

(1) Before any person enters into a contractual agreement to acquire a licensed health facility, the person shall notify the ***board*** [~~commission~~] of the [~~person's~~] intent to acquire the facility or major medical equipment and of the services to be offered in the facility and its bed capacity or the use of ***the*** [~~such~~] medical equipment. The notice shall be in writing and shall be filed at least thirty (30) days prior to entry into a contract to acquire the health facility or major medical equipment with respect to which the notice is given.

(2) A certificate of need shall be required for the acquisition of a health facility or major medical equipment, only if:

(a) The notice required in this section is not filed and the arrangement will require the obligation of a capital expenditure which exceeds the capital expenditure minimum; or

(b) The ***board*** [~~commission~~] finds within thirty (30) days after the date it received notice that the health services or bed capacity of the health facility will be substantially changed in being acquired.

(3) Donations, transfers, and leases of major medical equipment and health facilities shall be considered acquisitions of equipment and facilities, and an acquisition of medical equipment or a facility for less than fair market value shall be considered an acquisition if the fair market value exceeds the expenditure minimum.

(4) Before any health facility reduces or terminates a health service or reduces its bed capacity, the facility shall notify the ***board*** [~~commission~~] of its intent. The notice shall be in writing and shall be filed at least thirty (30) days prior to the reduction or termination. A certificate of need shall be required for the reduction or termination only if the notice required in this section is not filed.

Section 53. KRS 216B.066 is amended to read as follows:

(1) Before a health facility acquires major medical equipment to be used solely for research, offers a health service solely for research or makes or obligates a capital expenditure solely for research, which exceeds the prescribed minimum, the health facility shall notify the ***board*** [~~commission~~] of its intent to do so. ***The*** [~~Such~~] notice shall be in writing and shall be made sixty (60) days prior to the acquisition, offering, or making or obligation of the expenditure with respect to which notice is given. The notice shall state the use to be made of the major medical equipment, health service or capital expenditure.

(2) A certificate of need shall be required for the acquisition of major medical equipment solely for research, the offering of a health service solely for research or the making or obligating of a capital expenditure solely for research by a health facility, only if:

(a) The notice required by this section is not filed; or

(b) The ***board*** [~~commission~~] finds within sixty (60) days after it receives notice that the project or transaction for which notice is given will affect the charges of the facility for the provision of medical or other patient care services other than services which are included in the research, will substantially change the bed capacity of the facility, or will substantially change the medical or other patient care services of the facility which were offered before the acquisition, offering, making or obligation.

(3) If major medical equipment is acquired, a health service is offered or a capital expenditure is made or obligated and, pursuant to this section, no certificate of need is required, ***the*** [~~such~~] equipment [~~or~~] service or facilities acquired through the capital expenditure ***shall*** [~~may~~] not be used in a manner which would affect the charges of the facility for the

provision of medical or other patient care services other than that included in the research, substantially change the bed capacity of the facility or substantially change the medical or other patient care services of the facility unless a certificate of need is issued.

(4) For purposes of this section, "solely for research" means patient care provided on an occasional and irregular basis and not as part of a research project.

Section 54. KRS 216B.075 is amended to read as follows:

The ***board*** [~~commission~~] shall [~~, within ninety (90) days, following the date this chapter becomes effective,~~] promulgate administrative regulations respecting application and review procedures ***to comply with any*** [~~consistent with the~~] federal ***laws*** [~~act~~] and regulations promulgated thereunder.

Section 55. KRS 216B.085 is amended to read as follows:

(1) Any time no later than fifteen (15) days after the date the review commences, any affected person may request a public hearing. Hearings shall be before a quorum of the ***board*** [~~commission~~], or, at the request of the chairman, before a member of the ***board*** [~~commission~~] designated by the chairman to serve as hearing officer. The hearing officer shall be authorized to administer oaths, issue subpoenas, subpoenas duces tecum, and all necessary process in the proceedings.

(2) If a hearing is requested, the chairman shall set a date, time, and place for a public hearing. Reasonable notice of the hearing shall be given to all affected persons in accordance with administrative regulations promulgated by the ***board*** [~~commission~~].

(3) At the hearing, any party to the proceedings shall have the right to be represented by counsel, and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing, and may conduct reasonable cross-examination under oath of persons who make factual allegations relevant to such matters. A full and complete record shall be maintained of the hearing.

(4) Any decision of the ***board*** [~~commission~~] to issue or deny a certificate of need shall be based solely on the record established with regard to the matter. All decisions granting, denying, or modifying a certificate of need shall be made by the ***board*** [~~commission~~] in writing and shall be recorded in the minutes of the ***board*** [~~commission~~]. The ***board*** [~~commission~~] shall notify the parties to the proceedings of the decision and the decision shall be final for purposes of judicial appeal unless a request for reconsideration is filed. An approved certificate of need shall be issued forty (40) days after notice of the ***board's*** [~~commission's~~] decision unless a request for reconsideration is filed or a judicial appeal is taken and issuance is enjoined by the court.

Section 56. KRS 216B.086 is amended to read as follows:

(1) The ***board*** [~~commission~~] may revoke a certificate of need, or portion thereof, for failure of the holder of the certificate to implement the project in accordance with timetables and standards for implementation established by administrative regulation of the ***board*** [~~commission~~]. The ***board*** [~~commission~~] shall give notice to the holder of the certificate of its initial decision to revoke the certificate of need or portion thereof. The ***board's*** [~~commission's~~] initial decision to revoke a certificate of need or portion thereof shall become final after thirty (30) days unless a hearing is requested. The chairman shall give notice to the holder of the certificate of a decision which has become final under the provisions of this subsection.

(2) The holder of the certificate of need to be revoked may request in writing a public hearing in respect to an initial decision by the ***board*** [~~commission~~] to revoke a certificate of need within thirty (30) days of the date of notice of the initial decision. Failure to request a hearing shall constitute a waiver of any right to reconsideration or judicial appeal of a final ***board*** [~~commission~~] decision to revoke a certificate of need.

(3) The hearing shall be before the ***board*** [~~commission~~], or at the request of the chairman, before a member of the ***board*** [~~commission~~] designated by the chairman to be the hearing officer. The hearing shall be no later than thirty (30) days after the request for the hearing is filed.

(4) ***If*** [~~In the event~~] a hearing is requested, the chairman shall set a date, time, and place for a public hearing. Reasonable notice of the hearing shall be given to all affected persons in accordance with administrative regulations promulgated by the ***board*** [~~commission~~].

(5) At the hearing, any party to the proceedings shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the revocation of the certificate of need, and may conduct reasonable cross-examination under oath of persons who testify. A full and complete record shall be maintained of the hearing, and all testimony shall be recorded but not be transcribed unless the ***board's*** [~~commission's~~] final decision is appealed pursuant to this chapter.

(6) After the issuance of an initial decision to revoke a certificate of need and before a final decision is made, no person shall have ex parte contacts with members of the ***board*** [~~commission~~] regarding the revocation. ***If*** [~~In the event~~] an ex parte contact occurs, it shall be promptly made a part of the record.

(7) If a hearing is requested after notice of the ***board's*** [~~commission's~~] initial decision to revoke a certificate of need, the ***board*** [~~commission~~] shall make a final decision ***within thirty (30) days*** [~~at its next regularly scheduled meeting~~] after the

hearing. Any final decision revoking a certificate of need shall be made by the ***board*** [~~commission~~] in writing and shall be recorded in the minutes of the ***board*** [~~commission~~]. The ***board*** [~~commission~~] shall notify the parties to the proceedings of the final decision.

(8) Any final decision of the ***board*** [~~commission~~] to revoke a certificate of need shall be based solely on the record established with regard to the revocation.

(9) Except as provided in subsection (1) of this section, reconsideration pursuant to KRS 216B.090 or judicial appeal pursuant to KRS 216B.115 is available with regard to a final decision of the ***board*** [~~commission~~] to revoke a certificate of need.

Section 57. KRS 216B.090 is amended to read as follows:

(1) Any party to the proceedings may, for good cause shown, request in writing a hearing for purposes of reconsideration of a decision of the ***board*** [~~commission~~] pertaining to a certificate of need or the revocation of a certificate of need under [~~such~~] procedures [~~as are~~] promulgated by administrative regulation. The request shall be filed within fifteen (15) days of the notice of the decision. For purposes of this section there shall be deemed to be "good cause shown" if the request for a public hearing:

(a) Presents significant, relevant information not previously available for consideration by the ***board*** [~~commission~~];

(b) Demonstrates that there have been significant changes in the factors or circumstances relied upon by the ***board*** [~~commission~~] in reaching its decision;

(c) Demonstrates that the ***board*** [~~commission~~] has materially failed to follow its adopted procedures in reaching its decision; or

(d) States that a public hearing pursuant to KRS 216B.085 was not conducted prior to a decision to deny a certificate of need.

(2) If a public hearing is granted, it shall be held within thirty (30) days after the decision to grant the request for reconsideration. The hearing shall be conducted in accordance with the provisions of this chapter. The ***board*** [~~commission~~] shall make its decision on reconsideration and shall give notice thereof. The decision of the ***board*** [~~commission~~] shall be final for purposes of judicial appeal. An approved certificate of need shall be issued forty (40) days after notice of the ***board's*** [~~commission's~~] decision unless a judicial appeal is taken and issuance is enjoined by the court.

Section 58. KRS 216B.095 is amended to read as follows:

(1) An applicant may waive the procedures for formal review of an application for a certificate of need and request a nonsubstantive review as provided below. The ***board may*** [~~chairman shall~~] grant or deny nonsubstantive review status within ten (10) days of the date the application is deemed completed and shall give notice to all affected persons of the decision to conduct a nonsubstantive review. Any affected person other than the applicant may request a hearing by filing a request with the ***board*** [~~commission~~] within ten (10) days of the notice to conduct a nonsubstantive review. As applicable, hearings shall be conducted as provided in KRS 216B.085. Based solely upon the record established with regard to the matter, the ***board*** [~~commission~~] shall approve or deny a certificate of need on all projects assigned nonsubstantive review status within thirty-five (35) days of the determination of nonsubstantive review status. If the application is denied nonsubstantive review status, it shall automatically be placed in the formal review process.

(2) If a certificate of need is denied following a nonsubstantive review, the applicant may request that the application be placed in the next cycle of the formal review process. Nothing in this subsection shall require an applicant to pursue a formal review before obtaining judicial review pursuant to KRS 216B.115.

(3) The ***board may*** [~~chairman shall~~] grant nonsubstantive review status to an application for a certificate of need which is required:

(a) To change the location of a proposed health facility;

(b) To replace or relocate a licensed health facility, ***if*** [~~provided~~] there is no substantial change in health services or substantial change in bed capacity;

(c) To replace or repair worn equipment ***if the*** [~~provided such~~] worn equipment ***has*** [~~shall have~~] been used by the applicant in a health facility for five (5) years or more;

(d) For cost escalations;

(e) [~~For change of ownership when applicable;~~

~~(f)~~] To establish an industrial ambulance service; or

(f)[~~(g)~~] In other circumstances the ***board*** [~~commission~~] by ***administrative*** regulation may prescribe.

(4) Notwithstanding any other provision to the contrary in this chapter, the ***board may*** [~~commission shall~~] approve a certificate of need for a project required for the purposes set out in ***paragraphs*** (a) through ***(f)***[~~(g)~~] of subsection (3) ***of this section*** [~~hereof~~], unless it finds the facility or service with respect to which the capital expenditure is proposed to be made is not [~~in fact so~~] required; or to the extent the facility or services contemplated by the proposed capital expenditure

is addressed in the state health plan, the ***board*** [~~commission~~] finds that the capital expenditure is not consistent with the state health plan.

(5) The decision of the ***board*** [~~commission~~] approving or denying a certificate of need pursuant to this section shall be final for purposes of judicial appeal, unless the applicant requests the application be placed in the formal review process. An approved certificate shall be issued thirty (30) days after notice of the ***board's*** [~~commission's~~] decision, unless a judicial appeal is taken and issuance is enjoined by the court.

Section 59. KRS 216B.105 is amended to read as follows:

(1) Unless otherwise provided in this chapter, no person shall operate any health facility in this Commonwealth without first obtaining a license issued by the ***board*** [~~cabinet~~], which license shall specify the kind or kinds of health services the facility is authorized to provide. A license shall not be transferable and shall be issued for a specific location and, if specified, a designated geographical area.

(2) The ***board may*** [~~cabinet shall have the authority to~~] deny, revoke, modify or suspend a license in any case in which it finds that there has been a substantial failure to comply with the provisions of this chapter or the administrative regulations promulgated hereunder. ***The*** [~~Such~~] denial, revocation, modification, or suspension shall be effected by mailing to the applicant or licensee, by certified mail, a notice setting forth the particular reasons for ***the*** [~~such~~] action. ***The*** [~~Such~~] denial, revocation, modification, or suspension shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within ***the*** [~~said~~] thirty (30) day period, shall file a request in writing for a hearing with the ***board*** [~~commission~~].

(3) The hearing shall be before the ***board*** [~~commission~~], or before a member of the ***board*** [~~commission~~] designated to serve as hearing officer by the chairman.

(4) If the hearing is before a designated hearing officer, within thirty (30) days from the conclusion of the hearing, the [~~hearing officer shall transmit his~~] findings and recommendations ***of the hearing officer shall be transmitted*** to the ***board*** [~~commission~~], with a synopsis of the evidence contained in the record and a statement of the basis of ***the hearing officer's*** [~~his~~] findings. The applicant or licensee shall be entitled to be represented at the hearing in person or by counsel, or both, and shall be entitled to introduce testimony by witnesses or, if the ***board*** [~~commission~~] so permits, by depositions. A full and complete record shall be kept of all hearings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to this chapter. The ***board*** [~~commission~~] may adopt the hearing officer's findings and recommendations or prepare written findings of fact and state the basis for its decision which shall become part of the record of the proceedings.

(5) All decisions revoking, suspending, modifying or denying licenses shall be made by the ***board*** [~~commission~~] in writing and shall be recorded in the minutes of the ***board*** [~~commission~~]. The ***board*** [~~commission~~] shall notify the applicant or licensee of the decision.

(6) The decision of the ***board*** [~~commission~~] shall be final for purposes of judicial appeal upon notice of the ***board's*** [~~commission's~~] decision.

Section 60. KRS 216B.115 is amended to read as follows:

(1) An appeal to the Franklin Circuit Court may be taken from any final decision of the ***board*** [~~commission or cabinet~~] with respect to a certificate of need application, a certificate of need, or a license, by any party to the proceedings.

(2) An appeal may be taken by filing a petition for review in the Franklin Circuit Court within thirty (30) days after notice of the final decision unless a request for reconsideration has been filed, in which case the petition shall be filed within fifteen (15) days of the ***board's*** [~~commission's~~] decision not to reconsider or notice of its decision on reconsideration. The petition shall state completely the grounds upon which the review is sought and shall assign all errors relied upon. The petitioner shall serve a copy of the petition to each person who was a party to the proceedings. Summons shall be issued upon the petition directing the adverse party or parties to file an answer within twenty (20) days after service of summons. The ***board*** [~~commission or cabinet~~] shall, upon being served with the summons and within thirty (30) days thereafter, file a copy of the record, duly certified by the [~~cabinet or the~~] chairman of the ***board*** [~~commission~~], the cost of the record to be taxed as costs upon appeal. In lieu of filing of the record, an abstract thereof may be filed if all parties to the appeal agree.

Section 61. KRS 216B.120 is amended to read as follows:

(1) Each party to the proceedings may participate as a party in the proceedings in the Circuit Court on an appeal.

(2) In case of an appeal, no new or additional evidence may be introduced in the Circuit Court except as to fraud or misconduct of some person engaged in the administration of this chapter and affecting the decision or order; the court shall hear the case upon the certified record or abstract thereof, and shall dispose of the case in a summary manner, its review being limited to determining whether the ***board*** [~~commission~~] or cabinet acted within its jurisdiction, whether the decision or order was procured by fraud, and whether the findings of fact in issue are supported by substantial evidence and are not clearly erroneous based upon a review of the record as a whole.

(3) The court shall enter judgment affirming, modifying, reversing, or setting aside the decision or, in its discretion,

remanding the case to the ***board*** [~~commission~~] or cabinet for proceedings in conformity with the directions of the court. If the court affirms the issuance of the certificate of need, the holder of the certificate shall be entitled to recover its costs of defense of the appeal, including its attorney's fees. The decision of the Circuit Court shall be final and nonappealable.

(4) In any case in which the granting of a license or certificate of need is appealed by a competing health care provider, the court shall require the appellant to post a bond, with good and sufficient surety, in ***the*** [~~such~~] sum [~~as~~] the court deems proper, for the payment of the costs and damages as may be incurred or suffered by the certificate of need or license applicant as a result of the filing and pendency of the appeal. Failure to post the bond as required by the court shall result in the dismissal of the appeal. If the decision of the ***board*** [~~commission~~] granting the certificate of need or license is sustained, the court shall order the appellant health care provider to pay the applicant its costs incurred and damages suffered as a result of the filing and pendency of the appeal, which shall not be limited to the amount of the bond. The court shall not withhold the finality of its decision on the merits of the appeal pending the determination as to ***the*** [~~such~~] costs and damages. As used in this section, "competing health care provider" means any health facility or health maintenance organization which competes with the applicant for patients, customers, the services of health care personnel, or policy holders.

Section 62. KRS 216B.125 is amended to read as follows:

If [~~In the event~~] the cabinet or ***board*** [~~commission~~] fails to issue or deny a certificate of need or an exemption pursuant to this chapter within the time prescribed under this chapter or administrative regulations promulgated by the ***board*** [~~commission~~], the applicant may seek judicial enforcement of this chapter by filing a civil action in Franklin Circuit Court.

Section 63. KRS 216B.130 is amended to read as follows:

Any other provisions of this chapter notwithstanding, any expenditure minimum or limit as provided in this chapter shall be adjusted for each twelve (12) month period beginning twelve (12) months after ***the effective date of this Act*** [~~July 15, 1980~~], to reflect the changes in the preceding twelve (12) month period in a cost index designated by regulation for the purposes of making ***the*** [~~such~~] adjustment. The ***board*** [~~commission~~] shall effect ***the*** [~~such~~] adjustment by administrative regulations.

Section 64. KRS 216B.455 is amended to read as follows:

(1) A certificate of need shall be required for all psychiatric residential treatment facilities. The application for a certificate of need shall include formal written agreements of cooperation that identify the nature and extent of the proposed working relationship between the proposed psychiatric residential treatment facility and each of the following agencies, organizations, or facilities located in the service area of the proposed facility:

   (a) Regional interagency council for children with emotional disability or severe emotional disability as defined in KRS 200.509;

   (b) Department for Social Services;

   (c) Local school districts;

   (d) Psychiatric hospitals; and

   (e) Any other agency, organization, or facility deemed appropriate by the ***board*** [~~Commission on Health Economics Control~~].

(2) All psychiatric residential treatment facilities shall comply with the licensure requirements as set forth in KRS 216B.105.

(3) All psychiatric residential treatment facilities shall be certified by the Joint Commission on Accreditation of Healthcare Organizations.

(4) A psychiatric residential treatment facility shall not be located in or on the grounds of a psychiatric hospital.

(5) [~~If a psychiatric residential treatment facility is licensed prior to April 9, 1992, and pursuant to KRS 216B.020, the facility shall be exempt from subsections (1) and (4) of this section, if the facility is in compliance with the administrative regulations in effect on the date of the licensure.~~

~~(6)~~] The total number of psychiatric residential treatment facility beds shall not exceed sixteen (16) beds in any area development district with less than 275,000 population; thirty-two (32) beds in any area development district with 275,000 to 550,000 population; and forty-eight (48) beds in any area development district with over 550,000 population.

PART IX

HEALTH PURCHASING ALLIANCES

SECTION 65. SUBTITLE 17A OF KRS CHAPTER 304 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in Sections 65 to 71 of this Act:

(1) "Accountable health plan" means an organization that integrates health care providers and facilities and assumes financial risk, in order to provide health care services to alliance members, and as certified by the alliance pursuant to Section 71 of this Act.

(2) "Alliance" means a health purchasing alliance.

(3) "Alliance member" means both mandatory and voluntary alliance members.

(4) "Antitrust laws" means federal and state laws intended to protect commerce from unlawful restraints, monopolies, and unfair business practices.

(5) "Board" means the Kentucky Health Policy Board created by Section 2 of this Act.

(6) "Business health coalition" means a group of employers organized to share information about health services and insurance coverage, to enable the employers to obtain more cost-effective care for their employees.

(7) "Health purchasing alliance" means an agency attached for administrative purposes to the Kentucky Health Policy Board but which operates independently of the board and that provides member purchasing services and detailed information to its members on comparative prices, usage, outcomes, quality, and enrollee satisfaction with accountable health plans and which is certified by the Kentucky Health Policy Board pursuant to Section 69 of this Act.

(8) "Consumer" means an individual user of health care services.

(9) "Department" means the Kentucky Department of Insurance.

(10) "Grievance procedure" means an established set of rules that specify a process for appeal of an organizational decision.

(11) "Health care provider" or "provider" means any facility or service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:

- *(a) Physicians, osteopaths, and podiatrists licensed pursuant to KRS Chapter 311;*
- *(b) Chiropractors licensed pursuant to KRS Chapter 312;*
- *(c) Dentists licensed pursuant to KRS Chapter 313;*
- *(d) Optometrists licensed pursuant to KRS Chapter 320;*
- *(e) Physician assistants regulated pursuant to KRS Chapter 311;*
- *(f) Nurse practitioners licensed pursuant to KRS Chapter 314; and*
- *(g) Other health care practitioners as determined by the board by administrative regulations promulgated pursuant to KRS Chapter 13A.*

(12) "Health insurer" or "insurer" means any insurance company; health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky.

(13) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; or health maintenance organization contract which affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, long-term care, medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(14) "Health status" means an assessment of an individual's mental and physical condition.

(15) "Managed care" means systems or techniques generally used by third party payors or their agents to affect access to and control payment for health care services. Managed care techniques may include one (1) or more of the following:

- *(a) Prior, concurrent, and retrospective review of the medical necessity and appropriateness of services or site of services;*
- *(b) Contracts with selected health care providers;*
- *(c) Financial incentives or disincentives related to the use of specified providers, services, or service sites;*
- *(d) Controlled access to and coordination of services by a case manager; and*
- *(e) Payor efforts to identify treatment alternatives and modify benefit restrictions for high cost patient care.*

(16) "Managed competition" means a process by which purchasers participate in alliances to obtain information on health benefit plans, and purchase from, competing accountable health plans.

(17) "Mandatory alliance member" means:

- *(a) Any person for whom the Commonwealth provides health insurance pursuant to KRS 18A.225 to 18A.229;*
- *(b) Employees of state institutions of higher education;*

(c) Elected and salaried employees of local school districts;

(d) Employees of local and district health departments;

(e) Elected and salaried employees of cities, counties, urban-counties, charter counties, or special districts excluding school districts; and

(f) Justices, judges, clerks, deputy clerks, and all other employees of the Judicial Department.

(18) "Medical outcomes" means a change in an individual's health status after the provision of health services.

(19) "Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals.

(20) "Purchaser" means an individual, an organization, or the Commonwealth that makes health benefit purchasing decisions on behalf of a group of individuals.

(21) "Self-funded plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for all covered services provided to its enrollees.

(22) "Utilization management" means programs designed to control the overutilization of health services by reviewing their appropriateness relative to established standards or norms.

(23) "Voluntary alliance member" means:

(a) An employer who voluntarily chooses to participate in a health purchasing alliance except that any employer who provides health plan benefits for one employee shall provide health plan benefits for all employees; and

(b) An individual who voluntarily chooses to participate in a health purchasing alliance.

SECTION 66. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) (a) There are hereby created two (2) health purchasing alliances in the Commonwealth as follows:

1. The West Kentucky Health Purchasing Alliance which shall be comprised of the Purchase, Pennyrile, Green River, Barren River, Lincoln Trail, and Kentuckiana Area Development Districts as defined in KRS 147A.050;

2. The East Kentucky Health Purchasing Alliance which shall be comprised of the Northern Kentucky, Buffalo Trace, Gateway, Fivco, Big Sandy, Kentucky River, Cumberland Valley, Lake Cumberland, and Bluegrass Area Development Districts as defined in KRS 147A.050.

(b) Each alliance shall operate independently from each other and from the Kentucky Health Policy Board but shall be attached to the Kentucky Health Policy Board for administrative purposes.

(2) The alliances designated in subsection (1) of this section shall be the only entities permitted to operate as health purchasing alliances in the Commonwealth and shall operate for the benefit of the members of the alliance. An alliance is the exclusive entity for the oversight and coordination of alliance member purchases. Any health benefit plan offered through an alliance shall be offered by an accountable health plan and an alliance shall not:

1. Directly provide insurance;

2. Directly contract, for purposes of providing insurance, with a health care provider or provider network; or

3. Bear any risk, or form self-insurance plans among its members.

Nothing in Sections 65 to 71 of this Act shall limit or authorize the formation of business health coalitions; however, a person or entity that pools together or assists in purchasing health coverage shall not discriminate in its activities based on the health status or historical or projected claims experience of such employers or recipients.

(3) Participation in an alliance shall be limited to mandatory alliance members and voluntary alliance members.

(4) Each alliance shall be governed by a board of directors consisting of five (5) members to be appointed by the Governor and confirmed by the Kentucky Senate. Members shall have expertise in business, finance, economics, or health benefits management and shall represent the interests of employers and health care consumers. No member shall be, nor have been:

(a) A health care provider or health insurer;

(b) An employee of a health care provider, health insurer, or health plan; or

(c) A person having a fiduciary relationship to a health care provider, health insurer, or health plan.

(5) The Governor may at any time remove any member of an alliance board of directors for cause after furnishing the member with a written copy of the charges against the member and affording the member a public hearing if requested.

(6) Each alliance may have regional advisory boards with the number of members, terms of office, and conditions of participation to be determined by the alliance and with the members to be appointed by the Governor from a list of

three (3) candidates for each open position on each regional advisory board submitted by the President of the Senate and the Speaker of the House; however, the terms of office of any member of a regional advisory board shall not exceed four (4) years. The qualifications for regional advisory board members shall be the same as for alliance board members as set forth in subsection (4) of this section.

(7) The members of the alliance board of directors and regional advisory boards shall be reimbursed for actual expenses incurred in the discharge of the member's duties.

(8) The alliance board of directors shall employ a chief executive officer and comptroller for the alliance. The chief executive officer shall employ any professional staff necessary to carry out the duties of the alliance and any regional advisory board subject to the approval of the Kentucky Health Policy Board.

(9) No member of the alliance board of directors or any regional advisory board shall be subject to any personal liability for any loss sustained or damage suffered on account of any action or inaction of the alliance.

SECTION 67. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The duties of each health purchasing alliance shall be as follows:

(1) Establishing the conditions of alliance membership as set forth in Section 66 of this Act;

(2) Providing assistance to alliance members in selecting and obtaining coverage through accountable health plans and providing alliance members with clear, standardized information in the following areas:

(a) A description of each accountable health plan under contract with the alliance and each health benefit plan offered by each accountable health plan;

(b) Price, enrollee costs, quality, patient satisfaction, enrollment, and enrollee responsibilities for each accountable health plan and health benefit plan offered through the alliance; and

(c) A comparison sheet containing each accountable health plan participating in the alliance with information on basic coverage that may be obtained through the alliance;

(3) Annually offering to all alliance members all accountable health plans and health benefit plans offered by the accountable health plans under contract with the alliance which meet the requirements set forth in Section 71 of this Act, and enrolling alliance members in the health benefit plan of the member's choice;

(4) Requesting proposals for the offering to alliance members of standard benefit plans, as defined by the board, pursuant to Section 78 of this Act, from all accountable health plans in the area served by the alliance in a format to be determined by the alliance. At least one (1) standard benefit plan shall have coverage for mandatory alliance members which is comparable to the coverage provided under Kentucky Kare Standard as of January 1, 1994. The alliance shall aggressively negotiate contracts and select accountable health plans to offer to members that best meet cost, quality, access, and service objectives, as determined by the alliance;

(5) Requesting proposals from all accountable health plans in the area served by the alliance for supplemental benefit plans approved by the board, determining if the proposals submitted by the accountable health plans meet the requirements of the request for proposals, and offering them as options through riders to the standard benefit plan;

(6) Distributing to health care purchasers retail price data on prescription drugs and their generic equivalents, durable medical equipment, and disposable medical supplies;

(7) Establishing administrative and accounting procedures for the operation of the alliance and members' services, preparing an annual budget for the alliance, and preparing an annual report on alliance operations for submission to the board;

(8) Developing and implementing a marketing and public information plan to publicize the alliance to potential members;

(9) Developing grievance procedures to be used in resolving disputes between alliance members and the health purchasing alliance and disputes between the accountable health plans and the health purchasing alliance. Any member of an alliance or accountable health plan that serves an alliance may appeal to the board any grievance that is not resolved by the alliance;

(10) Maintaining all records, reports, or other information required by the board or state law;

(11) Receiving and accepting grants, loans, advances, contributions, or funds from any public or private agency that are necessary for the operation of the alliance;

(12) Contracting with a qualified, independent third party, subject to approval of the board, for any service necessary to carry out the duties of the alliance;

(13) Developing a plan to facilitate participation of health care providers in accountable health plans in the area served by the alliance, with emphasis on participation by physicians in medically underserved areas;

(14) Ensuring that any accountable health plan that has a market share of fifteen percent (15%) or greater within the

jurisdiction of a health purchasing alliance is offered to members of the alliance;

(15) Collecting premiums on behalf of participating accountable health plans, including the remittance of the share of the group premium paid by both an employer and an employee. The alliance shall pay participating accountable health plans their contracting premium amounts on a prepaid monthly basis, or as otherwise mutually agreed upon;

(16) Setting reasonable fees, not to exceed three percent (3%) of annual premiums for health benefit plans offered by the alliance, which shall finance all reasonable and necessary costs incurred in administering the alliance. Imposition of fees shall be subject to the approval of the board;

(17) Administering a risk assessment and adjustment process to offset the differences in health status of populations enrolled in health benefit plans offered through the alliance. The risk assessment and adjustment methodology shall be developed and approved by the board; and

(18) Ensuring that each alliance member always has a choice of one (1) fee-for-service plan.

SECTION 68. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The alliance shall establish conditions of participation in the alliance for employers which shall include:

(a) Assurance that the group is a valid employer. This assurance shall include requirements for sole proprietors and self-employed individuals relating to the length of time the sole proprietor or self-employed individual has been in business, documentation to verify employment status, and any other requirements to ensure that the individual is working;

(b) Assurance that the individuals in the employer group are employees and have not been added for the purpose of securing health benefit coverage;

(c) Assurance that during the first year of membership in an alliance:

1. An employer shall not be required to pay a premium that exceeds the amount of the premium that the employer was charged for a health benefit plan providing the same coverage immediately prior to becoming a member of an alliance; and

2. An employee of an employer that is a member of an alliance shall not be required to pay any premium that exceeds the amount of the premium that the employee was charged for a health benefit plan providing the same coverage immediately prior to the date that the employer became a member of an alliance, if the employee purchased health insurance through a group plan made available to the employer;

(d) Assurance that an employer that lays off or terminates the employment of an employee allows the employee, at the employee's expense, the opportunity to continue coverage with any health benefit plan with which the employee was enrolled at the time of the layoff or termination of employment. The employee shall not be required to pay a premium that exceeds the amount charged to the employer or other employees; and

(e) Assurance that any employee who voluntarily terminates employment with an employer shall be permitted to continue to participate, at the employee's expense, in any health benefit plan with which the employee was enrolled at the effective date of the voluntary termination. The employee shall not be required to pay a premium that exceeds the amount charged to the employer or other employees.

(2) The alliance may require an employer seeking membership to agree to participate in the alliance for a specified minimum period of time, not to exceed one (1) year.

(3) The alliance shall not require an employer to pay any portion of premiums as a condition of participation in the alliance.

(4) If an employer who is a member of an alliance offers more than one (1) health benefit plan and the employer contributes to the coverage of employees or dependents of the employee, the alliance shall require that the employer contribute the same dollar amount for each employee, regardless of the health benefit plan chosen by the employee.

(5) For a minimum of one (1) year after January 1, 1995, an employer that seeks to participate in the alliance shall be allowed to keep the same coverage that the employer offered to its employees immediately prior to becoming a member of the alliance.

SECTION 69. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The Kentucky Health Policy Board created by Section 2 of this Act shall have the following duties with respect to health purchasing alliances:

(1) Initially and thereafter annually certifying that each health purchasing alliance complies with the provisions of Sections 65 to 71 of this Act. The board may decertify an alliance if it determines the alliance fails to comply with the provisions of Sections 65 to 71 of this Act and the administrative regulations adopted by the board pursuant to KRS Chapter 13A. Thereafter, a new health purchasing alliance may be established in accordance with the

procedures under Section 66 of this Act;

(2) Providing administrative startup funds through a loan or grant to each alliance.

(3) Conducting any annual review of the performance of each alliance to ensure the alliance is in compliance with Sections 65 to 71 of this Act. Each alliance shall submit data to the board to assist in this review, including:

(a) Employer enrollment by employer size, industry sector, and previous insurance status;

(b) Number of total eligible employers in the area served by each alliance and the number participating in the alliance;

(c) Premium ranges for each accountable health plan for alliance member categories;

(d) Type and resolution of member grievances;

(e) Membership fees collected by the alliance; and

(f) Alliance financial statements.

(4) Establishing a data system to be utilized by accountable health plans including data elements to be filed with the respective health purchasing alliance.

SECTION 70. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

In addition to the other duties described in Sections 65 to 71 of this Act, the Kentucky Health Policy Board shall supervise the health purchasing alliances to ensure that actions that affect market competition are not for private interest, so as to provide the health purchasing alliances and their board members with protection against violating antitrust laws.

SECTION 71. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) An accountable health plan may be created by health care providers, health maintenance organizations, and health insurers for the purpose of providing health care services to alliance members.

(2) Each accountable health plan that seeks to offer services to members of an alliance shall first be certified by the alliance. The alliance shall adopt administrative regulations pursuant to KRS Chapter 13A, in consultation with the Kentucky Health Policy Board, for certification of accountable health plans. To qualify as an accountable health plan, an applicant shall submit information acceptable to the alliance to satisfactorily demonstrate that the plan:

(a) Is licensed and in good standing with the licensure boards for participating providers;

(b) Has demonstrated the capacity to administer the health plans it is offering;

(c) Has the ability, experience, and structure to arrange for the appropriate level and type of health care services;

(d) Has the ability, policies, and procedures to conduct utilization management activities;

(e) Has the ability to achieve, monitor, and evaluate the quality and cost effectiveness of care provided by its provider network;

(f) Is financially solvent;

(g) Has the ability to assure enrollees adequate access to providers, including geographic availability and adequate numbers and types;

(h) Has the ability and procedures to monitor access to its provider network;

(i) Has a satisfactory grievance procedure and the ability to respond to enrollee's inquiries and complaints;

(j) Has the ability to recruit and retain health care providers in medically underserved areas;

(k) Does not limit the participation of any health care provider in its provider network in another accountable health plan;

(l) Has the ability and policies that allow patients to receive care in the most appropriate, least restrictive setting;

(m) Does not discriminate in enrolling members;

(n) Charges uniform premiums for standard benefit plans;

(o) Participates in coordination of benefits;

(p) Uses standardized electronic claims and billing processes and formats; and

(q) Discloses to the alliance reimbursement arrangements with providers.

(3) The alliance shall establish a certification fee to be paid by each accountable health plan to cover the cost in performing the certification review.

(4) An accountable health plan shall require all providers participating in the plan to report to the Kentucky Health Policy Board specified data which can be used in determining medical outcomes in accordance with standards

approved by the board and shall comply with all provisions of this subtitle.

(5) An accountable health plan may provide services to more than one (1) health purchasing alliance.

(6) A provider may participate in more than one (1) accountable health plan and in more than one (1) health purchasing alliance geographic region.

PART X

INSURANCE REFORMS

SECTION 72. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in Sections 72 to 78 of this Act, unless the context requires otherwise:

(1) "Board" means the Kentucky Health Policy Board created by Section 2 of this Act.

(2) "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as amended.

(3) "Guaranteed-issue basis" means that no applicant for insurance can be turned down except for nonpayment of premiums.

(4) (a) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; and health maintenance organization contract.

(b) "Health benefit plan" does not include policies covering only accident, credit, dental, disability income, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(c) "Health benefit plan" means a health benefit plan which affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky.

(5) "Insurer" means a person who provides heath benefit plans in this state and is subject to insurance regulation in this state, including an authorized insurance company, health maintenance organization, self-insurer or multiple welfare arrangement not exempt from state regulation by ERISA, accountable health plans as defined in Section 65 of this Act, and nonprofit hospital, medical-surgical, dental, and health service corporation.

SECTION 73. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

All health benefit plans issued or renewed on or after January 1, 1995, shall comply with the following provisions:

(1) All health benefit plans shall be renewable with respect to all eligible persons and dependents at the option of the policyholder or contract holder, except:

(a) For nonpayment of the required premiums by the policyholder or contract holder;

(b) For fraud or misrepresentation of the policyholder or contract holder;

(c) For noncompliance with health benefit plan provisions;

(d) If the insurer ceases doing business in Kentucky and notice of the decision to cease to do business in Kentucky is provided to the Kentucky Health Policy Board, the department, and to either the policyholder or contract holder. Health benefit plans shall not be canceled by the insurer for one (1) year after the date of the notice required under this paragraph unless the business has been sold to another insurer. An insurer that ceases to do business in Kentucky shall not reenter Kentucky for a period of five (5) years from the date of the notice required under this paragraph.

(2) (a) Pre-existing conditions provisions shall not exclude or limit coverage for a period beyond six (6) months following the individual's effective date of coverage and may only relate to conditions which had, during the six (6) months immediately preceding the effective date of coverage, manifested themselves in a manner that would cause an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment or for which medical advice, diagnosis, care, or treatment was recommended or received or as to a pregnancy existing on the effective date of coverage;

(b) In determining whether a pre-existing conditions provision applies to a person covered under a plan, all health benefit plans shall credit the time the person was covered under a previous health benefit plan provided by an insurer if the previous coverage was continuous to a date not more than sixty (60) days prior to the effective date of the new coverage.

SECTION 74. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Each insurer issuing policies or contracts under Subtitles 18, 32, or 38 of this chapter shall, before use thereof, file with the Kentucky Health Policy Board its rates, fees, dues, and other charges to be paid by insureds, members, enrollees, or subscribers and shall comply with the provisions of KRS 304.17-383.

SECTION 75. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) For all health benefit plans issued or renewed on or after January 1, 1995, insurers shall use a modified community rating methodology filed with and approved by the Kentucky Health Policy Board in which the premium for each individual policy and group policy is determined solely on the basis of age, geography, family composition, benefit plan design and cost containment provisions, and limited discounts for healthy lifestyles.

(2) Premium variations based on age shall not vary more than three hundred percent (300%) from the lowest to the highest price.

(3) The Kentucky Health Policy Board shall establish guidelines for geographic rating areas that take into consideration the following:

(a) Geographic rating should not be used to prevent areas with lower cost, more efficient delivery systems from cross-subsidizing areas where health benefit plans and providers operate efficiently;

(b) Geographic rating shall not increase rates of higher risk and needier populations relative to healthier and wealthier populations, nor to effectively discriminate on the basis of race or socio-economic class;

(c) Geographic rating areas may include entire communities and single metropolitan statistical areas but shall not fold lower cost and lower income rural areas into the same rating areas as higher cost urban areas.

(4) Adjustments for healthy lifestyles shall be approved by the Kentucky Health Policy Board and shall not discriminate on the basis of race, sex, or occupation. The board shall approve adjustments only for lifestyles that are free of voluntary behaviors that have been definitively documented as contributing to health care costs.

(5) The rate structure shall differentiate between single individuals, couples, single-parent families, and two-parent families with children.

SECTION 76. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

All health benefit plans issued or renewed on or after January 1, 1995, which provide coverage for a family member of the insured shall provide that the health plan benefits applicable for children shall be payable with respect to legally adopted children of the insured or any child for which the insured is a court appointed guardian from and after the date of the filing of the petition for adoption.

SECTION 77. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) It is an unfair trade practice for an insurer as defined in Section 72 of this Act, agent, broker, or any other person in the business of marketing and selling health plans, to commit or perform any of the following acts:

(a) Encourage individuals or groups to refrain from filing an application for coverage with the insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or

(b) Encourage or direct individuals or groups to seek coverage from another insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or

(c) Encourage an employer to exclude an employee from coverage.

The provisions of paragraphs (a) and (b) of this subsection shall not apply to information provided regarding the established geographic service area of an insurer.

(2) It is an unfair trade practice for an insurer to compensate an agent, broker, or any other person in the business of marketing and selling health plans on the basis of the health status, claims experience, industry, occupation, or geographic location of the insured or prospective insured.

(3) The remedy provided by KRS 304.12-120 shall be available for conduct proscribed by subsections (1) and (2) of this section.

SECTION 78. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board shall define no more than five (5) standard health care benefit plans, one (1) of which shall be a basic benefit plan. The board shall submit the plans to the commissioner within one hundred eighty (180) days after appointment of the board. The commissioner shall review the forms and return them with written comments to the board within thirty (30) days of receipt. The standard plans shall become operational on the date

designated by the board, which shall be no later than one hundred eighty (180) days after the board receives the forms and comments from the commissioner.

(2) On and after the date the standard benefit plans become operational:

(a) No insurer doing business in Kentucky shall issue or renew health benefit plans other than the standard health benefit plans established by the board, and any of the five (5) standard benefit plans offered shall be offered on a guaranteed-issue basis;

(b) Every insurer shall, as a condition of transacting business in this state, offer and issue the basic health benefit plan on a guaranteed-issue basis to all individuals and employers that elect to be covered under a plan and agree to make the required premium payments; and

(c) No insurer shall exclude any eligible person or dependent, who would otherwise be covered under a group health benefit plan, on the basis of an actual or expected health condition of the person.

(3) Each of the standard plans shall be in two (2) forms, one (1) of which shall be in the form of insurance and the second of which shall be consistent with the basic method of operation and benefit plans of health maintenance organizations, including federally qualified health maintenance organizations. Each of the standard plans shall provide for two (2) levels of cost sharing. The board shall take into consideration the levels of benefits provided in health benefit plans in Kentucky and appropriate medical and economic factors. The plans shall include cost containment features, such as utilization review of health care services, including review of medical necessity of hospital and physician services; case management benefit alternatives; selective contracting with hospitals, physicians, and other health care providers; reasonable benefit differentials applicable to participating and nonparticipating providers; and other managed care provisions.

(4) All policies and contracts providing health care benefits issued or renewed on or after the date the standard benefit plans become operational shall be uniform in structure, language, designation, and format to the standard benefit plans defined by the board and shall be filed with and approved by the board before being delivered or issued for delivery in Kentucky.

(5) The board shall inform residents of Kentucky of the existence and provisions of the standard benefit plans. The board shall develop an outline and chart of coverage that describes the features of each of the standard benefit plans available in Kentucky. The board shall broadly publicize a twenty-four hour toll-free telephone number for information on health care benefit plans available in Kentucky.

(6) The commissioner and the department shall render assistance on approval of plans and any other insurance matter as requested by the board.

(7) Any insurer that between the effective date of this Act and January 1, 1995, knowingly and willfully terminates coverage of any insured or dependent solely because the insured is eligible for coverage through a health purchasing alliance shall be prohibited from issuing or delivering any health benefit plan in the Commonwealth for a period of five (5) years from the date of exclusion.

Section 79. KRS 304.17-380 is amended to read as follows:

Each insurer issuing health insurance policies for delivery in this state shall, before use thereof, file with the ***Kentucky Health Policy Board, created by Section 2 of this Act, within the time and in the form designated by the Kentucky Health Policy Board,*** [~~commissioner~~] its premium rates and classification of risks pertaining to such policies. The insurer shall adhere to its rates and classifications as filed with the ***Kentucky Health Policy Board*** [~~commissioner~~]. The insurer may ***submit new*** [~~change such~~] filings from time to time as it deems proper.

Section 80. KRS 304.17-383 is amended to read as follows:

(1) No filing under KRS 304.17-380 [~~that contains an increase in premium rates~~] shall become effective until the ***Kentucky Health Policy Board, created by Section 2 of this Act,*** [~~commissioner~~] has issued an order approving the filing ***within thirty (30) days after receiving the filing. At the expiration of the thirty (30) day period, the filing shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the Kentucky Health Policy Board or a hearing has been held***. The ***Kentucky Health Policy Board*** [~~commissioner~~] may hold a hearing within thirty (30) days after receiving a filing under this subtitle [~~containing a rate increase,~~] and shall issue an order approving or disapproving the filing within thirty (30) days following the conclusion of the hearing.

(2) In approving or disapproving a filing under subsection (1) of this section, the ***Kentucky Health Policy Board*** [~~commissioner~~] shall consider:

(a) Whether the benefits provided are reasonable in relation to the premium charged;

(b) ***Whether the fees charged for the covered services are reasonable in relation to the premium charged;***

(c) Previous premium rates for the policies to which the filing applies; and

(d)[~~(c)~~]The effect of the ***rate or rate*** increase on policyholders.

(3) Not less than ten (10) days in advance of a hearing held under subsection (1) of this section, the ***Kentucky Health Policy***

Board [~~commissioner~~] shall notify the Attorney General in writing of the hearing [~~and of the premium increase to be considered~~]. The Attorney General shall be considered a party to such a hearing if he chooses to participate.

(4) No insurer receiving the ***Kentucky Health Policy Board's*** [~~commissioner's~~] approval of a filing under this section shall submit a new filing containing a rate increase for any of the same policies until at least ***twelve (12)*** [~~six (6)~~] months have elapsed following the effective date of the approved increase.

(5) At any time, the ***Kentucky Health Policy Board*** [~~commissioner~~], after a public hearing of which at least thirty (30) days' written notice has been given, may withdraw approval of rates previously approved under this section if he determines that the benefits are no longer reasonable in relation to the premium charged.

[~~(6) (a) Subsections (1) to (3) of this section shall not apply and premium rates shall be deemed approved upon filing with the Department of Insurance if the filing is accompanied by a loss ratio guarantee, and benefits shall be deemed reasonable in relation to the premium rates so long as the insurer complies with the terms of the loss ratio guarantee. This loss ratio guarantee shall be in writing and shall contain at least the following:~~

~~1. A recitation of the anticipated loss ratio standards contained in the original actuarial memorandum filed with the policy form when it was originally approved by the commissioner;~~

~~2. A guarantee that the actual Kentucky loss ratio for the calendar year in which the new rates take effect, and for each year thereafter until new rates are filed, will meet or exceed the loss ratio standards referred to in subparagraph 1. of this paragraph. If the annual earned premium volume in Kentucky under the particular policy form is less than one million dollars ($1,000,000) and therefore not actuarially credible, the loss ratio guarantee shall be based on the actual nationwide loss ratio for the policy form;~~

~~3. A guarantee that the actual Kentucky loss ratio results for each year at issue shall be independently audited at the insurer's expense. This audit shall be done in the second quarter of the next year and the audited results shall be reported to the commissioner not later than the date for filing the applicable accident and health policy experience exhibit;~~

~~4. A guarantee that affected Kentucky policyholders will be issued a proportional refund, based on premium paid, of the amount necessary to bring the actual aggregate loss ratio up to the anticipated loss ratio standards referred to in subparagraph 1. of this paragraph. The refund shall be made to all Kentucky policyholders insured under the applicable policy form as of the last of the year at issue if the refund would equal ten dollars ($10) or more per policy. The refund shall include statutory interest from the end of the year at issue until the date of payment. Payment shall be made during the third quarter of the next year; and~~

~~5. A guarantee that refunds of less than ten dollars ($10) will be aggregated by the insurer and paid to the Department of Insurance.~~

~~(b) As used in this subsection, the term "loss ratio" means the ratio of incurred claims to earned premium by number of years of policy duration, for all combined durations.~~]

Section 81. KRS 304.17-060 is amended to read as follows:

There shall be a provision as follows:

"Time Limit on Certain Defenses: [~~(a)~~] After three (3) years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such three (3) year period."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial three (3) year period, nor to limit the application of KRS 304.17-190 to 304.17-230, inclusive, in the event of misstatement with respect to age or occupation or other insurance.)

A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (a) until at least age fifty (50) or (b) in the case of a policy issued after age forty-four (44) for at least five (5) years from its date of issue, may contain in lieu of the foregoing the following provision, from which the clause in parentheses may be omitted at the insurer's option, under the caption "Incontestable":

"After the policy has been in force for a period of three (3) years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."

[~~(b) No claim for loss incurred or disability (as defined in the policy) commencing after two (2) years from the date of issue of this policy, shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.~~]

Section 82. KRS 304.17-270 is amended to read as follows:

[~~Except as provided in KRS 304.17-275,~~] Health insurance policies, other than accident insurance only policies, in which the insurer reserves the right to refuse renewal on an individual basis, shall provide in substance in a provision thereof or in an indorsement thereon or rider attached thereto that subject to the right to terminate the policy upon nonpayment of premium when due, such right to refuse renewal may not be exercised so as to take effect before the renewal date occurring on, or after and nearest, each policy anniversary (or in the case of lapse and reinstatement, at the renewal date occurring on, or after and nearest, each anniversary of the last reinstatement), and that any refusal of renewal shall be without prejudice to any claim originating while the policy is in force. (The parenthetic reference to lapse and reinstatement may be omitted at the insurer's option.)

Section 83. KRS 304.14-120 is amended to read as follows:

(1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or printed rider or indorsement form or form of renewal certificate, shall be delivered, or issued for delivery in this state, unless the form has been filed with and approved by the commissioner. This provision shall not apply to ***standard health care benefit plans established under Section 78 of this Act, or to*** surety bonds, or to specially rated inland marine risks, or to policies, riders, indorsements or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner or distribution of benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to group insurance policies issued and delivered to an association outside this state but covering persons resident in this state, all or substantially all of the premiums for which are payable by the insured members, the group certificates to be delivered or issued for delivery in this state shall be filed with and approved by the commissioner. As to forms for use in property, marine (other than wet marine and transportation insurance), casualty and surety insurance coverages the filing required by this subsection may be made by rating organizations on behalf of its members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

(2) Every such filing shall be made not less than sixty (60) days in advance of any such delivery. At the expiration of such sixty (60) days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than a thirty (30) day period within which he may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial sixty (60) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.

(3) Any order of the commissioner disapproving any such form or any notice of the commissioner withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonably to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at expiration of such period, not less than thirty (30) days after the giving of the notice of withdrawal, as the commissioner shall in such notice prescribe.

(4) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order, to which, in his opinion, this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(5) Appeals from orders of the commissioner disapproving any such form or withdrawing a previous approval shall be taken as provided in Subtitle 2 of this chapter.

Section 84. KRS 304.14-130 is amended to read as follows:

(1) The commissioner shall disapprove any form filed under KRS 304.14-120, or withdraw any previous approval thereof, only on one (1) or more of the following grounds:

    (a) If it is in any respect in violation of, or does not comply with, this code.

    (b) If it contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

    (c) If it has any title, heading, or other indication of its provisions which is misleading, or is printed in such size of type or manner of reproduction as to be substantially illegible.

    (d) [~~As to an individual health insurance policy, if the benefits provided therein are unreasonable in relation to the premium charged.~~

    ~~(e)~~] If it excludes coverage for human immunodeficiency virus infection or acquired immunodeficiency syndrome or contains limitations in the benefits payable, or in the terms or conditions of the contract, for human immunodeficiency virus infection or acquired immunodeficiency syndrome which are different than those which apply to any other sickness or medical condition.

(2) The insurer shall not use in this state any such form after disapproval or withdrawal of approval.

Section 85. KRS 304.38-200 is amended to read as follows:

Health maintenance organizations shall be subject to the provisions of this subtitle, and to the following provisions of Chapter 304, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

(1) Subtitle 1 – Scope of Code;

(2) Subtitle 2 – The Insurance Commissioner;

(3) Subtitle 4 -- Fees and Taxes;

(4) Subtitle 5 -- Kinds of Insurance; Limits of Risk; Reinsurance;

(5) Subtitle 12 -- Trade Practices and Frauds;

(6) Subtitle 14 -- KRS 304.14-500 to 304.14-560;

(7) *Subtitle 17A--Health Insurance;*

(8) Subtitle 25 -- Continuity of Management;

(9)[~~(8)~~] Subtitle 33 -- Rehabilitation and Liquidation; and

(10)[~~(9)~~] Subtitle 99 -- Penalties.

PART XI - REINSURANCE PROGRAM

SECTION 86. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) There is established a nonprofit entity to be known as the Kentucky Health Reinsurance Program. All insurers issuing or maintaining standard health benefit plans in Kentucky on or after the effective date of this section shall be members of the program.

(2) Within sixty (60) days after the effective date of this section, the Kentucky Health Policy Board shall give notice to all members of the time and place for the initial organizational meeting, which shall take place within one hundred twenty (120) days after the effective date of this section. The members shall select the initial Health Reinsurance Board subject to approval by the Kentucky Health Policy Board. The Health Reinsurance Board shall consist of nine (9) members who shall serve staggered terms as determined by the program's plan of operation. At least one (1) member of the Health Reinsurance Board shall be, to the extent possible:

(a) An insurer whose principal health insurance business is in the small employer market;

(b) An insurer whose principal health insurance business is in the large employer market; and

(c) A health maintenance organization;

The commissioner shall be an ex officio member of the Health Reinsurance Board. In approving the selection of the Health Reinsurance Board, the Kentucky Health Policy Board shall assure that all members of the program are fairly represented.

(3) If the initial Health Reinsurance Board is not elected at the organizational meeting, the Kentucky Health Policy Board shall appoint the initial board within thirty (30) days of the organizational meeting.

(4) Within one hundred eighty (180) days after the appointment of the initial Health Reinsurance Board, that board shall submit to the Kentucky Health Policy Board a plan of operation, and thereafter any amendments thereto necessary or suitable, to assure the fair, reasonable, and equitable administration of the program. The Kentucky Health Policy Board shall, after notice and hearing, approve the plan of operation, provided the Kentucky Health Policy Board determines it to be suitable to assure the fair, reasonable, and equitable administration of the program and provides for the sharing of program gains or losses on an equitable and proportionate basis in accordance with the provisions of subsection (11) of this section. The plan of operation shall become effective upon approval in writing by the Kentucky Health Policy Board consistent with the date on which the coverage under this section shall be made available. Any plan of operation, or amendments thereto, submitted by the Health Reinsurance Board to the Kentucky Health Policy Board pursuant to this subsection shall be deemed approved by the Kentucky Health Policy Board if not expressly disapproved in writing by the Kentucky Health Policy Board within ninety (90) days of its receipt by the Kentucky Health Policy Board.

(5) If the Health Reinsurance Board fails to submit a suitable plan of operation within one hundred eighty (180) days after its appointment, the Kentucky Health Policy Board shall, after notice and hearing, adopt and promulgate a temporary plan of operation. The Kentucky Health Policy Board shall amend or rescind any plan adopted by the Kentucky Health Policy Board under this subsection at the time a plan of operation is submitted by the Health Reinsurance Board and approved by the Kentucky Health Policy Board.

(6) The plan of operation shall establish rules, conditions, and procedures for:

(a) The handling and accounting of assets and moneys of the program and for an annual fiscal reporting to the commissioner and the Kentucky Health Policy Board;

(b) Filling vacancies on the Health Reinsurance Board, subject to the approval of the Kentucky Health Policy Board;

(c) Selecting an administering insurer which shall be an insurer as defined in Section 72 of this Act and setting forth the powers and duties of the administering insurer;

(d) Reinsuring risks in accordance with the provisions of this section;

(e) Collecting assessments subject to subsection (11) of this section from all members to provide for claims

reinsured by the program and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made;

(f) Providing protection for insurers from the financial risk associated with insureds that present poor credit risks;

(g) Establishing standards for the coverage of employers that have high turnover employees;

(h) Establishing an appeals process for insurers to seek relief when a carrier has experienced an unfair share of administrative and credit risks;

(i) Determining the adjusted average market premium prices for standard health benefit plans sold in Kentucky;

(j) Establishing participation standards at issue and renewal for reinsured cases;

(k) Establishing standards for those conditions under which an insurer would not be required to write business received from a particular agent or broker; and

(l) Any additional matters at the discretion of the Health Reinsurance Board.

(7) The program shall have the general powers and authority granted under this chapter to insurance companies licensed to transact health insurance except the power to issue insurance. In addition the Health Reinsurance Board shall have the specific authority to:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this section, including the authority, with the approval of the Kentucky Health Policy Board, to enter into contracts with similar programs of other states for the joint performance of common functions, or with persons or other organizations for the performance of administrative functions;

(b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against any program or board member;

(c) Take legal action as necessary to avoid the payment of improper claims against the program;

(d) Design the array of standard health benefit plans, as provided under Section 78 of this Act, for which reinsurance will be provided and issue reinsurance policies in accordance with the requirements of this section;

(e) Establish rules, conditions, and procedures pertaining to the reinsurance of members' risks by the program;

(f) Establish appropriate rates, rate schedules, rate adjustments, rate classifications, and any other actuarial functions appropriate to the operation of the program;

(g) Assess members in accordance with the provisions of subsection (11) of this section, and make any advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses. Any interim assessments shall be credited as offsets against any regular assessments due following the close of the fiscal year;

(h) Appoint from among members appropriate legal, actuarial, and other committees as are necessary to provide technical assistance in the operation of the program, policy and other contract design, and any other function within the authority of the program; and

(i) Borrow money to effect the purposes of the program. Any notes or other evidence of indebtedness of the program not in default shall be legal investments for insurers and may be carried as admitted assets.

(8) Any member may reinsure coverage of an insured, or any dependent of that insured with the program, if:

(a) The program shall reinsure the level of coverage provided in the basic health benefit plan;

(b) With respect to the coverage provided to insureds issued after the effective date of this section, the insurer shall be required to use high-cost case management, hospital precertification techniques, and other cost containment techniques as established by the program;

(c) With respect to eligible employees and their dependents who are hired subsequent to the commencement of the employer's coverage by an insurer and who are not late enrollees, coverage may be reinsured;

1. Within sixty (60) days of the commencement of their coverage under the plan except in the case of late enrollees; or

2. Commencing on a date established by the Health Reinsurance Board, but no later than eighteen (18) months after the program becomes operational, on the first plan anniversary after the employer's coverage has been in effect with the employer insurer for at least three (3) years and every third plan anniversary thereafter; or

3. For late enrollees the later of eighteen (18) months following the date the late enrollee becomes a member of the employer's plan or at the conclusion of the three (3) year reinsurance period.

(d) With respect to eligible employees and their dependents who are employed by a employer as of the date the

employer's coverage commences, coverage may be reinsured:

1. Within sixty (60) days of the commencement of the employer's coverage with the insurer, except in the case of late enrollees; or

2. Commencing on a date established by the Health Reinsurance Board, but no later than eighteen (18) months after the program becomes operational, on the first plan anniversary after the employer's coverage has been in effect with the employer insurer for at least three (3) years and every third plan anniversary thereafter; or

3. For late enrollees the later of eighteen (18) months following the date the late enrollee becomes a member of the employer's plan or at the conclusion of the three (3) year reinsurance period.

(e) With respect to eligible employees and their dependents, an insurer may reinsure the entire employer group:

1. Within sixty (60) days of the commencement of the employer group's coverage under the plan; or

2. In the case where a new entrant to an employer group is reinsured under the provisions of paragraph (c) of this subsection, on the first plan anniversary after the new entrant became a member of the employer's plan; or

3. Commencing on a date established by the Health Reinsurance Board, but no later than eighteen (18) months after the program becomes operational, on the first plan anniversary after the employer's coverage has been in effect with the employer for at least three (3) years and every third plan anniversary thereafter.

(9) Except as provided in subsection (10) of this section, premium rates charged for coverage reinsured by the program shall be established as follows:

(a) For whole group reinsurance coverage, one and one half (1.5) times the adjusted average market premium price established by the program for that classification or group with similar characteristics and coverage, with respect to the eligible employees and their dependents of a employer, all of whose coverage is reinsured with the program, minus a ceding expense factor determined by the program.

(b) For individual reinsurance coverage, five (5) times the adjusted average market premium price established by the program for an individual in that classification or group with similar characteristics and coverage, with respect to an individual or eligible employee or that individual's or employee's dependents, minus a ceding expense factor determined by the program.

(10) Premium rates charged for reinsurance by the program to a health maintenance organization which is approved by the secretary of the United States Department of Health and Human Services as a federally qualified health maintenance organization pursuant to 42 U.S.C. 300 et seq., and as such is subject to requirements that limit the amount of risk that may be ceded to the program, may be modified to reflect the portion of risk that may be ceded to the program.

(11) (a) Following the close of each fiscal year, the administering insurer shall determine the net premiums, the program expenses for administration and the incurred losses, if any, for the year, taking into account investment income and other appropriate gains and losses. For purposes of this section, health benefit plan premiums earned by multiple employer welfare arrangements shall be established by adding paid claim losses and administrative expenses of the multiple employer welfare arrangement. Health benefit plan premiums and benefits paid by a member that are less than an amount determined by the Health Reinsurance Board to justify the cost of collection shall not be considered for purposes of determining assessments. For purposes of this subsection, "net premiums" means health benefit plan premiums, less administrative expense allowances.

(b) Any net loss for the year shall be recouped first by assessments of members to the extent provided below:

1. Assessments shall first be apportioned by the Health Reinsurance Board among all members in proportion to their respective shares of the total health benefit plan premiums, net of reinsurance premiums paid for coverage under this program, earned in Kentucky from health benefit plans, and to the extent permitted by ERISA, other benefit arrangements during the calendar year coinciding with or ending during the fiscal year of the program, or on any other equitable basis as may be provided in the plan of operation. An assessment shall be made pursuant to this subsection against a health maintenance organization which is approved by the Secretary of United States Department of Health and Human Services as a federally-qualified health maintenance organization pursuant to 42 U.S.C. 300 et seq., subject to an assessment adjustment formula adopted by the Health Reinsurance Board and approved by the Kentucky Health Policy Board for those approved health maintenance organizations which recognizes the restrictions imposed on the health maintenance organizations by federal law. This adjustment formula shall be adopted by the Health Reinsurance Board and approved by the Kentucky Health Policy Board prior to the first anniversary of the program's operation.

2. Assessments under this paragraph shall be capped at four percent (4%) of the premium for health benefit plans.

(c) If assessments exceed actual losses and administrative expenses of the program, the excess shall be held at interest and used by the Health Reinsurance Board to offset future losses or to reduce program premiums. As used in this subsection, "future losses" includes reserves for incurred but not reported claims.

(d) Each member's proportion of participation in the program shall be determined annually by the Health Reinsurance

Board based on annual statements and other reports deemed necessary by that board and filed by the member with that board. Multiple employer welfare arrangements shall report to the Health Reinsurance Board claims payments made and administrative expenses incurred in Kentucky on an annual basis on a form prescribed by the Kentucky Health Policy Board.

(e) Provision shall be made in the plan of operation for the imposition of an interest penalty for late payment of assessments.

(f) A member may seek from the Kentucky Health Policy Board a deferment, in whole or in part, from any assessment issued by the Health Reinsurance Board. The Kentucky Health Policy Board may defer, in whole or in part, the assessment of a member if, in the opinion of the Kentucky Health Policy Board, payment of the assessment would endanger the member's ability to fulfill its contractual obligations.

(g) If an assessment against a member is deferred in whole or in part, the amount by which the assessment is deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in this subsection. The member receiving the deferment shall remain liable to the program for the amount deferred. The Kentucky Health Policy Board may attach appropriate conditions to any deferment.

(12) Neither the participation as members of the program or as Health Reinsurance Board members, the establishment of rates, forms, or procedures for coverage issued by the program, nor any other joint or collective action required by this section, shall be the basis of any legal action, criminal or civil liability or penalty against the program, the Health Reinsurance Board, or any of its members either jointly or separately.

PART XII

MEDICAL EDUCATION REFORM

SECTION 87. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created the Kentucky Health Service at the University of Kentucky and the University of Louisville respectively. With respect to medicine and membership in the Kentucky Health Service, "primary care physicians" are those physicians practicing in "primary care" as defined in KRS 164.925 and includes others that may be designated by the legislation as shortage medical disciplines in Kentucky. The appropriate health sciences center official designated by the board of trustees of each institution shall direct the Kentucky Health Service. The Kentucky Health Service shall, at each institution:

- *(a) Create and oversee the implementation of regional family practice residency training programs in community-based sites, coordinated so that the number of first year post-graduate positions in family practice is comparable to the number of graduates entering family practice; and*
- *(b) In conjunction with the Kentucky Health Policy Board, develop contracts setting forth the amount and nature of stipends and fees to be provided by the service to medical students or residents participating in the Kentucky Health Service and the binding obligation of the student or resident entering into the contract, including requiring each student or resident to sign a binding contract obligating the student to practice primary care medicine in underserved areas of Kentucky for one (1) year for each year of participation in the service.*

(2) The Kentucky Higher Education Assistance Authority shall enforce contractual obligations for students participating in the Kentucky Health Service, including the one (1) year primary care practice obligation for each year of Kentucky Health Service participation. Any participant who fails to fulfill this obligation shall be immediately required to repay the service for the full cost of education, stipend, salary, or other benefits paid by the service to the participant. The cost of education shall include all costs as determined by the respective institution from time to time, including that portion in excess of tuition and fees. In addition, the participant shall pay all legal or collection costs incurred by the institution in connection with enforcement of the contract. The only offset allowed shall be for tuition and fees actually paid by the participant. All moneys collected from students shall be paid into the Kentucky Health Service.

(3) The Kentucky Health Policy Board as created by Section 2 of this Act shall periodically establish goals for the medical schools based upon the professional medical needs of the Commonwealth. In admitting students to the Kentucky Health Service, preference shall be given to students making a commitment to locate in a medically underserved area as designated by the Kentucky Health Policy Board. The students shall meet the academic and related standards for admission to medical school. The service shall provide tuition and fees to cover all medical students participating in the service and an additional annual stipend to medical students and residents who contract to enter the Kentucky Health Service. Subject to the availability of funds, the stipend shall annually increase at the rate of increase in the consumer price index of the United States Department of Commerce or its successor.

(4) All medical students shall participate in off-campus educational experiences and all residents participating in the Kentucky Health Service shall participate in community-based training to the extent allowed by appropriate national accrediting boards.

(5) The sponsoring universities, community-based regional educational programs, and satellite facilities shall be linked

together through coordinated telecommunications by July 1, 1995.

SECTION 88. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) The University of Kentucky and the University of Louisville shall increase the training of general pediatric, general internal medicine, and combined medicine-pediatric resident positions in community-based sites to the extent allowed by appropriate national accrediting boards. The University of Louisville and the University of Kentucky colleges of medicine shall enter into contracts with all community-based faculty that assist in training students. The contracts shall include performance standards and methods of compensation for the faculty members.

(2) Residency programs at the University of Kentucky and the University of Louisville shall conform to the national residency specialty distribution and funding priority.

(3) The University of Kentucky and the University of Louisville shall enhance library communications with practitioners throughout the Commonwealth and with community-based educational sites and shall expand the continuing education capabilities at these sites.

(4) Beginning September 1, 1995, the University of Kentucky and the University of Louisville shall provide biennial progress reports on the service at each institution to the board and the General Assembly through the Council on Higher Education.

SECTION 89. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board as created by Section 2 of this Act, in cooperation with the Council on Higher Education in Kentucky, shall develop a comprehensive minority health professions education program providing for:

  (a) The recruitment of minority students to attend the University of Kentucky, the University of Louisville, or other state institutions of higher education where appropriate for training in medicine, dentistry, nursing, pharmacy, physical therapy, and other allied professions;

  (b) The payment of stipends, scholarships, and other financial assistance needed by minority students in medicine, dentistry, nursing, pharmacy, physical therapy, and other allied health professions; and

  (c) The payment of financial or other incentives to encourage minority graduates in medicine, dentistry, nursing, pharmacy, physical therapy, and other allied health professions to establish a practice in underserved areas as defined by the Kentucky Health Policy Board.

(2) The Kentucky Higher Education Assistance Authority shall enforce contractual obligations for minority health professions education students receiving financial assistance under this section, using guidelines no less stringent than those provided under Section 87 of this Act.

SECTION 90. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board shall prepare a biennial report to the General Assembly which documents:

  (a) The number of minority students enrolled as a result of the program established pursuant to Section 89 of this Act;

  (b) The number of minority students who successfully graduate in medicine, dentistry, nursing, pharmacy, physical therapy, and other allied health professions schools; and

  (c) Recommendations for improving the recruitment of minority students in medicine, dentistry, nursing, physical therapy, and other allied health professions.

(2) The Kentucky Health Policy Board shall periodically review health professions' manpower needs by service delivery region and shall designate health professions shortages by service delivery region for use by institutions of higher education and the Council on Higher Education in Kentucky.

(3) The Kentucky Health Policy Board shall evaluate the feasibility for the cross-disciplinary training of health care professionals. The evaluation shall address cross-training of clinical laboratory and radiology technicians and the cross-training of physical and occupational therapists.

SECTION 91. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) The Council on Higher Education in Kentucky is required to establish regional physician extender programs to meet the needs as established by the Kentucky Health Policy Board as created by Section 2 of this Act. The current programs offered shall be capped at the number of students enrolled as of September 1, 1994. After September 1, 1994, to meet those needs the current programs at the University of Kentucky will be maintained and new programs shall be established at the University of Louisville. The Kentucky Health Policy Board shall identify the need for health professionals within geographic regions. Proposals shall be solicited from all accredited colleges or universities within the Commonwealth to provide physician extender training within the geographic region in need. The process shall include a strong emphasis on community experience for program participants and monitoring of the service obligations of the graduates.

(2) When feasible students in allied health, dentistry, pharmacy, and nursing shall be trained along with medical students and primary care residents and the University of Kentucky and the University of Louisville Health Science

Centers will be responsible for establishing community programs to promote team access to health care and to encourage practitioners to practice in underserved areas.

(3) New regional physician extender training sites shall be established as follows:

- ***(a) Two (2) by September, 1994;***
- ***(b) Two (2) by September, 1996; and***
- ***(c) The remainder as expeditiously as appropriations become available.***

(4) The students enrolled in each physician extender training program may be participants in the Kentucky Health Service. Service participants in physician extender training programs shall be eligible for funding equal to tuition, and stipends, if they agree to serve in underserved areas of Kentucky after graduation for one (1) year for every year of training. In admitting students to physician extender training programs, preference shall be given to students making a commitment to locate in medically underserved areas as designated by the Kentucky Health Policy Board.

SECTION 92. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

The Kentucky Health Policy Board as created by Section 2 of this Act, in conjunction with the University of Kentucky and the University of Louisville medical schools, shall develop an underserved area physician respite program. This program shall provide substitute physicians who shall relieve physicians who are practicing in medically underserved areas available by January, 1995.

SECTION 93. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

Each institution of higher education receiving state tuition assistance for its students, including each community college, shall develop a healthy life-styles program at a charge which covers program expenses.

PART XIII

PRESCRIPTIVE AUTHORITY

Section 94. KRS 314.011 is amended to read as follows:

As used in KRS 314.011 to 314.161 and 314.991, unless the context thereof requires otherwise:

(1) "Board" shall mean Kentucky Board of Nursing.

(2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A.

(3) "Nurse" shall mean a person licensed under the provisions of this chapter as a registered nurse or as a licensed practical nurse.

(4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:

- (a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and
- (b) Planning, implementation, and evaluation based on nationally accepted standards of nursing practice.

(5) "Registered nurse" shall mean one who is licensed under the provisions of this chapter to engage in registered nursing practice.

(6) "Registered nursing practice" shall mean the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:

- (a) The care, counsel, and health teaching of the ill, injured, or infirm.
- (b) The maintenance of health or prevention of illness of others.
- (c) The administration of medication and treatment as prescribed by a physician***,*** [~~or~~] dentist***, or an advanced registered nurse practitioner*** and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses. Components of medication administration include, but are not limited to:
    1. Preparing and giving medications in the prescribed dosage, route, and frequency;
    2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
    3. Intervening when emergency care is required as a result of drug therapy;
    4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
    5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
    6. Instructing an individual regarding medications.

(d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care.

(e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses.

(7) "Advanced registered nurse practitioner" shall mean one who is registered and designated to engage in advanced registered nursing practice including, but not limited to, the nurse anesthetist, nurse midwife, and nurse practitioner pursuant to KRS 314.042.

(8) "Advanced registered nursing practice" shall mean the performance of additional acts by registered nurses who have gained added knowledge and skills through an organized postbasic program of study and clinical experience and who are certified by the American Nurses' Association or other nationally established organizations or agencies recognized by the board to certify registered nurses for advanced nursing practice. ***The additional acts may, subject to board approval and subject to the provision of Section 95 of this Act, include prescribing treatments, drugs, devices, and ordering diagnostic tests; however, advanced registered nurse practitioners granted Board of Nursing approval shall be authorized to issue prescriptions for legend drugs as defined in KRS 217.905, from a limited drug formulary approved by the Kentucky Health Policy Board. The formulary shall be revised annually by the board and shall permit advanced registered nurse practitioners to prescribe any controlled substances as defined in KRS Chapter 218A and under the conditions as set forth under Section 96 of this Act.*** The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by regulation.

(9) "Licensed practical nurse" shall mean one who is licensed under the provisions of this chapter to engage in licensed practical nursing practice.

(10) "Licensed practical nursing practice" shall mean the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:

(a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist.

(b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board.

(c) The administration of medication or treatment as authorized by a physician***,*** ~~[or]~~ dentist***, or an advanced registered nurse practitioner*** and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally accepted organizations of licensed practical nurses.

(d) Teaching, supervising, and delegating except as limited by the board.

(e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally accepted organizations of licensed practical nurses.

(11) "School of nursing" shall mean a nursing education program preparing persons for licensure as a registered nurse or a practical nurse.

(12) "Continuing education" shall mean offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge.

(13) "Nursing assistance" shall mean the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse.

(14) "Limited license" shall mean a license to practice nursing in a restricted capacity. The restriction may be applied to:

(a) A person with a disability who can practice nursing within the limits defined by regulation by the board; or

(b) A licensee who has been subjected to disciplinary action by the board.

Section 95. KRS 314.042 is amended to read as follows:

(1) An applicant for registration and designation to practice as an advanced registered nurse practitioner shall file with the board a written application for registration and designation and submit evidence, verified by oath, that the applicant is in good physical and mental health; has completed an organized postbasic program of study and clinical experience acceptable to the board; has fulfilled the requirements of KRS 214.615(1); is certified by a nationally established organization or agency recognized by the board to certify registered nurses for advanced nursing practice; and is able to understandably speak and write the English language and to read the English language with comprehension.

(2) The board may issue a registration to practice advanced registered nursing to an applicant who holds a current active registered nurse license issued by the board and meets the qualifications of subsection (1) of this section. An advanced registered nurse practitioner shall be designated by the board as a nurse anesthetist, nurse midwife, nurse practitioner, or such other designation as determined by the board.

(3) The applicant for registration and designation or renewal thereof to practice as an advanced registered nurse practitioner shall pay a fee to the board as set forth in regulation by the board.

(4) An advanced registered nurse practitioner shall maintain a current active registered nurse license issued by the board and maintain current certification by the appropriate national organization or agency recognized by the board.

(5) Any person who holds a registration and designation to practice as an advanced registered nurse practitioner in this state shall have the right to use the title "advanced registered nurse practitioner" and the abbreviation "ARNP." No other person shall assume such title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is an advanced registered nurse practitioner. No person shall practice as an advanced registered nurse practitioner unless registered under this section.

(6) Any person heretofore registered as an advanced registered nurse practitioner under the provisions of this chapter who has allowed the registration to lapse may be reinstated on payment of current fee and by meeting the provisions of this chapter and regulations promulgated by the board.

(7) In addition to the continuing education requirements of KRS 314.073, any person registered as an advanced registered nurse practitioner shall complete at least five (5) contact hours in pharmacology during each licensure period.

(8) (a) An advanced registered nurse practitioner who wishes to prescribe a controlled substance and is approved by the board shall make application to the United States Drug Enforcement Administration (DEA) and obtain a DEA license number prior to exercising controlled substance prescribing authority. The DEA number shall be furnished to the board.

(b) An approved and DEA licensed advanced registered nurse practitioner may prescribe a Schedule II or III controlled substance in quantity sufficient to provide treatment for up to forty-eight (48) hours. No refills shall be allowed.

(c) An approved and DEA licensed advanced registered nurse practitioner may prescribe a Schedule IV or V controlled substance in sufficient quantity to provide treatment for up to thirty (30) days. No refills shall be allowed.

SECTION 96. A NEW SECTION OF KRS CHAPTER 314 IS CREATED TO READ AS FOLLOWS:

An advanced registered nurse practitioner shall be considered as a "practitioner" for the purposes of KRS Chapters 217 and 218A and shall have the authority granted to a practitioner pursuant to those chapters.

PART XIV

TAX INCENTIVES

Section 97. KRS 141.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Secretary" means the secretary of revenue;

(2) "Cabinet" means the Revenue Cabinet;

(3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 1991, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 1991, that would otherwise terminate, and as modified by KRS 141.0101;

(4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;

(5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;

(6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;

(7) "Individual" means a natural person;

(8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable income as defined in Section 63 of the Internal Revenue Code, and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;

(9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;

(10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;

(b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;

(e) Exclude Social Security and railroad retirement benefits subject to federal income tax;

(f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;

(g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990; [~~and~~]

(h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the armed forces of the United States or any dependent of such person who served in Vietnam; ***and***

(i) Exclude any amount paid during the taxable year to any of the following for insurance which constitutes medical care for the taxpayer or for the taxpayer's spouse or dependents:

1. A licensed provider of health insurance;

2. A health maintenance organization;

3. A self-insured plan;

4. A multiple employer welfare arrangement; or

5. A hospital, medical-surgical or health services corporation.

This exclusion shall be permitted only to the extent that the payments have not already been excluded from gross income, and only to the extent that the total amount excluded as payments made for insurance that constitutes medical care does not exceed the cost of a standard plan, defined by the Kentucky Health Policy Board under Section 77 of this Act. Any amount excluded pursuant to this paragraph shall not be allowable deduction in computing net income under subsection (11) of this section;

(11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202 and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;

(b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);

(c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and

(d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;

(b) Exclude all dividend income received after December 31, 1969;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;

(e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;

(f) Include the amount calculated under KRS 141.205;

(g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income; and

(h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

(13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202 and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:

(a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;

(b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;

(c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;

(d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;

(e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and

(f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;

(b) "Taxable net income," in the case of corporations having property or payroll both within and without this state means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;

(c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction; and

(d) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year;

(15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;

(16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;

(17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;

(18) "Nonresident" means any individual not a resident of this state;

(19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;

(20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;

(21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;

(22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;

(23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;

(24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;

(25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

Section 98. KRS 141.081 is amended to read as follows:

(1) ***Except as provided in subsections (3) and (4) of this section,*** an individual, at his election, may deduct from his adjusted gross income a standard deduction of six hundred and fifty dollars ($650).

(2) The standard deduction provided for in this section shall be in lieu of all deductions and shall not be allowed in the case of a taxable year of less than twelve (12) months on account of a change in the accounting period or in the case of a fiduciary.

(3) In the case of a husband and wife living together, the standard deduction provided for in this section shall not be allowed to either if the net income of one (1) of the spouses is determined without regard to the standard deduction ***or not allowed pursuant to subsection (4) of this subsection***. The determination of marital status shall be made in the manner prescribed in Section 153 of the Internal Revenue Code.

(4) An individual, or a husband and wife living together, shall not be allowed to deduct from adjusted gross income the standard deduction provided by this section if the taxpayer, the taxpayer's spouse, and dependents did not have health insurance coverage for the entire taxable year. Proof of health insurance coverage for the taxable year shall be determined in a manner as may be prescribed by the cabinet.

Section 99. The provisions of Sections 97 and 98 of this Act shall apply for tax years beginning on or after January 1, 1994.

PART XV

MEDICAL ASSISTANCE

SECTION 100. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall establish a system within the Medical Assistance Program to reduce unnecessary hospital emergency room utilization and costs by redefining and controlling hospital emergency utilization. The cabinet shall establish by promulgation of administrative regulations, pursuant to KRS Chapter 13A, the following:

(1) Criteria and procedures for determining if a medical emergency exists;

(2) Reimbursement rates that provide for nominal reimbursement of emergency room care for care that does not meet the criteria established for a medical emergency; and

(3) Prohibition of reimbursement at hospital emergency room rates for diagnosis and treatment for a condition that does not meet the criteria established for a medical emergency.

SECTION 101. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall undertake a study to determine whether the use of copayments by medical assistance recipients as allowed by federal law would accomplish the following:

(1) Discourage emergency room utilization for nonemergency care; or

(2) Discourage the appropriate use of preventive health and health services.

SECTION 102. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall review the Medical Assistance Program reimbursement rates for emergency transportation providers to determine if existing rates are fair and reasonable. Notwithstanding this review, the cabinet shall by promulgation of administrative regulation, pursuant to KRS Chapter 13A do the following:

(1) Prescribe reimbursement rates for emergency transportation providers to ensure that emergency rates are paid only for transporting medical assistance recipients to the emergency room of a hospital in emergency situations;

(2) Establish, in nonemergency cases, lower medical assistance reimbursement rates for emergency transportation providers for the transportation of stretcher patients from nursing homes to physician offices or hospitals; and

(3) Establish a verification system that requires medical providers to confirm that medical assistance recipients have appointments for medical services and that medical services were obtained prior to payment by the cabinet to the emergency transportation provider.

SECTION 103. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall review the procedures for medical assistance reimbursement of pharmacists to reduce fraud and abuse. The cabinet shall by promulgation of administrative regulation, pursuant to KRS Chapter 13A, establish the following:

(1) Point-of-sale computer technology, with integration of data at the physician's office and the pharmacy, that will

permit prospective drug utilization review;

(2) Usage parameters by drug class to enable medical necessity and appropriateness reviews to be conducted prior to payment;

(3) A dialog among the Department for Medicaid Services, the Kentucky Medical Board of Licensure, and the Kentucky Board of Pharmacy, to develop recommendations for legislation for the 1996 Regular Session of the General Assembly that will strengthen the generic substitution laws for prescription medication;

(4) A dispensing fee for each prescription in accordance with the findings of the report submitted by the cabinet pursuant to KRS 205.561.

SECTION 104. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall review the available technology associated with the medical assistance system to determine which technology is best suited to enhance program service operation, monitoring ability, and fraud and abuse detection. This shall include the ability to provide on-line access to data files to allow cross-analysis of provider and recipient utilization patterns. The cabinet shall by promulgation of administrative regulations, pursuant to KRS Chapter 13A, establish an integrated system to enhance program integrity, using a combination of staff, computer technology, and contractual services to identify potential fraud, abuse, and misutilization of services. This system shall:

(1) Utilize statisticians, program specialists, accountants, nurses, and other medical specialists to review the Medical Assistance Program to identify patterns of provider and recipient behavior that contributes to unnecessary or abusive use of program services;

(2) Utilize computer capability through contractual services or the purchase of computer software to detect the unbundling of claims and other techniques used by providers to enhance reimbursement;

(3) Impose utilization controls on the expenditures in respiratory, physical, speech, and occupational therapy and durable medical equipment provided to nursing home residents, through the use of established medical criteria or preauthorization of ancillary therapies;

(4) Establish state audit and edit requirements that exceed the federal audit and edit requirements;

(5) Obtain access to necessary data from the fiscal agent of each medical provider;

(6) Review the efficiency and effectiveness of the fraud and abuse detection and investigation process to determine whether changes shall be made;

(7) Direct that fraud and abuse detection and investigation components shall be active in initiating investigations. The fraud and abuse detection, investigation and prosecution functions shall be integrated, with access to information in files maintained by the Department for Social Insurance and the Department for Medicaid Services;

(8) Review penalties for deterrent value for medical providers that are found to have abused Medicaid regulations and statutes; and

(9) Provide for a proactive effort to reduce costs for institutionalized program participants. Program officials shall seek to implement innovative or experimental demonstration programs that aim to control costs.

SECTION 105. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall seek to strengthen the managed care component of the KenPac Program. The cabinet shall by promulgation of administrative regulation, pursuant to KRS Chapter 13A, establish the following:

(1) Inclusion of noninstitutionalized blind, aged, and disabled recipients in an effort to reduce inappropriate usage;

(2) Financial incentives for KenPac physicians who effectively manage the care of their patients. These incentives may include an increase in the case management fee for demonstrated effective case management, or through other arrangements that encourage the effective and efficient management of patients. Clear and concise administrative regulations promulgated under KRS Chapter 13A shall be established by the cabinet to determine physician qualification for the incentives;

(3) An oversight and education program in the KenPac system to assist with patient education regarding the appropriate and effective use of the system, and to assist providers with more efficient management of patients;

(4) Criteria to avoid duplication of the provision of early and periodic screening, diagnosis and treatment type services to children in the KenPac Program;

(5) A review of the feasibility of a demonstration project to allow health maintenance organizations to bid on the provision of services to KenPac participants;

(6) Extension of KenPac to all counties within the state. The cabinet shall determine the feasibility of working with state-supported medical schools to obtain physicians in the counties where KenPac does not operate; and

(7) More stringent reporting and verification requirements in contracts with KenPac physicians regarding verification of services provided to KenPac patients.

SECTION 106. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall seek to prohibit the sheltering of assets in medical assistance long-term care cases by promulgation of administrative regulations, pursuant to KRS Chapter 13A, that establish the following:

(1) Consideration of assets placed in Medicaid qualifying trusts as a prohibited transfer of resources, to the extent prohibited by federal law;

(2) Revision of Medicaid policy to provide that assets funding the purchase of an annuity shall be treated as a transfer of resources;

(3) Revision of Medicaid policy to treat income producing property as an available resource;

(4) Review of Medicaid eligibility procedures and operation to improve eligibility verification and detection of fraud and abuse; and

(5) Review of the feasibility of instituting a photographic identification card, possibly in conjunction with other entitlement programs, to reduce fraud and abuse through misuse of medical cards.

SECTION 107. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall by promulgation of administrative regulations enhance third-party resource collection capacity in Medicaid cases through utilization of in-house personnel and selective contracting for high-volume or high-technological services.

SECTION 108. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall review all medical assistance reimbursement systems for appropriateness and cost effectiveness. The review shall include:

(1) Review of cost-based reimbursement policies for hospitals and nursing homes to determine the effectiveness and appropriateness of alternate systems. Consideration shall be given to the use of modified diagnostic related groups and resource utilization groups systems, and using capitated payment methods; and

(2) Review of reimbursement rates for physicians to determine whether savings or cost containment would be better achieved through using a relative based resource value scale system, a capitated payment method, or other alternative methods of reimbursement.

SECTION 109. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall promulgate administrative regulations that establish a system providing for the reporting to the General Assembly, on a quarterly basis, as to the progress in implementing the provisions of Sections 100 to 111 of this Act, the findings of any reports or studies authorized by Sections 100 to 111 of this Act, and recommendations regarding the reports or studies.

SECTION 110. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall promote access to preventive health services by low-income Kentuckians through local health departments by recognizing qualified local and district health departments as primary care centers for purposes of Medicaid reimbursement.

SECTION 111. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Department for Medicaid Services shall develop and implement, effective July 1, 1995, a system for monitoring the use of medical assistance program covered services by medical assistance recipients using smart card technology. As used in this section, "smart card" means an identification card issued to each medical assistance recipient containing a photograph of the recipient and an electronic device which enables computer tracking of:

(1) All drugs and durable medical equipment prescribed for and dispensed to the recipient;

(2) All medical assistance covered physician office visits made by the recipient; and

(3) Any other medical assistance program covered service provided to the medical assistance recipient as defined by administrative regulation promulgated pursuant to KRS Chapter 13A and under this chapter.

SECTION 112. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall request any waivers of federal law that are necessary to implement the provisions of Sections 100 to 111 of this Act.

PART XVI

CONFORMING AMENDMENTS

Section 113. KRS 205.640 is amended to read as follows:

(1) The commissioner of medicaid services shall adopt a disproportionate share program consistent with the requirements of Title XIX of the Social Security Act which shall include to the extent possible, but not limited to, the provisions of this section.

(2) The "Medical Assistance Revolving Trust Fund (MART)" shall be established in the State Treasury and all provider tax

revenues collected pursuant to KRS 142.201 to 142.259 shall be deposited in the State Treasury to the credit of the fund. All investment earnings of the fund shall be credited to the fund. It is the intent of the General Assembly that provider tax revenues collected in accordance with KRS 142.201 to 142.259 shall be used to fund the ***provisions of Sections 5 to 10 of this Act*** [~~Health Care Data Commission created in KRS 216.273~~] and to supplement the medical assistance-related general fund appropriations for fiscal year 1994 and subsequent fiscal years, and that all funds credited to the MART fund will be matched with federal medicaid funds to the greatest extent possible.

(3) The "Medical Assistance Indigent Trust Fund (MAIT)" shall be established in the State Treasury for the purpose of receiving any funds transferred from the MART fund or from federal funds for the operation of the disproportionate share program established by the commissioner of medicaid services in accordance with the provisions of subsection (1) of this section. All investment earnings of the fund shall be credited to the fund. It is the intent of the General Assembly that all funds transferred to the MAIT fund will be matched with federal medicaid funds. The MAIT fund shall be exempt from any state budget reduction acts.

(4) An amount, including provider tax revenues and federal matching funds, to the extent possible, shall be transferred from the MART fund or from federal funds to the MAIT fund for the purpose of funding the disproportionate share program established by the commissioner of medicaid services.

(5) The commissioner of the Department for Medicaid Services shall implement a disproportionate share program which will take into consideration the amount of service provided by hospitals for medicaid recipients beyond the covered days and individuals and families with incomes up to one hundred percent (100%) of the federal poverty level, as determined by the hospital pursuant to guidelines established by the Cabinet for Human Resources; the percentage of total services rendered by the hospital that consists of services provided to medicaid recipients and persons receiving SSI benefits; and hospitals serving a federally designated medically underserved area, a federally designated health manpower shortage area, or a primary care physician shortage area designated under the rural Kentucky medical scholarship fund. Provided that no individual hospital shall receive distributions from the MAIT fund that exceed indigent care provided by the hospital and documented to the Department for Medicaid Services, based upon compensation for the services at the facility's medicaid rate. Hospitals receiving reimbursement from the MAIT fund shall not bill for services provided to patients not eligible for medical assistance with family incomes up to one hundred percent (100%) of the federal poverty level.

(6) The secretary of the Cabinet for Human Resources shall promulgate administrative regulations necessary***, pursuant to KRS Chapter 13A,*** for the administration and implementation of this section.

(7) All hospitals receiving reimbursement from the MAIT fund shall:

(a) Display prominently a sign which reads as follows: "This hospital will accept patients regardless of race, creed, ethnic background, or ability to pay.";

(b) Accept benefits of state health insurance coverage described in KRS 18A.229 and 18A.2281;

(c) Provide to medicaid recipients any additional days of coverage per hospital stay, based on medical necessity determined in the usual manner, without responsibility for payment for such days of care accruing to the patient or the medicaid program; and

(d) Collect and report to the department data on the number of indigent patient days provided pursuant to this section, including additional days of coverage for medicaid recipients. ***The cabinet shall annually, no later than July 1, compile a report for the Governor and the Legislative Research Commission on the implementation of this section.***

Section 114. KRS 214.450 is amended to read as follows:

As used in KRS 214.452 to 214.466, unless the context otherwise requires:

(1) "Blood" means any blood, blood product, blood component, or blood derivative including plasma.

(2) "Blood establishment" means a place of business under one (1) management at one (1) general physical location which engages in the collection, preparation, processing, labeling, packaging, and dispensing of blood or blood products to any health care facility, health service, or health care provider.

(3) "Communicable disease" means only a communicable disease which may be transmitted by blood and as set forth in any administrative regulation issued under KRS 214.460 and pursuant to KRS Chapter 13A.

(4) "Health facility" means any health facility set forth under KRS 216B.015***(10)***[~~(11)~~] which provides for the transfusion of blood into a living human body.

(5) "Health care provider" means any licensed dentist, physician, osteopath, registered nurse, practical nurse, certified paramedic, certified emergency medical technician, or physician assistant.

(6) "Health service" means any health service as set forth under KRS 216B.015***(11)***[~~(12)~~] and which provides for the transfusion of blood into a living human body.

(7) "Sexually transmitted disease" means only a blood borne sexually transmitted disease as provided under KRS 214.410(2) and as set forth in any administrative regulation issued under KRS 214.460 and pursuant to KRS Chapter 13A.

(8) "Donor" means either a paid or volunteer donor of blood.

Section 115. KRS 194.030 is amended to read as follows:

The Cabinet for Human Resources shall consist of the following major organizational units which are hereby created:

(1) Office of the Secretary;

(2) The Office for Policy and Budget. The Office for Policy and Budget shall provide the secretary with professional support in planning, budgeting, and policy analysis, including the appraisal of needs, the formulation of policy, and the evaluation of programs. The Office for Policy and Budget shall be headed by an administrator who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;

(3) The Office of the Counsel. The Office of the Counsel shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of the Counsel shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of the Counsel shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be directly responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general in accordance with the provisions of KRS 15.105;

(4) The Office of the Ombudsman. The Office of the Ombudsman shall provide a review of citizen complaints on services of the Cabinet for Human Resources when such complaints cannot be resolved through normal administrative remedies. The Office of the Ombudsman shall be headed by an ombudsman who shall be appointed by the Governor with the advice of the secretary. The ombudsman shall be directly responsible to the secretary;

(5) The Office of Administrative Services. The Office of Administrative Services shall be responsible for providing administrative support services within the Cabinet for Human Resources. All fiscal, facility, and information management functions of the cabinet shall be vested in the Office of Administrative Services. The Office of Administrative Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The executive director shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director shall exercise authority over the office of administrative services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(6) The Department for Social Insurance. The Department for Social Insurance shall develop and operate programs of the cabinet that provide income maintenance or income supplementation services and social insurance benefit programs not assigned to another department. The Department for Social Insurance shall also be responsible for all eligibility determination and certification functions associated with these programs. The Department for Social Insurance shall be headed by a commissioner for social insurance who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for social insurance shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for social insurance shall exercise authority over the Department for Social Insurance under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(7) The Department for Medicaid Services. The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the federal Social Security Act. The Department for Medicaid Services shall be headed by a commissioner for medicaid services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for medicaid services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for medicaid services shall exercise authority over the Department for Medicaid Services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(8) The Department for Health Services. The Department for Health Services shall develop and operate all programs of the cabinet that provide health services and all programs for the prevention, detection, care, and treatment of physical disability, illness, and disease. The Department for Health Services shall be headed by a commissioner for health services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for health services shall be a duly licensed physician who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner shall advise the head of each major organizational unit enumerated in this section on policies, plans, and programs relating to all matters of public health, including any actions necessary to safeguard the health of the citizens of the Commonwealth. The commissioner shall serve as chief medical officer of the Commonwealth. The commissioner for health services shall exercise authority over the Department for Health Services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(9) The Department for Mental Health and Mental Retardation Services. The Department for Mental Health and Mental Retardation Services shall provide services for all programs for the prevention, detection, and treatment of mental disability, illness, and disease and administer all programs for the assistance of community treatment and prevention of such disability, illness, and disease. The Department for Mental Health and Mental Retardation Services shall be headed

by a commissioner for mental health and mental retardation who shall be appointed by the secretary for human resources with the approval of the Governor in accordance with KRS 12.050. The commissioner for mental health and mental retardation shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for mental health and mental retardation shall exercise authority over the department under the direction of the secretary for human resources and shall only fulfill such responsibilities as delegated by the secretary;

(10) The Department for Social Services. The Department for Social Services shall develop and operate all social service programs of the cabinet. The Department for Social Services shall be headed by a commissioner for social services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for social services shall be a person who by education, professional qualification, training, and experience in the administration and management of social service programs is qualified to perform the duties of this office. The commissioner for social services shall exercise authority over the Department for Social Services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(11) The Department for Employment Services. The Department for Employment Services shall develop and operate all employment development and placement programs including all job recruitment and business liaison functions, employability development and training programs, and all job counseling and job placement programs of the cabinet. In addition, the department shall develop and operate all programs relating to unemployment insurance laws of the Commonwealth including responsibilities relating to hearing and judging unemployment insurance benefit appeals. The Department for Employment Services shall be headed by a commissioner for employment services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for employment services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for employment services shall exercise authority over the Department for Employment Services under the direction of the secretary and shall fulfill only such responsibilities as delegated by the secretary;

(12) The Office of the Inspector General. The Office of the Inspector General shall be responsible for:

(a) The conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and the conduct of special investigations requested by the secretary, commissioners, or office heads of the Cabinet for Human Resources into matters related to the cabinet or its programs;

(b) Licensing and regulatory functions as the secretary may delegate;

(c) Review of health facilities participating in transplant programs, as determined by the secretary, for the purpose of determining any violations of KRS 311.165 to 311.247; and

(d) The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority.

The Office of the Inspector General shall be headed by an inspector general who shall be appointed by the secretary with the approval of the Governor. The inspector general shall be directly responsible to the secretary;

(13) The Commission for Handicapped Children. The duties, responsibilities and authority set out in KRS 200.460 to 200.490 shall be performed by the commission. The commission shall advocate the rights of handicapped children, and to the extent that funds are available, shall provide such services and facilities for handicapped children as are deemed appropriate by the commission. The commission shall be composed of seven (7) members appointed by the Governor to serve a term of office of four (4) years. The commission may promulgate such administrative regulations pursuant to KRS Chapter 13A as may be necessary to implement and administer its responsibilities. The duties, responsibilities, and authority of the commission for handicapped children shall be performed through the Office of the Executive Director of the Commission. The executive director shall be appointed by the Governor pursuant to KRS 12.040, and the commission may at any time recommend the removal of the executive director upon filing with the Governor a full written statement of its reasons for such removal. The executive director shall report directly to the Commission for Handicapped Children and serve as the commission's secretary; and

(14) The ***Kentucky Health Policy Board*** ~~[Commission for Health Economics Control in Kentucky]~~. The duties, responsibilities and authority pertaining to the certificate of need functions and the licensure appeal functions, as set out in KRS 216B.010 to 216B.990, shall be performed by the commission. The commission may promulgate administrative regulations pursuant to KRS Chapter 13A necessary to implement and administer its responsibilities.

Section 116. KRS 194.120 is amended to read as follows:

The ***Kentucky Health Policy Board*** ~~[Commission for Health Economics Control in Kentucky]~~ and the Commission for Handicapped Children shall be the only statutory bodies attached to the cabinet that shall have the authority to issue administrative regulations. No other corporate body or instrumentality of the Commonwealth, advisory committee, interstate compact, or other statutory body, presently or hereinafter attached to the cabinet, shall issue administrative regulations, but shall operate only in an advisory capacity.

Section 117. KRS 216.510 is amended to read as follows:

As used in KRS 216.515 to 216.530:

(1) "Long-term care facilities" means those health care facilities in the Commonwealth which are defined by the ***Kentucky Health Policy Board*** [~~Commission for Health Economics Control in Kentucky~~] to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing facilities as defined in Public Law 100-203, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.

(2) "Resident" means any person who is admitted to a long-term care facility as defined in KRS 216.515 to 216.530 for the purpose of receiving personal care and assistance.

(3) "Cabinet" means the Cabinet for Human Resources.

Section 118. KRS 216.535 is amended to read as follows:

As used in KRS 216.537 to 216.590:

(1) "Long-term care facilities" means those health care facilities in the Commonwealth which are defined by the ***Kentucky Health Policy Board*** [~~Commission for Health Economics Control in Kentucky~~] to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing facilities as defined in Public Law 100-203, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.

(2) "Cabinet" means the Cabinet for Human Resources.

(3) "Resident" means any person admitted to a long-term care facility as defined by this section.

(4) "Licensee" in the case of a licensee who is an individual means the individual, and in the case of a licensee who is a corporation, partnership, or association means the corporation, partnership, or association.

(5) "Secretary" means the secretary of the Cabinet for Human Resources.

(6) "Long-term care ombudsman" means the person responsible for the operation of a long-term care ombudsman program which investigates and resolves complaints made by or on behalf of residents of long-term care facilities.

(7) "Willful interference" means an intentional, knowing, or purposeful act or omission which hinders or impedes the lawful performance of the duties and responsibilities of the ombudsman as set forth in this chapter.

Section 119. KRS 216.885 is amended to read as follows:

(1) It is unlawful to operate or maintain a PPEC center without first obtaining a certificate of need from the ***Kentucky Health Policy Board*** [~~Commission for Health Economics Control in Kentucky~~] and a license for the PPEC center from the cabinet. The cabinet is responsible for licensing PPEC centers in accordance with the provisions of KRS Chapter 216B.

(2) Separate licenses are required for PPEC centers maintained on separate premises, even though they are operated under the same management. Separate licenses are not required for separate buildings on the same grounds.

(3) The Cabinet for Human Resources may deny, revoke, modify or suspend a license in accordance with KRS 216B.105.

PART XVII

MISCELLANEOUS PROVISIONS

SECTION 120. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) The Secretary of the Finance and Administration Cabinet, after consultation with the Secretary for the Cabinet for Human Resources, shall on a quarterly basis, certify to the Interim Committee on Appropriations and Revenue the general fund savings realized from the procedures required by Sections 100 to 111 of this Act and any other procedures adopted by the Cabinet for Human Resources or the Kentucky Health Policy Board to control the cost of health care.

(2) The certification shall indicate the following:

- ***(a) The means by which savings were achieved, including a description of the discrete procedure used to achieve the savings; and***
- ***(b) The amount saved as a result of the specific procedure, including an explanation as to the calculations and assumptions used in determining the amount.***

(3) The amount certified by the secretary under this section shall be transferred to a trust account to be utilized by the secretary of the Cabinet for Human Resources to provide health care coverage for additional categories of citizens, but the funds in the trust account shall not be spent until appropriated by the General Assembly. The funds in the trust account shall not lapse. The secretary shall give priority in utilizing any appropriated trust account funds to matching available federal funds in the Medicaid program.

(4) Savings in the general fund appropriation for the Medicaid program shall be determined as follows:

- ***(a) To the extent that the average cost per month per eligible actually experienced by the Medicaid program is less than the average cost per month per eligible reflected in the enacted budget, the savings attributable to that difference shall be deemed to be eligible for certification under this section.***
- ***(b) To the extent that the number of eligibles actually participating in the Medicaid program is less than the number reflected in the enacted budget, the savings attributable to that difference shall be deemed not***

eligible for certification under this section.

(5) Savings in the general fund appropriation to the Department of Mental Health shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.

(6) Savings in the general fund appropriation to the Department of Health Services shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.

(7) Savings in the general fund appropriation to the Department of Social Services shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.

(8) Only those savings that can be certified as being recurring shall be transferred to the trust fund.

PART XVIII

REPEALERS

Section 121. The following KRS sections are repealed:

216.270 Definitions for KRS 216.273 to 216.287.

216.273 Kentucky Health Care Data Commission -- Membership -- Terms -- Executive director and staff -- Liability of members.

216.275 Powers and duties of commission.

216.277 Limitation of powers of Cabinet for Human Resources with respect to commission.

216.280 Data required to be submitted to commission -- Promulgation of administrative regulations -- Other duties of commission.

216.283 Private data -- Treatment and use of personal and aggregate data -- Penalty.

216.285 Reports by commission.

216.287 Furnishing of data as condition of licensure of provider.

PART XIX

NONCODIFIED MATERIAL

Section 122. The Kentucky Health Policy Board shall be the successor to the Kentucky Health Data Commission, repealed under Section 121 of this Act, and all records, materials, and work of that Commission shall be transferred to the Kentucky Health Policy Board.

The Committee Substitute to **HB 250** is as follows:

HB 250, AN ACT relating to health care reform.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

PART I

KENTUCKY HEALTH POLICY BOARD

SECTION 1. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 15, 37, and 38 of this Act, unless the context requires otherwise:

(1) "Board" means the Kentucky Health Policy Board created pursuant to Section 2 of this Act.

(2) "Facility" means any hospital or other health care facility, whether operated for profit or not, required to be licensed pursuant to KRS Chapter 216B.

(3) "Health care provider" or "provider" means any facility and service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:

- ***(a) Physicians, osteopaths, and podiatrists licensed pursuant to KRS Chapter 311;***
- ***(b) Chiropractors licensed pursuant to KRS Chapter 312;***
- ***(c) Dentists licensed pursuant to KRS Chapter 313;***
- ***(d) Optometrists licensed pursuant to KRS Chapter 320;***
- ***(e) Physician assistants regulated pursuant to KRS Chapter 311;***
- ***(f) Nurse practitioners licensed pursuant to KRS Chapter 314;***
- ***(g) Psychologists licensed pursuant to KRS Chapter 319;***

(h) Licensed clinical social workers pursuant to KRS Chapter 335; and

(i) Other health care practitioners as determined by the board by administrative regulation promulgated pursuant to KRS Chapter 13A.

(4) "Hospital services" means:

(a) Inpatient hospital services as enumerated in medicare regulation 42 C.F.R. Sec. 409.10, as it may be amended from time to time;

(b) Emergency services;

(c) Outpatient services provided by the hospital;

(d) Physician and other services provided in a hospital on an inpatient or outpatient basis; and

(e) Inpatient and outpatient mental health and substance abuse services, including intensive outpatient and day treatment.

SECTION 2. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board is hereby created as an independent agency of state government. The goal of the board shall be to control health care costs, improve quality and efficiency, encourage competition, and develop a system of integrated health care delivery which makes necessary health services available to all residents of the Commonwealth. The board shall be attached for administrative purposes to the Cabinet for Human Resources.

(2) The board shall consist of five (5) members appointed by the Governor no later than August 1, 1994, and confirmed by the Kentucky Senate. The members shall be full-time state employees and a chairman shall be appointed by the Governor from among the membership. Three (3) members shall be persons who do not hold, and have not held, any full-time employment with a facility and who are not, and have not been licensed providers. Each of the remaining two (2) members shall either have at least five (5) years experience in the management or operation of a facility or have been a licensed provider for at least five (5) years. Each member shall have a demonstrated interest in the provision of efficient, economical, and quality health care. Compensation for members of the board shall be exempt from the provisions of KRS 64.640. The members shall comply with the provisions of KRS Chapter 11A and any code of ethics for executive branch employees. The Governor may at any time remove any member for cause after furnishing the member with a written copy of the charges against the member and affording the member a public hearing if requested. No member of the board shall accept employment or compensation from any facility or provider, or become a practicing provider within the Commonwealth of Kentucky for two (2) years, following the end of the member's term.

(3) The terms of members of the board shall be four (4) years except that the terms of initial members shall be staggered to end as follows:

(a) Two (2) on June 30, 1995;

(b) One (1) on June 30, 1997; and

(c) Two (2) on June 30, 1998.

(4) At the end of a term, a member shall continue to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed and qualifies. A member who serves (2) consecutive full four (4) year terms shall not be reappointed for four (4) years after completion of those terms.

(5) A majority of the full authorized membership of the board shall constitute a quorum.

(6) The board shall appoint an executive director, to be the chief administrative officer of the board. The executive director shall serve at the pleasure of the board. Under the direction of the board, the executive director shall perform any duty or function that the board requires.

(7) The executive director may employ staff necessary for the performance of the duties of the board. The board's staff shall not be subject to the classified service provided for by KRS 18A.005 to 18A.200.

(8) No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.

SECTION 3. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The board may:

(a) Annually set a target expenditure limit for total state health expenditures with a goal that the rate of increase decline by ten percent (10%) per year until the rate of increase in total state health expenditures is equal to the rate of increase in state personal income.

(b) Promulgate any administrative regulations pursuant to KRS Chapter 13A necessary to carry out its statutory responsibilities;

(c) Appoint temporary volunteer advisory committees, which may include individuals and representatives of

interested public or private entities or organizations to carry out its statutory responsibilities;

(d) Apply for and accept any funds, property, or services from any person or government agency to carry out its statutory responsibilities;

(e) By administrative regulation, promulgated pursuant to KRS Chapter 13A, comply with any federal requirement that may be imposed or opportunity that may be presented with regard to any matter under the jurisdiction of the board;

(f) Make agreements with a grantor of funds, or property, or services, including an agreement to make any study, plan, demonstration, or project to carry out its statutory responsibilities;

(g) Develop and implement pilot programs relating to health care costs, quality, or access as it deems appropriate;

(h) Publish and make available information that relates to the health care financing and delivery system that is in the public interest;

(i) Sue and be sued;

(j) Contract with a qualified, independent third party for any service necessary to carry out the powers and duties of the board, subject to the provisions of KRS Chapter 45A; however, unless permission is granted specifically by the board, a third party hired by the board shall not release, publish, or otherwise use any information to which the third party has access under its contract;

(k) Authorize purchasing cooperatives through which licensed providers may purchase medical supplies, medical equipment, services, or pharmaceuticals at discount prices for the purpose of lowering health care costs to patients.

(l) Financially audit the books and records of the Kentucky Health Purchasing Alliance created by Section 66 of this Act;

(m) Recommend the initiation of disciplinary proceedings for health care providers before the State Board of Medical Licensure created pursuant to KRS Chapter 311, the State Board of Podiatry created pursuant to KRS Chapter 311, the State Board of Chiropractic Examiners created pursuant to KRS Chapter 312, the Kentucky Board of Dentistry created pursuant to KRS Chapter 313, the Kentucky Board of Nursing created pursuant to KRS Chapter 314, the Kentucky Board of Pharmacy created pursuant to KRS Chapter 315, the Kentucky Board of Examiners of Psychology created pursuant to KRS Chapter 319, the Kentucky Occupational Therapy Board created pursuant to KRS Chapter 319A, the Kentucky Board of Optometric Examiners created pursuant to KRS Chapter 320, the State Board of Physical Therapy created pursuant to KRS Chapter 327, the State Board of Examiners of Social Work of Kentucky created pursuant to KRS Chapter 335, and the Kentucky Licensure Board for Specialists in Hearing Aid Instruments created pursuant to KRS Chapter 334, for any violations of any provisions of KRS Chapter 164, 205, 216, 216B, 304, or 314; and

(n) Conduct pilot projects providing for the use of a health care voucher system or medical savings plans, or both.

(2) The board shall:

(a) Analyze specific health service costs and benefits, and define and develop a priority listing of minimum health benefits on the basis of the relationships between costs, benefits, and improved quality of life for citizens of the Commonwealth of Kentucky. The board shall use the minimum list of health care benefits to recommend to the 1996 Regular Session of the General Assembly a plan for the implementation and funding of a universal access plan for all Kentuckians;

(b) Periodically participate in or conduct analyses and studies that relate to:

1. Health care costs;

2. Health care quality or outcome;

3. Health providers and health services; or

4. Epidemiologic studies;

(c) Prescribe one (1) standardized uniform health claim form and one (1) medical necessity form which shall be used when processing any health insurance claim and workers' compensation health claim made in this state.

1. The board shall promulgate an administrative regulation, pursuant to KRS Chapter 13A, to carry out the provisions of this paragraph.

2. Any person who violates this paragraph by failing to use or accept the standardized uniform health claim form or medical necessity form shall be subject to forfeiture of its license to do business in this Commonwealth and a civil fine not to exceed five hundred dollars ($500) for the first violation and *one thousand dollars ($1,000) for subsequent violations;*

(d) Collect, analyze, and disseminate county specific data from health care providers on maximum fees charged for health care procedures as described under Sections 11 to 15 of this Act;

(e) Develop, update, and recommend implementation of parameters for clinical practice for use by health care providers as described under Section 16 of this Act;

(f) Compile and publish a list from information supplied by each health care provider of equipment, health facilities, and health services in which the provider has five percent (5%) or more ownership or financial interest as described under Section 37 of this Act;

(g) Authorize pilot projects for twenty-four (24) hour health coverage as set forth under Section 38 of this Act;

(h) Approve or disapprove certificate-of-need applications under KRS Chapter 216B;

(i) Establish a mechanism for biennial review of projects for compliance with the terms of the granted certificate of need as set forth under Section 45 of this Act;

(j) Certify and may decertify the Kentucky Health Purchasing Alliance for the Commonwealth pursuant to Section 69 of this Act;

(k) Annually review the performance of the Kentucky Health Purchasing Alliance;

(l) Supervise the Kentucky Health Purchasing Alliance to protect against violation of antitrust laws as provided under Section 70 of this Act

(m) Define standard benefit plans, as provided under Section 67 of this Act, on which requests for proposals are submitted to the Kentucky Health Purchasing Alliance by the accountable health plans;

(n) Inform Kentucky residents of the existence and provisions of the five (5) standard benefits plans available, as provided under Section 78 of this Act;

(o) Develop and approve a risk assessment and adjustment methodology for use by the Kentucky Health Purchasing Alliance under Section 67 of this Act;

(p) Approve supplemental benefit plans as provided under Section 67 of this Act;

(q) Develop an underserved area physician respite program as provided under Section 92 of this Act;

(r) Within ninety (90) days after the end of each facility's fiscal year or more often as the board determines, prepare from the information filed with the board any summary, compilation, or other supplementary report required by the board;

(s) Set deadlines for the filing of statutorily required reports and make each required report filed and each summary, compilation, or supplementary report, except for privileged medical information, available for public inspection at the office of the board during regular business hours and each summary and compilation available to any agency or person on request and upon payment to the board of a reasonable fee for distribution of an electronic or printed copy of the information;

(t) Promulgate administrative regulations pursuant to KRS Chapter 13A that relate to meetings, minutes which shall be kept of each meeting, and transactions of the board;

(u) Prepare annually a budget proposal that includes the estimated income of the board and proposed expenses for its administration and operation;

(v) On or before October 1 of each year, submit to the Governor, Legislative Research Commission, and Interim Joint Committees on Appropriations and Revenue and Health and Welfare an annual report on the operations and activities of the board during the preceding fiscal year, including:

1. A copy of each summary, compilation, and supplementary report deemed relevant by the board; and

2. Any other fact, suggestion, or policy recommendation that the board considers necessary; and

(w) Develop rate-setting systems pursuant to Sections 126 to 133 of this Act.

(3) The board may promulgate administrative regulations that impose civil fines not to exceed one thousand dollars ($1,000) for each violation for failure to file a report as required. The amount of any fine imposed shall not be included in the costs of a facility in regulating its rates.

SECTION 4. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The power of the secretary for human resources over plans, proposals, and projects of units in the cabinet does not include the power to disapprove or modify any decision or determination that the board makes under powers specifically delegated by law to the board.

(2) The power of the secretary for human resources to transfer by administrative regulation, administrative order, or written directive, any staff, functions, or funds of units in the cabinet does not apply to any staff, function, or funds of the board.

PART II

HEALTH DATA COLLECTION

SECTION 5. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

As used in Sections 5 to 15 of this Act, unless the context requires otherwise:

(1) "Ambulatory facility" means a facility, including an ambulatory surgical facility, ambulatory care clinic, alternative birth center, mobile health service, or a specialized medical technology service, which is not part of a hospital, and which is licensed pursuant to KRS Chapter 216B, and which provides one (1) or more major ambulatory procedures to patients not requiring hospitalization.

(2) "Charge" means all amounts billed by a hospital or ambulatory facility, including charges for all ancillary and support services or procedures, prior to any adjustment for bad debts, charity contractual allowances, administrative or courtesy discounts, or similar deductions from revenue. However, if necessary to achieve comparability of information between providers, charges for the professional services of hospital-based or ambulatory facility-based physicians shall be excluded from the calculation of charge.

(3) "Hospital" means a facility licensed pursuant to KRS Chapter 216B as either an acute care hospital, psychiatric hospital, rehabilitation hospital, or chemical dependency treatment facility.

(4) "Procedures" means those surgical, medical, radiological, diagnostic, or therapeutic, procedures performed by a provider, as periodically determined by the Kentucky Health Policy Board in administrative regulations promulgated pursuant to KRS Chapter 13A as those for which reports to the Kentucky Health Policy Board shall be required. "Procedures" also includes procedures that are provided in hospitals or other licensed ambulatory facilities, or those which require the use of special equipment, including fluoroscopic equipment, computer tomographic scanners, magnetic resonance imagers, mammography, ultrasound equipment, or any other new technology as periodically determined by the Kentucky Health Policy Board.

(5) "Quality" means the extent to which a provider renders care which obtains for patients optimal health outcomes.

(6) "Risk-adjusted" means mathematically modified to remove the effects of differences among providers in their patients' severity of illness or other factors that are not the result of the providers' treatment of the patients, but that are likely to affect the charges or quality of care.

SECTION 6. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board shall collect, analyze, and disseminate information on the cost, quality, and outcomes of health services provided by health facilities and health care providers in the Commonwealth.

(2) The executive director of the Kentucky Health Policy Board shall serve as chief administrative officer for the health data collection functions of Sections 5 to 10 of this Act.

(3) No member of the Kentucky Health Policy Board or employee thereof shall be subject to any personal liability for any loss sustained or damage suffered on account of any action or inaction of under Sections 5 to 10 of this Act.

SECTION 7. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) For the purposes of carrying out the provisions of Sections 5 to 10 of this Act, the Kentucky Health Policy Board may:

(a) Appoint temporary volunteer advisory committees, which may include individuals and representatives of interested public or private entities or organizations;

(b) Apply for and accept any funds, property, or services from any person or government agency;

(c) Make agreements with a grantor of funds or services, including an agreement to make any study allowed or required under Sections 5 to 10 of this Act; and

(d) Contract with a qualified, independent third party for any service necessary to carry out the provisions of Sections 5 to 10 of this Act; however, unless permission is granted specifically by the Kentucky Health Policy Board, a third party hired by the Kentucky Health Policy Board shall not release, publish, or otherwise use any information to which the third party has access under its contract.

(2) For the purposes of carrying out the provisions of Sections 5 to 10 of this Act, the Kentucky Health Policy Board shall:

(a) Publish and make available information that is in the public interest and relates to the health care financing and delivery system, motor vehicle health benefits, the cost of workers' compensation health benefits, and health insurance;

(b) Periodically participate in or conduct analyses and studies that relate to:

1. Health care costs;

2. Health care quality and outcomes;

3. Health care providers and health services;

4. Health insurance costs; and

5. The cost of health benefits covered by motor vehicle insurance and workers' compensation.

(c) Promulgate administrative regulations pursuant to KRS Chapter 13A that relate to its meetings, minutes, and transactions related to Sections 5 to 10 of this Act; and

(d) Prepare annually a budget proposal that includes the estimated income and proposed expenditures for the administration and operation of Sections 5 to 10 of this Act.

(3) All insurers and self-insurers authorized to write motor vehicle, workers' compensation, or health insurance in this state shall transmit annually by January 30 to the Kentucky Health Data Commission the following information on their insurance experience in this state for the preceding calendar year:

(a) Total premiums paid;

(b) Total cost of claims filed;

(c) Total cost of claims paid:

1. Total cost of health and medical claims payments for motor vehicle insurance; and

2. Total cost of health and medical claims payments for workers' compensation insurance;

(d) Total policies canceled by type and the aggregate reasons therefor; and

(e) List of total health and medical services paid for, grouped by types of services and costs:

1. Total cost per health and medical service per insured group per month:

a. Cost paid by insurer;

b. Cost paid by insured; and

2. Percentage of insureds who received each service.

(4) The Kentucky Health Policy Board may promulgate administrative regulations pursuant to KRS Chapter 13A that impose civil fines not to exceed five hundred dollars ($500) for each violation for failure to file a report as required. The amount of any fine imposed shall not be included in the allowed costs of a facility for medicare or medicaid reimbursement.

SECTION 8. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board shall establish by promulgation of administrative regulations pursuant to KRS Chapter 13A, no later than September 1, 1994, those data elements required to be submitted to the Kentucky Health Policy Board by all licensed hospitals and ambulatory facilities, including a timetable for submission and acceptable data forms which shall include the uniform health claim form pursuant to KRS 304.14-135 or any other universal health claim form to be determined by the Kentucky Health Policy Board. Thereafter, every hospital and ambulatory facility shall be required to report, on a periodic basis, information regarding the charge for and quality of the procedures and health care services performed therein, and as stipulated by administrative regulations promulgated pursuant to KRS Chapter 13A. The Kentucky Health Policy Board may conduct statistical surveys of a sample of hospitals, ambulatory facilities, or other providers in lieu of requiring the submission of information by all hospitals, ambulatory facilities, or providers.

(2) The Kentucky Health Policy Board shall require for submission to the board by any group of providers, including those categories within the definition of provider contained in Section 1 of this Act and any further categories determined by the board, at the beginning of each fiscal year after January 1, 1995, and within the limits of the state, federal, and other funds made available to the board for that year, and as provided by board promulgation of administrative regulations pursuant to KRS Chapter 13A, the following:

(a) A list of medical conditions, health services, and procedures for which charge and quality data shall be collected and published at specified time intervals and in a specified manner;

(b) A timetable for filing data;

(c) A list of data elements that are necessary to enable the board to analyze and disseminate risk-adjusted charge, quality, and outcome information, including mortality and morbidity data;

(d) A format for data submission which shall include use of the uniform health claim form pursuant to KRS 304.14-135 or any other universal health claim form to be determined by the Kentucky Health Policy Board, and which may be in the form of magnetic computer tape, computer diskettes, or other electronic media, or through an electronic network, or in the form of hard copy;

(e) Procedures to allow health care providers at least thirty (30) days to review information generated from any data required to be submitted by them, with any reports generated by the board to reflect valid corrections by the provider before the information is released to the public; and

(f) Procedures pertaining to the confidentiality of data collected.

(3) The board shall coordinate its data-gathering activities with other data-collection activities conducted by the Cabinet for Human Resources and the Department of Insurance, as well as other state agencies which collect health-related service, utilization, financial, and health care personnel data, to prevent duplicate filing requirements.

(4) The board shall conduct outcome analyses and effectiveness studies and prepare other reports pertaining to issues involving health care charges and quality.

(5) The board may independently audit any data required to be submitted by providers as needed to corroborate the accuracy of the submitted data. Any audit may be at the expense of the board and shall, to the extent practicable, be coordinated with other audits performed by state agencies.

(6) The board may initiate activities set forth in subsection (1) or (2) of this section at any time after the effective date of this Act.

SECTION 9. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The following types of data shall be deemed as relating to personal privacy and, except by court order, shall not be published or otherwise released by the Kentucky Health Policy Board or its staff and shall not be subject to inspection under KRS 61.870 to 61.884:

(a) Any data, summary of data, correspondence, or notes that identify or could be used to identify any individual patient or member of the general public, unless the identified individual gives written permission to release the data or correspondence; and

(b) Any correspondence or related notes from or to any employee or employees of a provider if the correspondence or notes identify or could be used to identify any individual employee of a provider, unless the corresponding persons grant permission to release the correspondence.

(2) Health care providers submitting required data to the board shall not be required to obtain individual permission to release the data, except as specified in subsection (1) of this section, and, if submission of the data to the board complies with pertinent administrative regulations promulgated pursuant to KRS Chapter 13A, shall not be deemed as having violated any statute or administrative regulation protecting individual privacy.

(3) No less than sixty (60) days after the annual report or reports are published and except as otherwise provided, the board shall make all aggregate data which does not allow disclosure of the identity of any individual patient, and which was obtained for the annual period covered by the reports, available to the public. The aggregate data shall be made available in both printed format and in a standard electronic format which is readable by commonly available software for personal computers. Single copies of the printed data shall be made available to individuals at no cost. The board may impose a fee no greater than that necessary to cover its costs for providing electronic or multiple printed copies of the data. At least one (1) printed and one (1) electronic copy of the aggregate data shall be provided without charge to the Legislative Research Commission.

(4) Collection of data about individual patients shall be in a nonidentifying numeric form and shall not include a patient's name or Social Security number. Any person who receives information identifying a patient through error or any other means shall return all copies of the information immediately.

(5) All data and information collected shall be kept in a secure location and under lock and key when specifically responsible personnel are absent.

(6) Only designated board staff shall have access to raw data and information. The designated staff shall be made aware of their responsibilities to maintain confidentiality. Staff with access to raw data and information shall sign a statement indicating that the staff person accepts responsibility to hold that data or identifying information in confidence and is aware of penalties under state or federal law for breach of confidentiality. Data which, because of small sample size, breaches the confidence of individual patients, shall not be released.

(7) Any employee of the board or member of the board who violates any provision of this section shall be fined not more than five hundred dollars ($500) for each violation or be confined in the county jail for not more than six (6) months, or both, and shall be removed and disqualified from office or employment.

SECTION 10. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board shall annually, on or before July 1, prepare and publish, in understandable language with sufficient explanation to allow consumers to draw meaningful comparisons, a report or reports on health care charges, quality, and outcomes which includes diagnosis-specific or procedure-specific comparisons for each hospital and ambulatory facility, differentiated by payor if relevant, and for other provider groups as relevant data becomes available.

(2) The board shall annually, on or before October 1, submit to the Interim Joint Committees on Appropriations and Revenue and Health and Welfare and to the Governor a report on the operations and activities of the board under Sections 5 to 10 of this Act during the preceding fiscal year, including a copy of each study or report required or authorized under Sections 5 to 10 of this Act and any recommendations relating thereto.

(3) The board shall report at least biennially, no later than October 1 of each odd-numbered year, to the Interim Joint

Committees on Appropriations and Revenue and Health and Welfare and to the Governor on matters pertaining to comparative health care charges, quality, and outcomes, the effectiveness of its activities relating to educating consumers and containing health care costs, including the implementation of Sections 11 to 15 of this Act, and any recommendations regarding its data collection and dissemination activities.

(4) The board shall report at least biennially, no later than October 1 of each odd-numbered year, on the special health needs of the minority population in the Commonwealth as compared to the population in the Commonwealth as compared to the population at large. The report shall be transmitted to the Interim Joint Committees on Appropriations and Revenue and Health and Welfare and to the Governor and shall contain an overview of the health status of minority Kentuckians, shall identify the diseases and conditions experienced at disproportionate mortality and morbidity rates within the minority population, and shall make recommendations to meet the identified health needs of the minority population.

PART III

FEE DISCLOSURE FOR PROVIDERS

SECTION 11. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds that one of the factors affecting the increasing cost of health care services is a lack of consumer knowledge of health care costs prior to obtaining treatment. Therefore, it is the purpose of Sections 11 to 15 of this Act to promote health care cost awareness among health care consumers and providers, to encourage competitive health care pricing, and to improve the quality of health care in the Commonwealth through the public disclosure of fees charged by licensed health care providers as set forth under Section 13 of this Act.

SECTION 12. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

As used in Sections 11 to 15 of this Act:

(1) "Health care recipient" means any individual who receives, or should have received, health care from a health care provider.

(2) "Conspicuous place" means a waiting room reception area, admission room, or other area where a health care recipient can readily observe a health care charge posting.

SECTION 13. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The Health Care Policy Board shall develop usual and customary rate guidelines by appropriate geographic region which shall identify those provider fees which will be reimbursed by the basic benefit plan as defined by the board.

(2) Health care providers shall post in a conspicuous place a statement, in a form approved by the board, indicating:

  (a) Whether the rates the provider charges are in compliance with the usual and customary rate guidelines developed by the board; or

  (b) Whether the rates charged by the provider exceed the usual and customary rate guidelines developed by the board.

(3) Any provider whose rates for services exceed the usual and customary rate guidelines developed by the board shall notify each health care recipient in writing and require the recipient to sign a statement, in a form approved by the board, that the recipient understands that the rate charged is higher than the amount the basic benefit plan will reimburse.

(4) All pharmacies granted permits under KRS Chapter 315 shall make available upon request a quotation of the maximum retail selling price, and the generic price if applicable, of all prescription drugs and medications sold at the pharmacy.

(5) Notwithstanding anything in this section to the contrary, a health care provider who does not have a suitable area in which to make the required posting shall furnish, upon request, the required information in writing to each health care recipient. The information given to each health care recipient shall be in at least ten (10) point black type on a white background.

(6) The posting of a statement required under this section shall be done in eighteen (18) point black type or larger and displayed on a white background.

SECTION 14. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) By July 1 of each year, all health care providers shall submit to the Kentucky Health Policy Board, a copy of the most recent posting prepared pursuant to Section 13 of this Act and a listing of the maximum fees charged for all other health care procedures.

(2) The board shall collect, analyze, and disseminate the data, and shall develop county specific reports that are to be made available in pamphlet form that are reasonably understandable and will allow for valid comparisons.

(3) The board may promulgate administrative regulations under KRS Chapter 13A to implement this section, including provisions for the standardization of the form on which health care providers shall submit charge or fee data and the

content and form of other related data.

SECTION 15. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

Any health care provider who willfully violates any of the provisions of Sections 11 to 15 of this Act shall be fined no less than one hundred dollars ($100) per day for failure to post required material and one thousand dollars ($1,000) per month for failure to submit the required data to the board.

PART IV

QUALITY IMPROVEMENT

SECTION 16. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

For the purpose of improving and assessing the quality of clinical care, the Kentucky Health Policy Board, created by Section 2 of this Act, through the various professional licensure boards and any volunteer advisory committees deemed necessary by the board, shall develop, update, and recommend implementation of parameters for clinical practice for use by health care providers as defined in Section 1 of this Act. The board may adopt any parameters for clinical practice as developed and updated by the federal Agency for Health Care Policy Research, or the board may adopt other parameters for clinical practice which are developed by qualified bodies, as determined by the board, with periodic updating based on data collected during the application of the parameters. Outcome measures shall be developed by the board in conjunction with the provider community. After these measures have been established they shall be disseminated to the various professional licensure boards.

PART V

PROVIDER ARBITRATION AND MEDIATION

SECTION 17. KRS CHAPTER 417A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

The following provisions shall apply to actions prior to filing a lawsuit against a health care provider alleging personal injury or wrongful death:

(1) Any person, or the personal representative of a deceased person, aggrieved by reason of any action or inaction of a health care provider may, in person or by counsel, file with the clerk of the Circuit Court a preliminary complaint which alleges the names and addresses of the health care provider or providers by whom the party claims to have been injured and sets forth sufficient facts to establish where, when, and how the patient was injured, and requests mediation prior to submission of a formal complaint. Upon filing the preliminary complaint the clerk of the court shall notify the health care provider or providers of the allegation and request to mediate. Upon receipt of written agreement by the health care provider or providers, a mediation process shall be initiated.

(2) The filing of the preliminary complaint shall initiate the mediation process pursuant to Section 18 of this Act, and shall toll the statute of limitations so long as the preliminary complaint is filed within the period allowed for filing a complaint against a health care provider.

(3) The notification issued against the health care provider or providers shall state that the subject matter of the preliminary complaint shall be submitted to mediation; shall identify the mediator; and shall state the time and place of the mediation which shall be scheduled no sooner than thirty (30) days following the filing of the preliminary complaint nor later than sixty (60) days from the filing of the preliminary complaint.

(4) The health care provider or providers may file a responsive pleading to a preliminary complaint within a time allowed by the court.

(5) If the aggrieved party is not represented by counsel, then the health care provider or providers shall be encouraged to respond to mediation without counsel, but may engage counsel at the health care provider's option.

(6) If the mediation does not result in a resolution of the dispute, the aggrieved party has ninety (90) days after the mediator files a report with the court in which to file a complaint for lawsuit, within the Kentucky Rules of Civil Procedure, and to issue summons to be served upon the health care provider or providers for that purpose.

(7) If the mediation does not result in the resolution of the dispute and the aggrieved party files a complaint under the Rules of Civil Procedure, then the mediation process required under Section 18 shall be waived.

SECTION 18. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

The following provisions shall apply to any action filed in Circuit Court by a patient or patient's representative against a health care provider alleging personal injury or wrongful death:

(1) Upon filing of a complaint in a personal injury action alleging negligence of a health care provider, the plaintiff's attorney shall file an affidavit stating as follows:

(a) That the plaintiff's attorney has gathered all pertinent medical records and has had those records reviewed by a qualified expert in the same field that is the subject of the action and who is qualified to render opinions on the appropriate standard of care under the same or similar circumstances, and that person, after reviewing the records, has given the opinion, predicated upon reasonable medical probability, that there was a

departure from the standard of care and that the departure was a substantial factor in causing the injury or death; or

(b) That, because of significant time constraints posed by the applicable statute of limitations, the plaintiff's attorney has not had time to do the acts required in paragraph (a) of this subsection, in which case the plaintiff's attorney shall within ninety (90) days of the date of the filing of the complaint file the required affidavit, with the time for the health care provider and any other defendants to file a responsive pleading not to commence until after the affidavit is filed.

(2) The complaint shall be dismissed at the cost of the plaintiff and any other sanctions as the trial court deems appropriate may be assessed against the plaintiff and plaintiff's attorney for failure to comply with the provisions of paragraph (a) or (b) of subsection (1) of this section.

(3) In all actions covered by this section the case shall be referred to mediation as follows:

(a) After the expiration of ninety (90) days from the date of service of summons upon the health care provider, or at an earlier time as the health care provider may agree, the trial court shall order the parties to mediation which mediation shall be held no later than one hundred and eighty (180) days from the date of service of summons upon the health care provider or at an earlier date as the parties may agree;

(b) The parties may serve interrogatories, requests for documents, requests for admissions, and obtain medical records by agreement or subpoena prior to mediation without leave of court, but any depositions to be taken shall be taken only with leave of court upon a showing of good cause, or by agreement of the parties;

(c) The parties shall attend a mediation conference on a date and at a time certain with the following persons required to be present:

1. The parties in the case of individuals, or the duly-appointed personal representative of an estate, or in the case of a corporate entity, a duly-authorized representative with authority to settle;

2. Each party's counsel of record, if any;

3. A representative of each party's insurer who is not the counsel for the health care provider and who has authority to settle at any amount up to the total liability covered provided without further consultation; and

4. Other persons as the trial court may order, or the parties may agree, including but not limited to factual and expert witnesses.

(d) The mediation conference shall be at a time and place set by order of the court in which the action is pending and shall be conducted by a mediator appointed by the court to consider the possibility of settlement, the simplification of issues, and any other matters which the mediator and the parties determine may aid in the handling of the disposition of the proceedings. The mediator may schedule additional conferences necessary to complete the process and mediation shall continue until the parties have reached a settlement, until they are unwilling to proceed further, or until the mediator determines that further efforts would be futile. The mediator shall report to the court whether or not mediation was successful, or if further mediation might be considered after additional discovery, but the mediator shall not make findings of facts, nor shall the mediator assign blame to any party for the failure of the mediation process.

(e) If any party fails to appear at a duly-noticed and scheduled mediation conference without good cause, the trial court shall upon motion impose sanctions against the party or counsel, or both, which sanctions may include an award of attorney's fees and other reasonable costs and expenses.

1. At least ten (10) days prior to the mediation conference, each party shall submit to the mediator a written statement of the case. The statement shall be confidential and shall not be disclosed to the other party or parties without first obtaining permission of the party presenting the statement. Each statement shall contain the following information:

a. When and by whom the patient was treated and the nature of that treatment;

b. The alleged propriety or impropriety of the treatment and the nature and extent of the patient's injuries and damages; and

c. The amount, if any, that the parties would be willing to settle the matter at that stage of the proceeding.

2. Each party shall provide copies of the medical records believed by that party to be relevant, to the mediator and to all other parties.

3. Upon conclusion of the mediation conference the mediator shall return to the parties the written statements of the case, unless otherwise agreed by the parties.

(4) The procedure for mediation shall be as follows:

(a) All persons required by paragraph (c) of subsection (3) of this section shall be present with the mediator

presiding;

(b) The plaintiff if an individual, the personal representative of the patient's estate, or the attorney representing the plaintiff may present the facts, and if the party states the facts, the attorney may elaborate upon them or make positional or conclusionary statements regarding the facts;

(c) The defendant, or, in the case of a corporate entity, the representative of that health care provider, or the attorney for the health care provider may make statements of facts as deemed necessary and the attorney for each health care provider may make additional statements or make positional or conclusionary statements regarding the facts; and

(d) The mediator shall discuss the facts with all parties and their attorneys to determine the areas of conflict and shall confer with them as the mediator deems proper in accordance with the mediator's training and experience, with the intent and purpose of reaching a compromise on all or as many of the issues as is possible.

(5) Except as otherwise provided for in this section, all mediation documents and mediation communications are privileged and confidential and shall not:

(a) Be disclosed;

(b) Be subject to disclosure through discovery or any other process;

(c) Be admissible into evidence in any judicial or administrative proceeding; or

(d) Be considered a public record.

(6) Any party may, during the mediation process, name an expert witness, but no party may depose that expert unless the party identifying the expert later advises that the expert will be called as a witness at the trial. The opposing party shall not later designate the expert as a witness, nor may the witness be examined concerning any report that may have been furnished during the mediation process, unless the party producing the witness intends to offer the report into evidence.

(7) There is no privilege and no restriction on release of information considered privileged or confidential under subsection (5) of this section if:

(a) All parties consent in writing;

(b) The mediation communication or mediation document gives the mediator knowledge of or a reasonable cause to suspect a child has been abused or neglected, but only to the extent and for the specific purpose the communication or document is required to be disclosed; or

(c) The mediation communications were made in furtherance of the commission of a crime or fraud or as part of a plan to commit a crime or fraud, but only to the extent and for the specific purpose the communication or document is required to be disclosed.

(8) Guidelines and procedures for medical negligence mediation under this section, including mediator qualifications and mediation training, shall be developed by the Supreme Court of Kentucky and issued as rules.

(9) The Supreme Court of Kentucky shall, by rule, set a fee schedule for mediation services under this section.

(10) The trial court shall, utilizing the fee schedule, set a reasonable fee for the mediator based upon the complexity of issues and the time required for mediation. This fee shall be assessed among the parties on a pro rata basis. The court in which the action is pending may, utilizing the fee schedule, upon motion, increase the mediator's fee due to the complexity of the case, or the time involved.

(11) The mediators shall successfully complete mediation training in a program approved by the Administrative Offices of the Courts.

(12) Nothing contained in this section shall be construed to limit or prohibit the trial court, upon the motion of all parties, from referring a pending case against a health care provider to mediation at any time prior to the entry of a final judgment and any subsequent referral to mediation after the initial mediation conference shall be in accordance with the provisions of this section.

(13) In any action brought against a health care provider under this section, the trial court may, after an evidentiary hearing, award attorney's fees and expenses if the court finds as fact that:

(a) The claim or defense is totally without merit; and

(b) The party against which the award is made persisted in the claim or defense after it was known that the claim or defense was without merit, after having been placed upon notice by the opposing party.

SECTION 19. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

Notwithstanding any of the provisions of this chapter to the contrary, the provisions of Section 20 of this Act shall be applicable to the arbitration of a dispute, controversy, or issue arising out of or resulting from injury to, or the death of, a person caused by an error, omission, or negligence in the performance of professional services by a health care provider in

Kentucky.

SECTION 20. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) Any person who receives allegedly negligent health care from a health care provider shall have the option to execute an agreement to arbitrate a dispute, controversy, or issue arising out of the allegedly negligent health care or treatment, in lieu of civil action.

(2) Arbitration shall not commence without the voluntary agreement of the claimant and all defendants. The agreement to arbitrate shall not be valid if executed prior to receipt of medical services or treatment which are at issue in the arbitration.

(3) The form of the agreement shall be established by the Supreme Court and shall be accompanied by an information brochure developed by the Administrative Office of the Courts which clearly details the agreement provisions including, but not limited to, the limit on damages of five hundred thousand dollars ($500,000). The agreement to arbitrate shall specify that the maximum limit on damages which may be awarded in arbitration shall be five hundred thousand dollars ($500,000).

(4) (a) The agreement shall be executed only upon filing a notice of agreement in the Circuit Court which would otherwise have jurisdiction if a civil action were filed in a dispute, controversy, or issue arising out of or resulting from injury to, or the death of, a person caused by an error, omission, or negligence in the performance of a health care provider in Kentucky. All parties shall be present at the hearing in the Circuit Court and shall have a right to consult counsel. If after being advised of their right to consult counsel, the parties choose to waive that right the Circuit Court shall further advise the parties that by executing the arbitration agreement they are waiving:

1. The right to a trial by jury;

2. The right to appeal to the Kentucky and United States appellate courts; and

3. The right to have their case tried pursuant to the Kentucky Rules of Evidence.

(b) The Circuit Court shall allow the agreement to be executed only after the court is satisfied that all of the parties are capable of understanding the waivers set forth in paragraph (a) of this subsection, are executing the waivers without duress or under influence, and do in fact understand the waivers.

(5) The agreement to arbitrate shall state that any issues on appeal of an arbitration decision shall be limited to issues allowed in appeals of arbitration cases generally under state law.

(6) Each party to the agreement to arbitrate shall be entitled to cancel the agreement within three (3) business days by notifying the Administrative Office of the Courts in writing by midnight of the third business day following the date that the party signed the agreement to arbitrate. Written notification is deemed given if mailed or delivered by midnight of the third business day.

(7) The agreement to arbitrate shall state in at least ten (10) point bold faced type the following: "NOTICE TO EACH PARTY TO AGREEMENT TO ARBITRATE: IF WITHIN THREE (3) BUSINESS DAYS YOU DECIDE THAT YOU DO NOT WISH TO SUBMIT THE CASE TO ARBITRATION AND REMAIN A PARTY TO THIS AGREEMENT TO ARBITRATE, YOU MAY CANCEL THIS AGREEMENT BY MAILING A NOTICE TO THE ADMINISTRATIVE OFFICE OF THE COURTS BY MIDNIGHT OF THE THIRD BUSINESS DAY FOLLOWING THE DAY THAT YOU SIGNED THE AGREEMENT TO ARBITRATE. THE WRITTEN NOTICE SHOULD BE MAILED TO THE FOLLOWING ADDRESS: (current address of the Administrative Office of the Courts)."

SECTION 21. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) In a proceeding pursuant to Sections 19 to 36 of this Act:

(a) The parties may be represented by counsel, be heard, present evidence material to the controversy, and cross-examine any witness;

(b) The prevailing standard of duty, practice, or care applicable in a civil action shall be the standard applied in the arbitration, except as provided by Section 36 of this Act; and

(c) Damages shall be limited in total value to five hundred thousand dollars ($500,000).

(2) A party may appear without counsel and shall be advised of this right and the right to retain counsel in a manner calculated to inform the person of the nature and complexity of a proceeding by a simple concise form to be distributed by the Administrative Office of the Courts. The agreement to arbitrate shall specify that the parties have the right to representation by counsel during the arbitration proceedings.

(3) Actions commenced under this section shall be in accordance with KRS 413.140.

(4) Issues on appeal of an arbitration decision shall be limited to issues allowed in appeals of arbitration cases generally under state law.

SECTION 22. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) The arbitration process shall administer the proceeding without charge to the claimant. The administrative expense shall be one hundred fifty dollars ($150) per party per case, or as may be agreed by the parties and the Administrative Office of the Courts.

(2) An arbitration under Sections 19 to 36 of this Act shall be heard by a panel of three (3) arbitrators. The first panel member shall be an attorney who shall be chosen by the plaintiff from a list of three (3) volunteers submitted to the Administrative Office of the Courts by the Kentucky Academy of Trial Attorneys, pursuant to subsection (3) of this section. The second panel member shall be a health care provider, from the defendant's area of specialty, who shall be chosen by the defendant from a list of three (3) volunteer providers submitted to the Administrative Office of the Courts by the professional provider organization in the same field as the defendant, pursuant to subsection (3) of this section. The third panel member shall be a person chosen by agreement of the provider and attorney panel members from a list of experienced arbitrators who are Kentucky residents. The third panel member shall also serve as chairperson of the panel and shall determine hearing dates and locations.

(3) The third panel member of the panel shall be a qualified experienced arbitrator selected from a pool of candidates generated by the Administrative Office of the Courts. The Administrative Office of the Courts shall send simultaneously to each party an identical list of three (3) arbitrator candidates together with a brief biographical statement on each candidate. A party may strike from the list any name which is unacceptable and shall number the remaining names in order of preference. When the lists are returned, they shall be compared and the first mutually agreeable candidate in each category shall be invited to serve.

(4) Where no mutually agreed upon arbitrator is selected, the Administrative Office of the Courts shall generate a second list for consideration pursuant to the process defined in subsection (3) of this section. Where no mutually agreed upon arbitrator is selected from the second list, the Administrative Office of the Courts shall randomly select the arbitrator.

(5) The parties shall be restricted to the list of panel candidates submitted to them for consideration.

(6) The health care provider panel member shall not reside in the area development district where the defendant provider practices or resides, except upon agreement of the plaintiff and defendant.

(7) The attorney panel member shall not reside in the area development district where the plaintiff's attorney practices or resides, except on agreement of the defendant and plaintiff.

(8) The Administrative Office of the Courts, through its director or the director's designee, shall operate the arbitration process, with the initial claims filed with the Administrative Office of the Courts.

(9) All fees pursuant to subsection (1) of this section shall be submitted to the Administrative Office of the Courts to defray related expenses.

(10) Panel members shall be paid at the rate of one hundred dollars ($100) per day plus an amount for necessary expenses, as determined by the Administrative Office of the Courts.

SECTION 23. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) The professional provider organization in the same field as the defendant and the Kentucky Academy of Trial Attorneys shall make an initial screening for bias and shall require a candidate for a particular case to attest and complete a current personal disclosure statement. In addition to other relevant information, the statement shall disclose any personal acquaintance with any of the parties or their counsel and the nature of the acquaintance. If the statement reveals facts which suggest the possibility of partiality, the professional provider organization or the Kentucky Academy of Trial Attorneys shall communicate those facts to the Administrative Office of the Courts. The Administrative Office of the Courts shall make a final screening for bias and may eliminate from consideration any candidate determined to be unreasonably partial. The Administrative Office of the Courts shall communicate any facts regarding the possibility of the partiality of any arbitrator candidate to the defendant and claimant.

(2) Any party may propound reasonable questions to an arbitrator candidate if the questions are propounded within ten (10) days of the receipt of the candidate's name. Questions shall be propounded through the Administrative Office of the Courts, and the candidate shall respond to the Administrative Office of the Courts within ten (10) days of receipt.

(3) A party shall not communicate with a candidate directly or indirectly except through the Administrative Office of the Courts, the professional provider organization in the same field as the defendant, or the Kentucky Academy of Trial Attorneys any time after the filing of the request for arbitration. Any candidate who is aware of a communication shall immediately notify the Administrative Office of the Courts.

SECTION 24. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) A minor child shall be bound by a written agreement to arbitrate disputes, controversies, or issues upon the execution of an agreement on his behalf by a parent or legal guardian. The minor child shall not subsequently disaffirm the agreement.

(2) In cases involving a common question of law or fact, if a number of defendants are involved, the disputes, controversies, and issues shall be consolidated into a single arbitration proceeding if the consolidation is consistent with the Kentucky Rules of Civil Procedure.

(3) A person who is not a party to the arbitration agreement may join in the arbitration or be joined at the request of any party with all the rights and obligations of the original parties. Each party to an arbitration under Sections 19 to 36 of this Act shall be required to arbitrate with all parties, whether the parties are original or joined pursuant to this section.

SECTION 25. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) Prior to the institution of a proceeding or claim by a patient, any offer of reparations and all communications incidental thereto made in writing to a patient by a health care provider or hospital is privileged and shall not be used by any party to establish the liability or measure of damages attributable to the offeror.

(2) An offer of reparations shall provide that a patient has thirty (30) days to accept or reject the offer, or a lesser period of time as may be necessitated by the condition of the health of the patient.

(3) After any rejection or the lapse of the applicable time, any party may request binding arbitration.

(4) Any offer to a patient shall include a statement that the patient may consult legal counsel before rejecting or accepting the offer.

(5) If a potential claim is identified by a health care provider or hospital where, in its judgment, reparations are not appropriate, the provider may, at its option, file a request for arbitration which shall identify the potential claim and deny liability.

SECTION 26. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) After the appointment of the panel, the parties to the arbitration may take depositions and obtain discovery regarding the subject matter of the arbitration and use and exercise the same rights, remedies, and procedures, and be subject to the same duties, liabilities, and obligations in the arbitration with respect to the subject matter thereof, as if the subject matter of the arbitration were pending in a civil action in Circuit Court.

(2) The panel shall conclude the entire proceeding as expeditiously as possible.

(3) Discovery shall commence no earlier than twenty (20) days after all parties have received a copy of the agreement to arbitrate and shall be completed within five (5) months after the date that the last party received a copy of the agreement to arbitrate.

(4) A party may be granted an extension of time to complete discovery upon a showing that the extension is not the result of neglect and that the extension is necessary in order to avoid substantial prejudice to the rights of the party.

SECTION 27. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) The name of any expert witnesses who will be called at the arbitration shall be disclosed to the opposing party, who may depose the witness.

(2) Any party may also provide discovery of that party's expert witnesses by the written interrogatory procedure provided in the Kentucky Rules of Civil Procedure. A party may disclose without request or shall disclose, upon request, the name of each expert the party expects to call at the hearing, the subject matter on which the expert will testify, the substance of facts and opinions to which the expert will testify, and a summary of the grounds for each opinion.

(3) If a party is provided or requests the discovery procedure in subsection (2) of this section and the provision or request occurs prior to the date on which an expert is noticed for deposition or other discovery is commenced under prevailing civil practice, any further discovery of the expert by any other party by deposition or otherwise shall obligate the other party to compensate the expert for time and expenses in a reasonable amount as may be determined by the panel.

SECTION 28. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) An arbitration hearing established pursuant to Sections 19 to 36 of this Act shall adhere to the Kentucky Rules of Civil Procedure.

(2) Testimony shall be taken under oath and a record of the proceedings shall be made by a video tape recording. Any party, at that party's expense, may have transcriptions or copies of the recording made or may provide for a written transcript of the proceedings. The cost of any transcription ordered by the panel for its own use shall be deemed part of the cost of the proceedings.

(3) Expert testimony shall not be required; but if expert testimony is used, it shall be admitted under the same circumstances as in a civil trial and be subject to cross-examination.

(4) The party with the burden of establishing a standard of care and breach thereof shall establish standards, either by the introduction of expert testimony or by other competent proof of the standard and breach thereof, which may include the use of works as provided in subsection (5) of this section.

(5) Authoritative, published works on the general and specific subjects in issue may be admitted and argued from, upon prior notice to all other parties.

(6) The panel shall accord that weight and probative worth to expert evidence which it deems appropriate. The panel may call a neutral expert on its own motion, which expert witness shall be subject to cross-examination by the parties. The cost of the expert shall be deemed a cost of the proceeding.

SECTION 29. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

The panel or its chairperson in the arbitration proceeding shall, upon application by a party to the proceeding, and may upon its own determination, issue a subpoena requiring a person to appear and be examined with reference to a matter within the scope of the proceeding, and to produce books, records, or papers pertinent to the proceeding. In case of disobedience to the subpoena, the chairperson or a majority of the arbitration panel in the arbitration proceeding may petition the Circuit Court of the county in which the witness resides or the Circuit Court of the county in which the inquiry is being held to require the attendance and testimony of the witness and the production of books, papers, and documents. A Circuit Court, in case of contumacy or refusal to obey a subpoena, may issue an order requiring the person to appear and to produce books, records, and papers and give evidence related to the matter in question, or which may give rise to matters relevant to the issues in question. Failure to obey the order of the court may be punished by the court as contempt.

SECTION 30. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) On application of a party to the arbitration, the panel or its chairperson may order the deposition of a witness to be taken for use as evidence and not for discovery if the witness cannot be compelled to attend the hearing or if exceptional circumstances exist making it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be taken. The deposition shall be taken in the manner prescribed by law or court rule for the taking of depositions in civil actions.

(2) In addition to the power of determining the merits of the arbitration, the panel may enforce the rights, remedies, procedures, duties, liabilities, and obligations of discovery by the imposition of the same terms, conditions, consequences, liabilities, sanctions, and penalties as may be imposed in like circumstances in a civil action by a Circuit Court of the Commonwealth, except the power to order the arrest or imprisonment of a person.

(3) For the purpose of enforcing the duty to make discovery, to produce evidence or information, including books and records, and to produce persons to testify at a deposition or at a hearing, and to impose terms, conditions, consequences, liabilities, sanctions, and penalties upon a party for violation of a duty, a party shall be deemed to include every affiliate of the party as defined in subsection (4) of this section. For that purpose, the personnel of an affiliate shall be deemed to be the officers, directors, managing agents, agents, and employees of that party to the same degree as each of them, respectively, bears that status to the affiliate; and the files, books, and records of an affiliate shall be deemed to be in the possession and control of, and capable of production by, the party.

(4) As used in this section, "affiliate" of the party to the arbitration means and includes a party or person for whose immediate benefit the action or proceeding is prosecuted or defended or an officer, director, administrator, member, agent, employee, or managing agent of that party or person.

SECTION 31. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) Except for the parties to the arbitration and their agents, officers, and employees, all witnesses appearing pursuant to subpoena shall be entitled to receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in the Circuit Court. The fee and mileage of a witness subpoenaed upon the application of a party to the arbitration shall be paid by that party. The fee and mileage of a witness subpoenaed solely upon the determination of the arbitrator or the majority of a panel of arbitrators shall be paid in the manner provided for the payment of the arbitrator's expenses.

(2) The cost of each arbitrator's fees and expenses, together with any administrative fee, may be assessed against any party in the arbitration decision or may be assessed among parties in the proportions determined in the arbitration decision.

SECTION 32. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) A majority of the panel of arbitrators may grant any relief found to be equitable and just, including money damages, provision for hospitalization, medical, or rehabilitative procedures, support, or any combination thereof.

(2) The panel may order submission of written briefs within thirty (30) days after the close of hearings. In written briefs, each party may summarize the evidence and testimony and may propose a comprehensive award of remedial or compensatory elements.

(3) The panel shall render its decision within thirty (30) days after the close of the hearing or the receipt of briefs, if ordered.

(4) The decision in the arbitration proceeding shall be in writing and shall be signed by the chairperson or by the majority of the panel. The decision shall include a determination of all the questions submitted to arbitration by each party, the resolution of which is necessary to determine the dispute, controversy, or issue.

SECTION 33. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) In addition to the decision, the panel shall render a written opinion which states its reasoning for the finding of liability or nonliability, and the reasoning for the amount and kind of any award. A panel member who disagrees with the majority may write a dissenting opinion.

(2) The panel shall determine the degree to which each defendant party was at fault for the total damages accruing to any other party to the arbitration, considering all sources of damage involving parties to the arbitration, but excluding the damages attributable to persons not parties to the arbitration.

(3) The panel shall prepare a schedule of contributions according to the relative fault of each party, which schedule shall be binding as between those parties, but that determination shall not affect a claimant's right to recover jointly and severally from all parties where that right otherwise exists in the law.

SECTION 34. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) In the case of an award, any element of which includes remedial services, contracts, annuities, or other noncash award element, the panel shall determine the current cash value of each element of the award and shall also determine a total current cash value of the entire award, which shall not exceed five hundred thousand dollars ($500,000).

(2) An award of remedial surgery or care shall not require that the patient undergo that treatment or care by the health care provider whose conduct resulted in the award.

(3) A claimant may refuse to accept the benefits of an award for remedial surgery or other noncash award element, and the refusal shall not affect the claimant's right to receive any other part of the award, nor shall the refusal entitle the claimant to payment of the current cash value of the portion refused.

SECTION 35. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) The Administrative Office of the Courts shall transmit to the commissioner of insurance and the applicable licensing board of any defendant party a copy of the demand for arbitration within ten (10) days of filing. A copy of the decision and opinion of the panel shall be transmitted to the same parties within ten (10) days of the filing of the decision and opinion. The decision and opinion shall be filed for informational purposes and the making or filing of the decision and opinion shall not of itself be a ground for discipline.

(2) The commissioner of insurance shall by July 1, on odd numbered years, compile a report of the total number and type of demands for arbitration and the nature of the decisions and opinions reached and shall transmit the report to the Governor, Legislative Research Commission, Interim Joint Committees on Banking and Insurance and Health and Welfare, and the Kentucky Health Policy Board.

SECTION 36. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) In each action brought against a health care provider relating to alleged negligence, the arbitration panel created pursuant to Section 22 of this Act, shall consider separately, and render a decision within thirty (30) days, any claim that the plaintiff's allegations were without probable cause or merit or were frivolous. For the purposes of this section, "frivolous" allegations means those allegations found by the arbitration panel to be so totally lacking in merit that the allegation appears to have been made in bad faith.

(2) A claim that an allegation was frivolous or was made without probable cause or merit shall be made by the defendant and asserted in the defendant's initial response to the claim, or the recourse established under this section shall be waived.

(3) If a claim that an allegation was frivolous or was made without probable cause or merit is found to be correct by the arbitration panel, the plaintiff shall pay all associated costs and defendant's attorney fees and other expenses, as determined to be reasonable by the arbitration panel.

(4) If a claim of frivolous allegation or of an allegation without probable cause or merit is found to be incorrect by the arbitration panel, the defendant shall pay all associated costs and the plaintiff's attorney fees and other expenses, incurred to consider the claim, as determined to be reasonable by the arbitration panel.

(5) For the purposes of this section, the standard of proof in arbitration panel hearings shall be whether the health care provider rendered care consistent with applicable practice parameters which existed at the time of service. "Applicable practice parameters" means those guidelines or parameters adopted by the national specialty board governing the procedure or by the federal Agency for Health Care Policy and Research or by other agencies as accepted by the arbitration panel. In the absence of practice parameters adopted by the national specialty board governing the procedure, the federal Agency for Health Care Policy and Research, or other agencies, regarding the procedure which is the subject of the action, the standard of proof in arbitration panel hearings shall be whether the health care provider rendered care consistent with what a reasonably prudent health care provider in the same field that is the subject of the action would render under the same or similar circumstances.

PART VI

SELF-REFERRAL RESTRICTIONS

SECTION 37. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) Except as otherwise provided in KRS 205.510 to 205.630, no provider shall knowingly solicit, receive, or offer any remuneration (including any kickback, bribe, or rebate) for furnishing medical assistance benefits or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made pursuant to Title XIX of the Social Security Act.

(2) (a) No provider shall knowingly make, offer, or receive a payment, a rebate of a fee, or a charge for referring a recipient to another provider for furnishing of benefits.

(b) Any conduct or activity which does not violate or which is protected under the provisions of 42 U.S.C. sec. 1395nn or 42 U.S.C. sec. 1320A-7B(b), as amended, or federal regulations promulgated under those statutes, shall not be deemed to violate the provisions of this section and the conduct or activity shall be accorded the same protections allowed under federal law and regulation.

(3) Any person who violates subsection (1) or (2) of this section shall be guilty of a Class A misdemeanor unless the combination or aggregation of offenses is valued at three hundred dollars ($300) or more, in which case it shall be a Class D felony. In addition to any other penalty authorized by law, any person who violates the provisions of subsection (2)(a) of this section shall not be entitled to bill or collect from the recipient or any third party payor and shall repay any payments due the Commonwealth for services provided which were related to the referral.

PART VII

TWENTY-FOUR HOUR HEALTH COVERAGE

SECTION 38. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) By January 1, 1995, the Kentucky Health Policy Board shall promulgate administrative regulations pursuant to KRS Chapter 13A authorizing the establishment by March 1, 1995, of pilot projects for twenty-four (24) hour health coverage. The administrative regulations for the pilot projects shall provide that:

(a) A twenty-four (24) hour policy may cover general health care for purposes of general health insurance, auto insurance, workers' compensation, or health care normally covered by any line of insurance written in the Commonwealth;

(b) A twenty-four (24) hour coverage policy shall not contain deductibles or copayments for medical services or treatment for work-related injuries or diseases; and

(c) There shall be no transfer of liabilities or expenses between or among particular lines of insurance whose medical or health components have been combined into a twenty-four (24) hour coverage for health care.

(2) No policy for twenty-four (24) hour coverage shall become effective until it is reviewed and approved by the board, in consultation with the commissioner of the Department of Insurance.

(3) Notwithstanding any other provision of the Kentucky Revised Statutes to the contrary, each insurer authorized or licensed to write insurance in the Commonwealth shall provide any information requested by the board for the purpose of developing a twenty-four (24) hour health policy.

(4) The purchase of a twenty-four (24) hour health policy shall not constitute an exemption from statutory provisions which require other nonmedical insurance coverage. However, an insurance carrier shall reduce its premium for insurance coverage written without the medical or health care component. Notwithstanding the provisions of Subtitle 13 of KRS Chapter 304, the premium reduction required in this subsection shall be subject to the approval of the commissioner of the Department of Insurance.

(5) If an employer obtains a twenty-four (24) hour health insurance policy, pursuant to this section, to secure payment of compensation for medical care and treatment under KRS Chapter 342, the employer shall also procure an insurance policy which shall provide indemnity benefits to ensure that the total coverage afforded by both the twenty-four (24) hour insurance policy and the policy providing indemnity benefits, shall provide the total compensation required by KRS Chapter 342.

(6) The participants in a pilot project for twenty-four (24) hour health coverage shall comply with periodic reporting requirements of the Kentucky Health Policy Board.

(7) Each insurer authorized or licensed to write insurance in the Commonwealth shall cooperate with the board and shall provide any information requested by the board for the purpose of studying twenty-four (24) hour health policy.

(8) Each agency of state government shall cooperate with the board if requested to provide information for the purposes of this section.

Section 39. KRS 342.020 is amended to read as follows:

(1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and

surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employee may select the physician to treat ***the*** [~~his~~] injury, and the hospital in which ***treatment may be rendered*** [~~he shall be treated~~]. The employer, or an insurer on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of such services within thirty (30) days of receipt of a statement for services. The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter if appropriate as long as medical services are rendered.

(2) ***Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, medical services and treatment provided under this chapter shall not be subject to copayments or deductibles.***

(3) When a compensable injury or occupational disease results in the amputation of an arm, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, the employer shall initially pay for, in addition to the other medical, surgical, and hospital treatment enumerated in subsection (1) and this subsection, a modern artificial member and, where required, proper braces.

(4)[~~(3)~~] Upon motion of the employer, with sufficient notice to the employee for a response to be filed, if it is shown to the satisfaction of the administrative law judge by affidavits or testimony that, because of the physician selected by the employee to treat ***the*** [~~his~~] injury or disease, or because of the hospital selected by the employee in which ***treatment is being rendered*** [~~he is being treated~~], that the employee is not receiving proper medical treatment and ***the*** [~~his~~] recovery is being substantially affected or delayed; or that the funds for [~~his~~] medical expenses are being spent without reasonable benefit to the employee; or that because of the physician selected by the employee or because of the type of medical treatment being received by the employee that the employer will substantially be prejudiced in any compensation proceedings resulting from the employee's injury or disease; then the administrative law judge may allow the employer to select a physician to treat the employee and the hospital or hospitals in which the employee is treated for ***the*** [~~his~~] injury or disease. No action shall be brought against any employer subject to this chapter by any person to recover damages for malpractice or improper treatment received by any employee from any physician, hospital, or attendant thereof.

(5)[~~(4)~~] An employee who reports an injury alleged to be work-related or files an application for adjustment of a claim shall execute a waiver and consent of any physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding any other provision in the Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, workers' compensation insurer, special fund, uninsured employers' fund, or the administrative law judge, provide the requesting party with any information or written material reasonably related to any injury for which the employee claims compensation.

Section 40. KRS 342.375 is amended to read as follows:

Every policy or contract of workers' compensation insurance under this chapter, issued or delivered in this state, shall cover the entire liability of the employer for compensation to ***each employee*** [~~every one of his employees~~] subject to this chapter, except as otherwise provided in KRS 342.345 ***or Sections 38 to 39 of this Act***. However, if specifically authorized by the commissioner, a separate insurance policy may be issued for a specified plant or work location if the liability of ***the*** [~~such~~] employer under this chapter to ***each employee*** [~~all his other employees~~] subject to this chapter is otherwise secured and provided that no employee transferred from one plant or work location to another within the employment of the same employer shall thereby lose any benefit rights accumulated under the average weekly wage concept.

PART VIII

CERTIFICATE OF NEED

Section 41. KRS 216B.010 is amended to read as follows:

The General Assembly finds that the licensure of health facilities***,*** [~~and~~] health services***, and health care providers*** is a means to insure that the citizens of this Commonwealth will have safe, adequate***,*** and efficient medical care; that the proliferation of unnecessary health care facilities, health services and major medical equipment results in costly duplication and underuse of such facilities, services and equipment; and that such proliferation increases the cost of quality health care within the Commonwealth. Therefore, it is the purpose of this chapter to ***fully authorize and empower the Kentucky Health Policy Board to perform any certificate-of-need function and other statutory functions necessary to improve the quality and increase access to health care facilities, services, and providers, and to create a cost-efficient health care delivery system for the citizens of the Commonwealth. The Kentucky Health Policy Board may recommend to the Kentucky General Assembly methods to increase access to health care facilities, services, and providers*** [~~provide for the establishment of the Commission for Health Economics Control in Kentucky for the purpose of acting on applications for certificates of need~~].

Section 42. KRS 216B.015 is amended to read as follows:

Except as otherwise provided, for purposes of this chapter, the following definitions shall apply:

(1) "Administrative regulation" means a regulation adopted and promulgated pursuant to the procedures in KRS Chapter 13A.

(2) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health facilities which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; the cabinet and third-party payors who reimburse health facilities for services in the health service area in which the project is proposed to be located.

(3) "Applicant" means ***any physician's office requesting a major medical equipment expenditure of five hundred thousand dollars ($500,000) or more or*** any person, health facility, or health service requesting a certificate of need or license***, from the Kentucky Health Policy Board***.

(4) ***"Board" means the Kentucky Health Policy Board created by Section 2 of this Act.***

(5) "Cabinet" means the Cabinet for Human Resources.

(6)[~~(5)~~] "Capital expenditure" means an expenditure made by or on behalf of a health facility which:

(a) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance or is not for investment purposes only; or

(b) Is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part thereof.

(7)[~~(6)~~] "Capital expenditure minimum" means one million five hundred thousand dollars ($1,500,000) beginning ***with the effective date of this section*** [~~July 15, 1990,~~] and as adjusted annually thereafter. In determining whether an expenditure exceeds the expenditure minimum, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the improvement, expansion, or replacement of any plant or any equipment with respect to which the expenditure is made shall be included. Donations of equipment or facilities to a health facility which if acquired directly by the facility would be subject to review under this chapter shall be considered a capital expenditure, and a transfer of the equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review.

(8)[~~(7)~~] "Certificate of need" means an authorization by the ***board*** [~~commission to proceed~~] to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service as covered by this chapter.

[~~(8) "Commission" means the Commission for Health Economics Control in Kentucky.~~

~~(9) "Committee" means the Kentucky Health Care Cost Containment Advisory Committee.~~]

(9)[~~(10)~~] "Formal review process" means the ninety (90) day certificate of need review conducted by the ***board*** [~~commission~~].

(10)[~~(11)~~] "Health facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include, but shall not be limited to, health facilities and health services commonly referred to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, tuberculosis hospitals, skilled nursing facilities, nursing facilities, nursing homes, personal care homes, intermediate care facilities, family care homes, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance services, nonemergency health transportation services, hospices, community mental health and mental retardation centers, home health agencies, kidney disease treatment centers and freestanding hemodialysis units, health maintenance organizations, and others providing similarly organized services regardless of nomenclature.

(11)[~~(12)~~] "Health services" means clinically related services provided within the Commonwealth to two (2) or more persons, including, but not limited to, diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services.

(12)[~~(13)~~] "Major medical equipment" means equipment which is used for the provision of medical and other health services and which costs in excess of the medical equipment expenditure minimum[~~, except that the term does not include medical equipment acquired by or on behalf of a medical laboratory~~]. For purposes of this ***subsection*** [~~paragraph~~], "medical equipment expenditure minimum" means one million five hundred thousand dollars ($1,500,000) beginning ***with the effective date of this section*** [~~July 15, 1990,~~] and as adjusted annually thereafter. In determining whether medical equipment has a value in excess of the medical equipment expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included.

(13)[~~(14)~~] "Nonsubstantive review" means an expedited review conducted by the ***board*** [~~cabinet~~] of an application for a certificate of need as authorized under KRS 216B.095.

(14)[~~(15)~~] "Nonclinically related expenditures" means expenditures for:

(a) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a substantial change in beds, a substantial change in a health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility; or

(b) Projects which do not involve the provision of direct clinical patient care including, but not limited to, the following:

1. Parking facilities;
2. Telecommunications or telephone systems;
3. Management information systems;
4. Ventilation systems;
5. Heating or air conditioning, or both;
6. Energy conservation; or
7. Administrative offices.

(15)[~~(16)~~] "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record.

(16)[~~(17)~~] "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a group, state, or political subdivision or instrumentality including a municipal corporation of a state.

(17)[~~(18)~~] "Record" means, as applicable in a particular proceeding:

(a) The application and any information provided by the applicant at the request of the cabinet or the ***board*** [~~commission~~];

(b) Any information provided by a holder of a certificate of need or license in response to a notice of revocation of a certificate of need or license;

(c) Any memoranda or documents prepared by or for the cabinet or the ***board*** [~~commission~~] regarding the matter under review which were introduced at any hearing;

(d) Any staff reports or recommendations prepared by or for the cabinet or the ***board*** [~~commission~~];

(e) Any recommendation or decision of the ***board*** [~~cabinet~~];

(f) Any testimony or documentary evidence adduced at a hearing;

(g) The findings of fact and opinions of the ***board*** [~~commission~~] or the findings of fact and recommendation of the hearing officer; and

(h) Any other items required by administrative regulations promulgated by the ***board*** [~~commission~~].

(18)[~~(19)~~] "Secretary" means the secretary of the Cabinet for Human Resources.

(19)[~~(20)~~] "State health plan" means the document prepared***, under the direction of the board*** triennially, updated annually, [~~and duly adopted by the state health planning council~~] and approved by the Governor.

[~~(21) "State Health Planning Council" means the Council for Health Services established under KRS 194.090.~~]

(20)[~~(22)~~] "Substantial change in a health service" means:

(a) The addition of a health service for which there are review criteria and standards in the state health plan;

(b) The addition of a health service subject to licensure under this chapter; or

(c) The reduction or termination of a health service which had previously been provided in the health facility.

(21)[~~(23)~~] "Substantial change in bed capacity" means the addition, reduction, relocation, or redistribution of beds by licensure classification within a health facility.

(22)[~~(24)~~] "Substantial change in a project" means a change made to a pending or approved project which results in:

(a) A substantial change in a health service, except a reduction or termination of a health service;

(b) A substantial change in bed capacity, except for reductions;

(c) A change of location; or

(d) An increase in costs greater than the allowable amount as prescribed by regulation.

(23)[~~(25)~~] "To acquire" means to obtain from another by purchase, transfer, lease, or other comparable arrangement of the controlling interest of a capital asset or capital stock, or voting rights of a corporation. An acquisition shall be deemed to occur when more than fifty percent (50%) of an existing capital asset or capital stock or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one person from another person.

(24)[~~(26)~~] ***"To batch"*** [~~To "batch"~~] means to review in the same review cycle and, if applicable, give comparative consideration to all filed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area.

(25)[~~(27)~~] "To establish" means to construct, develop, or initiate a health facility.

(26)[~~(28)~~] "To obligate" means to enter any enforceable contract for the construction, acquisition, lease, or financing of a capital asset. A contract shall be considered enforceable when all contingencies and conditions in the contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract.

(27)[~~(29)~~] "To offer" means, when used in connection with health services, to hold a health facility out as capable of providing, or as having the means of providing, specified health services.

Section 43. KRS 216B.020 is amended to read as follows:

(1) [~~The provisions of this chapter that relate to the issuance of a certificate of need shall not apply to family care homes; state veterans' nursing homes; services provided on a contractual basis in a rural primary care hospital as provided under KRS 216.380; community mental health centers for services as defined in KRS Chapter 210; primary care centers; rural health clinics; private duty nursing services licensed as nursing pools; group homes; end stage renal disease dialysis facilities, freestanding or hospital based; swing beds; special clinics, including, but not limited to, wellness, weight loss, family planning, disability determination, speech and hearing, counseling, pulmonary care, and other clinics which only provide diagnostic services with equipment not exceeding the major medical equipment cost threshold and for which there are no review criteria in the state health plan; nonclinically related expenditures; the relocation of hospital administrative or outpatient services into medical office buildings which are on or contiguous to the premises of the hospital or the following health services provided on site in an existing health facility when the cost is less than six hundred thousand dollars ($600,000) and the services are in place by December 30, 1991: psychiatric care where chemical dependency services are provided, level one (1) and level two (2) of neonatal care, cardiac catheterization, and open heart surgery where cardiac catheterization services are in place as of July 15, 1990. The provisions of this section shall not apply to nursing homes, personal care homes, intermediate care facilities, and family care homes; or nonconforming ambulance services as defined by administrative regulation. These listed facilities or services shall be subject to licensure, when applicable.~~

~~(2) The provisions of this chapter that relate to the issuance of a certificate of need shall not apply, after September 15, 1991, to licensed acute care hospitals, as defined by administrative regulation, in counties with more than 3,000 acute care hospital beds, except as these provisions relate to rehabilitation beds and long-term care beds.~~

~~(3)~~] Nothing in this chapter shall be construed to authorize the licensure, supervision, regulation, or control in any manner of:

(a) Private offices and clinics of physicians, dentists, and other practitioners of the healing arts ***unless the physician's office meets the criteria set forth in subsection (3) of Section 42 of this Act***;

(b) Office buildings built by or on behalf of a health facility for the exclusive use of physicians, dentists, and other practitioners of the healing arts; ***unless the physician's office meets the criteria set forth in subsection (3) of Section 42 of this Act,*** except no capital expenditure or expenses relating to any such building shall be chargeable to or reimbursable as a cost for providing inpatient services offered by a health facility;

(c) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees, if the facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four (24) hours;

(d) Establishments, such as motels, hotels, and boarding houses, which provide domiciliary and auxiliary commercial services, but do not provide any health related services and boarding houses which are operated by persons contracting with the United States Veterans Administration for boarding services;

(e) The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination and recognized by that church or denomination; and

(f) On-duty police and fire department personnel assisting in emergency situations by providing first-aid or transportation when regular emergency units licensed to provide first-aid or transportation are unable to arrive at the scene of an emergency situation within a reasonable time.

(2)[~~(4)~~] An existing facility licensed as skilled nursing, intermediate care, or nursing home shall notify the cabinet of its intent to change to a nursing facility as defined in Public Law 100-203. A certificate of need shall not be required for conversion of skilled nursing, intermediate care, or nursing home to the nursing facility licensure category.

Section 44. KRS 216B.035 is amended to read as follows:

(1) The ***board*** [~~secretary~~] shall ***hire any*** [~~provide the commission such~~] administrative staff [~~assistance as may be~~] required by the ***board*** [~~commission~~] to carry out its duties and functions under the provisions of this chapter.

(2) The chairman shall keep a full and true record of all the proceedings of the ***board*** [~~commission~~], of all books and papers ordered filed by the ***board*** [~~commission~~], and of all exemptions and certificates of need issued by the ***board*** [~~commission~~], and shall be responsible to it for the safe custody and preservation of all documents in its office. Under the direction of the ***board*** [~~commission~~], the ***executive director*** [~~chairman~~] shall have general charge of its office, superintend its clerical business***,*** and perform such other duties as the ***board*** [~~commission~~] prescribes. ***The executive director and chairman*** [~~He~~] may administer oaths in all parts of the state, where the exercise of that power is properly incidental to the performance of ***their*** [~~his~~] duties or those of the ***board*** [~~commission~~].

Section 45. KRS 216B.040 is amended to read as follows:

(1) The ***board*** [~~commission~~] shall have four (4) separate and distinct functions ***in administering this chapter***:

(a) To approve or deny certificates of need in accordance with the provisions of this chapter, except as to those applications which have been granted nonsubstantive review status by the chairman;

(b) To issue and to revoke certificates of need;

(c) To provide a due process hearing and issue a final determination on all actions by the cabinet to deny, revoke, modify, or suspend licenses of health facilities and health services issued by the cabinet; and

(d) To enforce, through legal actions on its own motion, the provisions of this chapter and its orders and decisions issued pursuant to its functions.

(2) The ***board*** [~~commission~~] shall:

(a) ***Promulgate*** [~~Issue~~] administrative regulations ***pursuant to the provisions of KRS Chapter 13A***[~~through the secretary~~]:

1. To establish the certificate of need review procedures, including but not limited to, application procedures, notice provisions, procedures for review of completeness of applications, and timetables for review cycles.

2. To establish criteria for issuance and denial of certificates of need which shall be limited to the following considerations:

a. Consistency with plans. ***Each proposal approved by the board shall*** [~~The proposals may~~] be consistent with the state health plan***, subject to biennial budget authorizations and limitations, and with consideration given to the proposal's impact on health care costs in the Commonwealth***. The state health plan shall contain a need assessment for long-term care beds, which shall be based on a statistically valid analysis of the present and future needs of the state as a whole and counties individually. The need assessment shall be applied uniformly to all areas of the state. The methodology shall be reviewed and updated on an annual basis. The fact that the state health plan shall not address the specific type of proposal being reviewed shall not constitute grounds for disapproval of the proposal;

b. Need and accessibility. The proposal shall meet an identified need in a defined geographic area and be accessible to all residents of the area. A defined geographic area shall be defined as the area the proposal seeks to serve, including its demographics, and shall not be limited to geographical boundaries;

c. Interrelationships and linkages. The proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state, accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system;

d. Costs, economic feasibility, and resources availability. The proposal, when measured against the cost of alternatives for meeting needs, shall be judged to be an effective and economical use of resources, not only of capital investment, but also ongoing requirements for health manpower and operational financing;

e. Quality of services. The applicant shall be prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements assuring the provision of quality health care services***, as established by the board*** [~~and~~];

f. Hospital based skilled nursing, intermediate care and personal care beds shall [~~not~~] be considered by the ***board*** [~~commission~~] in determining the need for freestanding long-term care beds.

(b) Conduct public hearings, as requested, in respect to certificate of need applications, revocations of certificates of need, and denials, suspensions, modifications, or revocations of licenses.

(3) The ***board*** [~~commission~~] may:

(a) Issue other administrative regulations [~~through the secretary~~] necessary for the proper administration of ***this chapter*** [~~its functions~~];

(b) Administer oaths, issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the ***board*** [~~commission~~], and the process shall extend to all parts of the Commonwealth. Service of process in all proceedings brought before or initiated by the ***board*** [~~commission~~] may be made by certified mail, or in the same manner as other process in civil cases, as the ***board*** [~~commission~~] directs;

(c) Establish by ***promulgation of*** administrative regulation ***under KRS Chapter 13A*** reasonable application fees for certificates of need;

(d) Appoint technical advisory committees as are deemed necessary to administer its functions under the provisions of this chapter; [~~and~~]

(e) Establish a mechanism for issuing advisory opinions to prospective applicants for certificates of need regarding the requirements of a certificate of need***; and***

(f) Establish a mechanism for biennial review of projects for compliance with the terms of the certificate of need.

Section 46. KRS 216B.042 is amended to read as follows:

(1) The cabinet shall:

(a) Establish by ***promulgation of*** administrative regulation under KRS Chapter 13A reasonable application fees for licenses and ***promulgate*** [~~issue~~] other administrative regulations necessary for the proper administration of the licensure function;

(b) Issue, deny, revoke, modify, or suspend licenses or provisional licenses in accordance with the provisions of this chapter; and

(c) Establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. These regulations, under KRS Chapter 13A, shall include, but need not be limited to:

1. Patient care standards and safety standards, minimum operating standards, minimum standards for training, required licenses for medical staff personnel, and minimum standards for maintaining patient records;

2. Licensure application and renewal procedures; and

3. Classification of health facilities and health services according to type, size, range of services, and level of care.

(2) The cabinet ***or board*** may authorize its agents or representatives to enter upon the premises of any health care facility for the purpose of inspection, and under the conditions set forth in administrative regulations promulgated ***under KRS Chapter 13A*** by the ***board or*** [~~commission and~~] the cabinet.

(3) The board may revoke licenses or certificates of need for specific health facilities or health services or recommend the initiation of disciplinary proceedings for health care providers on the basis of the violation of any provisions of this chapter.

Section 47. KRS 216B.045 is amended to read as follows:

Every order, decision, finding, license or certificate issued or approved by the ***board*** [~~commission~~] or cabinet under any of the provisions of this chapter shall be in writing and shall be entered on the records of the ***board*** [~~commission~~] or cabinet.

Section 48. KRS 216B.050 is amended to read as follows:

The ***board*** [~~commission~~] or cabinet may compel obedience to its lawful orders by mandamus, injunction***,*** or other proper proceedings in the Franklin Circuit Court or any other Circuit Court of competent jurisdiction. Every order entered by the ***board*** [~~commission~~] or cabinet shall continue in force until the expiration of the time, if any, named by the ***board*** [~~commission~~] or cabinet in the order, or until revoked or modified.

Section 49. KRS 216B.055 is amended to read as follows:

Notice of decisions and orders made by the ***board*** [~~commission~~] or cabinet under the provisions of this chapter shall be made by certified mail addressed to the last known address on file with the cabinet or ***board*** [~~commission~~], or by personal service. ***The*** [~~Such~~] notice shall be mailed or personal service shall be obtained no later than fifteen (15) working days after the decision or order. Notice shall be complete and effective upon mailing.

Section 50. KRS 216B.061 is amended to read as follows:

(1) Unless otherwise provided in this chapter, no person shall do any of the following without first obtaining a certificate of need:

(a) Establish a health facility;

(b) Obligate a capital expenditure which exceeds the capital expenditure minimum;

(c) Make a substantial change in the bed capacity of a health facility;

(d) Make a substantial change in a health service;

(e) Make a substantial change in a project;

(f) Acquire major medical equipment;

(g) Alter a geographical area or alter a specific location which has been designated on a certificate of need or license;

(h) Transfer an approved certificate of need for the establishment of a new health facility or the replacement of a licensed facility.

(2) No person shall separate portions of a single project into components in order to evade any expenditure minimum set

forth in this chapter. For purposes of this chapter, the acquisition of one (1) or more items of functionally related diagnostic or therapeutic equipment shall be considered as one (1) project.

(3) No person shall have ex parte contact with any member of the ***board or the board's staff*** {~~commission~~} regarding a ***planned or pending*** certificate of need application ***prior to*** {~~from~~} the commencement of the review cycle to the final decision***, except that procedural inquiries may be addressed to the staff for response***. ***If*** {~~In the event~~} an ex parte contact occurs, it shall be promptly made a part of the record.

(4) No person shall obligate a capital expenditure in excess of the amount authorized by an existing certificate of need unless ***the person*** {~~he~~} has received an administrative escalation from the ***board*** {~~commission~~} as prescribed by regulation.

(5) No person shall proceed to obligate a capital expenditure under an approved certificate of need if there has been a substantial change in the project.

(6) A certificate of need shall be issued for a specific location and, when applicable, for a designated geographical area.

Section 51. KRS 216B.062 is amended to read as follows:

(1) Applications for certificates of need shall be submitted according to timetables established by the ***board*** {~~commission~~} by ***promulgation of*** administrative regulation***, pursuant to the provisions of KRS Chapter 13A***. Once an application has been deemed complete pursuant to the ***board's administrative*** {~~commission's adopted~~} regulations, notice shall be given as provided by the regulations of the beginning of the review, the proposed review schedule, and the right to request a hearing. The review shall be deemed to commence on the date of notice. No review shall take longer than ninety (90) days from the commencement of the review unless the applicant agrees to a deferral of action.

(2) Applications proposing the same or similar types of services, facilities, or equipment shall be batched for review purposes, excluding those granted nonsubstantive review status. The ***board*** {~~commission~~} shall by ***promulgation of administrative*** regulation ***under KRS Chapter 13A*** establish appropriate batching groups to assure that applications for each type of service, facility, or equipment will be eligible for consideration at set intervals. In each review batch, the ***board*** {~~commission~~} shall review and, if appropriate, compare all timely filed applications proposing similar types of services, facilities, or equipment in the same health service areas.

Section 52. KRS 216B.065 is amended to read as follows:

(1) Before any person enters into a contractual agreement to acquire a licensed health facility, the person shall notify the ***board*** {~~commission~~} of the {~~person's~~} intent to acquire the facility or major medical equipment and of the services to be offered in the facility and its bed capacity or the use of ***the*** {~~such~~} medical equipment. The notice shall be in writing and shall be filed at least thirty (30) days prior to entry into a contract to acquire the health facility or major medical equipment with respect to which the notice is given.

(2) A certificate of need shall be required for the acquisition of a health facility or major medical equipment, only if:

(a) The notice required in this section is not filed and the arrangement will require the obligation of a capital expenditure which exceeds the capital expenditure minimum; or

(b) The ***board*** {~~commission~~} finds within thirty (30) days after the date it received notice that the health services or bed capacity of the health facility will be substantially changed in being acquired.

(3) Donations, transfers, and leases of major medical equipment and health facilities shall be considered acquisitions of equipment and facilities, and an acquisition of medical equipment or a facility for less than fair market value shall be considered an acquisition if the fair market value exceeds the expenditure minimum.

(4) Before any health facility reduces or terminates a health service or reduces its bed capacity, the facility shall notify the ***board*** {~~commission~~} of its intent. The notice shall be in writing and shall be filed at least thirty (30) days prior to the reduction or termination. A certificate of need shall be required for the reduction or termination only if the notice required in this section is not filed.

Section 53. KRS 216B.066 is amended to read as follows:

(1) Before a health facility acquires major medical equipment to be used solely for research, offers a health service solely for research or makes or obligates a capital expenditure solely for research, which exceeds the prescribed minimum, the health facility shall notify the ***board*** {~~commission~~} of its intent to do so. ***The*** {~~Such~~} notice shall be in writing and shall be made sixty (60) days prior to the acquisition, offering, or making or obligation of the expenditure with respect to which notice is given. The notice shall state the use to be made of the major medical equipment, health service or capital expenditure.

(2) A certificate of need shall be required for the acquisition of major medical equipment solely for research, the offering of a health service solely for research or the making or obligating of a capital expenditure solely for research by a health facility, only if:

(a) The notice required by this section is not filed; or

(b) The ***board*** {~~commission~~} finds within sixty (60) days after it receives notice that the project or transaction for which notice is given will affect the charges of the facility for the provision of medical or other patient care services other than services which are included in the research, will substantially change the bed capacity of the facility, or will substantially change the medical or other patient care services of the facility which were offered before the acquisition, offering, making or obligation.

(3) If major medical equipment is acquired, a health service is offered or a capital expenditure is made or obligated and, pursuant to this section, no certificate of need is required, ***the*** [~~such~~] equipment [~~or~~] service or facilities acquired through the capital expenditure ***shall*** [~~may~~] not be used in a manner which would affect the charges of the facility for the provision of medical or other patient care services other than that included in the research, substantially change the bed capacity of the facility or substantially change the medical or other patient care services of the facility unless a certificate of need is issued.

(4) For purposes of this section, "solely for research" means patient care provided on an occasional and irregular basis and not as part of a research project.

Section 54. KRS 216B.075 is amended to read as follows:

The ***board*** [~~commission~~] shall [~~, within ninety (90) days, following the date this chapter becomes effective,~~] promulgate administrative regulations respecting application and review procedures ***to comply with any*** [~~consistent with the~~] federal ***laws*** [~~act~~] and regulations promulgated thereunder.

Section 55. KRS 216B.085 is amended to read as follows:

(1) Any time no later than fifteen (15) days after the date the review commences, any affected person may request a public hearing. Hearings shall be before a quorum of the ***board*** [~~commission~~], or, at the request of the chairman, before a member of the ***board*** [~~commission~~] designated by the chairman to serve as hearing officer. The hearing officer shall be authorized to administer oaths, issue subpoenas, subpoenas duces tecum, and all necessary process in the proceedings.

(2) If a hearing is requested, the chairman shall set a date, time, and place for a public hearing. Reasonable notice of the hearing shall be given to all affected persons in accordance with administrative regulations promulgated by the ***board*** [~~commission~~].

(3) At the hearing, any party to the proceedings shall have the right to be represented by counsel, and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing, and may conduct reasonable cross-examination under oath of persons who make factual allegations relevant to such matters. A full and complete record shall be maintained of the hearing.

(4) Any decision of the ***board*** [~~commission~~] to issue or deny a certificate of need shall be based solely on the record established with regard to the matter. All decisions granting, denying, or modifying a certificate of need shall be made by the ***board*** [~~commission~~] in writing and shall be recorded in the minutes of the ***board*** [~~commission~~]. The ***board*** [~~commission~~] shall notify the parties to the proceedings of the decision and the decision shall be final for purposes of judicial appeal unless a request for reconsideration is filed. An approved certificate of need shall be issued forty (40) days after notice of the ***board's*** [~~commission's~~] decision unless a request for reconsideration is filed or a judicial appeal is taken and issuance is enjoined by the court.

Section 56. KRS 216B.086 is amended to read as follows:

(1) The ***board*** [~~commission~~] may revoke a certificate of need, or portion thereof, for failure of the holder of the certificate to implement the project in accordance with timetables and standards for implementation established by administrative regulation of the ***board*** [~~commission~~]. The ***board*** [~~commission~~] shall give notice to the holder of the certificate of its initial decision to revoke the certificate of need or portion thereof. The ***board's*** [~~commission's~~] initial decision to revoke a certificate of need or portion thereof shall become final after thirty (30) days unless a hearing is requested. The chairman shall give notice to the holder of the certificate of a decision which has become final under the provisions of this subsection.

(2) The holder of the certificate of need to be revoked may request in writing a public hearing in respect to an initial decision by the ***board*** [~~commission~~] to revoke a certificate of need within thirty (30) days of the date of notice of the initial decision. Failure to request a hearing shall constitute a waiver of any right to reconsideration or judicial appeal of a final ***board*** [~~commission~~] decision to revoke a certificate of need.

(3) The hearing shall be before the ***board*** [~~commission~~], or at the request of the chairman, before a member of the ***board*** [~~commission~~] designated by the chairman to be the hearing officer. The hearing shall be no later than thirty (30) days after the request for the hearing is filed.

(4) ***If*** [~~In the event~~] a hearing is requested, the chairman shall set a date, time, and place for a public hearing. Reasonable notice of the hearing shall be given to all affected persons in accordance with administrative regulations promulgated by the ***board*** [~~commission~~].

(5) At the hearing, any party to the proceedings shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the revocation of the certificate of need, and may conduct reasonable cross-examination under oath of persons who testify. A full and complete record shall be maintained of the hearing, and all testimony shall be recorded but not be transcribed unless the ***board's*** [~~commission's~~] final decision is appealed pursuant to this chapter.

(6) After the issuance of an initial decision to revoke a certificate of need and before a final decision is made, no person shall have ex parte contacts with members of the ***board*** [~~commission~~] regarding the revocation. ***If*** [~~In the event~~] an ex parte contact occurs, it shall be promptly made a part of the record.

(7) If a hearing is requested after notice of the ***board's*** [~~commission's~~] initial decision to revoke a certificate of need, the ***board*** [~~commission~~] shall make a final decision ***within thirty (30) days*** [~~at its next regularly scheduled meeting~~] after the hearing. Any final decision revoking a certificate of need shall be made by the ***board*** [~~commission~~] in writing and shall be recorded in the minutes of the ***board*** [~~commission~~]. The ***board*** [~~commission~~] shall notify the parties to the proceedings of the final decision.

(8) Any final decision of the ***board*** [~~commission~~] to revoke a certificate of need shall be based solely on the record established with regard to the revocation.

(9) Except as provided in subsection (1) of this section, reconsideration pursuant to KRS 216B.090 or judicial appeal pursuant to KRS 216B.115 is available with regard to a final decision of the ***board*** [~~commission~~] to revoke a certificate of need.

Section 57. KRS 216B.090 is amended to read as follows:

(1) Any party to the proceedings may, for good cause shown, request in writing a hearing for purposes of reconsideration of a decision of the ***board*** [~~commission~~] pertaining to a certificate of need or the revocation of a certificate of need under [~~such~~] procedures [~~as are~~] promulgated by administrative regulation. The request shall be filed within fifteen (15) days of the notice of the decision. For purposes of this section there shall be deemed to be "good cause shown" if the request for a public hearing:

(a) Presents significant, relevant information not previously available for consideration by the ***board*** [~~commission~~];

(b) Demonstrates that there have been significant changes in the factors or circumstances relied upon by the ***board*** [~~commission~~] in reaching its decision;

(c) Demonstrates that the ***board*** [~~commission~~] has materially failed to follow its adopted procedures in reaching its decision; or

(d) States that a public hearing pursuant to KRS 216B.085 was not conducted prior to a decision to deny a certificate of need.

(2) If a public hearing is granted, it shall be held within thirty (30) days after the decision to grant the request for reconsideration. The hearing shall be conducted in accordance with the provisions of this chapter. The ***board*** [~~commission~~] shall make its decision on reconsideration and shall give notice thereof. The decision of the ***board*** [~~commission~~] shall be final for purposes of judicial appeal. An approved certificate of need shall be issued forty (40) days after notice of the ***board's*** [~~commission's~~] decision unless a judicial appeal is taken and issuance is enjoined by the court.

Section 58. KRS 216B.095 is amended to read as follows:

(1) An applicant may waive the procedures for formal review of an application for a certificate of need and request a nonsubstantive review as provided below. The ***board may*** [~~chairman shall~~] grant or deny nonsubstantive review status within ten (10) days of the date the application is deemed completed and shall give notice to all affected persons of the decision to conduct a nonsubstantive review. Any affected person other than the applicant may request a hearing by filing a request with the ***board*** [~~commission~~] within ten (10) days of the notice to conduct a nonsubstantive review. As applicable, hearings shall be conducted as provided in KRS 216B.085. Based solely upon the record established with regard to the matter, the ***board*** [~~commission~~] shall approve or deny a certificate of need on all projects assigned nonsubstantive review status within thirty-five (35) days of the determination of nonsubstantive review status. If the application is denied nonsubstantive review status, it shall automatically be placed in the formal review process.

(2) If a certificate of need is denied following a nonsubstantive review, the applicant may request that the application be placed in the next cycle of the formal review process. Nothing in this subsection shall require an applicant to pursue a formal review before obtaining judicial review pursuant to KRS 216B.115.

(3) The ***board may*** [~~chairman shall~~] grant nonsubstantive review status to an application for a certificate of need which is required:

(a) To change the location of a proposed health facility;

(b) To replace or relocate a licensed health facility, ***if*** [~~provided~~] there is no substantial change in health services or substantial change in bed capacity;

(c) To replace or repair worn equipment ***if the*** [~~provided such~~] worn equipment ***has*** [~~shall have~~] been used by the applicant in a health facility for five (5) years or more;

(d) For cost escalations;

(e) [~~For change of ownership when applicable;~~

~~(f)~~] To establish an industrial ambulance service; or

(f)[~~(g)~~] In other circumstances the ***board*** [~~commission~~] by ***administrative*** regulation may prescribe.

(4) Notwithstanding any other provision to the contrary in this chapter, the ***board may*** [~~commission shall~~] approve a certificate of need for a project required for the purposes set out in ***paragraphs*** (a) through ***(f)***[~~(g)~~] of subsection (3) ***of this section*** [~~hereof~~], unless it finds the facility or service with respect to which the capital expenditure is proposed to be made is not [~~in fact so~~] required; or to the extent the facility or services contemplated by the proposed capital expenditure is addressed in the state health plan, the ***board*** [~~commission~~] finds that the capital expenditure is not consistent with the state health plan.

(5) The decision of the ***board*** [~~commission~~] approving or denying a certificate of need pursuant to this section shall be final for purposes of judicial appeal, unless the applicant requests the application be placed in the formal review process. An approved certificate shall be issued thirty (30) days after notice of the ***board's*** [~~commission's~~] decision, unless a judicial appeal is taken and issuance is enjoined by the court.

Section 59. KRS 216B.105 is amended to read as follows:

(1) Unless otherwise provided in this chapter, no person shall operate any health facility in this Commonwealth without first obtaining a license issued by the ***board*** [~~cabinet~~], which license shall specify the kind or kinds of health services the facility is authorized to provide. A license shall not be transferable and shall be issued for a specific location and, if specified, a designated geographical area.

(2) The ***board may*** [~~cabinet shall have the authority to~~] deny, revoke, modify***,*** or suspend a license in any case in which it finds that there has been a substantial failure to comply with the provisions of this chapter or the administrative regulations promulgated hereunder. ***The board shall deny, revoke, or suspend, a license in any case in which it finds there has been a violation of laws prohibiting discrimination based on disability, sex, age, religion, or race or national origin, in accordance with KRS Chapter 344. The*** [~~Such~~] denial, revocation, modification, or suspension shall be effected by mailing to the applicant or licensee, by certified mail, a notice setting forth the particular reasons for ***the*** [~~such~~] action. ***The*** [~~Such~~] denial, revocation, modification, or suspension shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within ***the*** [~~said~~] thirty (30) day period, shall file a request in writing for a hearing with the ***board*** [~~commission~~].

(3) The hearing shall be before the ***board*** [~~commission~~], or before a member of the ***board*** [~~commission~~] designated to serve as hearing officer by the chairman.

(4) If the hearing is before a designated hearing officer, within thirty (30) days from the conclusion of the hearing, the [~~hearing officer shall transmit his~~] findings and recommendations ***of the hearing officer shall be transmitted*** to the ***board*** [~~commission~~], with a synopsis of the evidence contained in the record and a statement of the basis of ***the hearing officer's*** [~~his~~] findings. The applicant or licensee shall be entitled to be represented at the hearing in person or by counsel, or both, and shall be entitled to introduce testimony by witnesses or, if the ***board*** [~~commission~~] so permits, by depositions. A full and complete record shall be kept of all hearings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to this chapter. The ***board*** [~~commission~~] may adopt the hearing officer's findings and recommendations or prepare written findings of fact and state the basis for its decision which shall become part of the record of the proceedings.

(5) All decisions revoking, suspending, modifying or denying licenses shall be made by the ***board*** [~~commission~~] in writing and shall be recorded in the minutes of the ***board*** [~~commission~~]. The ***board*** [~~commission~~] shall notify the applicant or licensee of the decision.

(6) The decision of the ***board*** [~~commission~~] shall be final for purposes of judicial appeal upon notice of the ***board's*** [~~commission's~~] decision.

Section 60. KRS 216B.115 is amended to read as follows:

(1) An appeal to the Franklin Circuit Court may be taken from any final decision of the ***board*** [~~commission or cabinet~~] with respect to a certificate of need application, a certificate of need, or a license, by any party to the proceedings.

(2) An appeal may be taken by filing a petition for review in the Franklin Circuit Court within thirty (30) days after notice of the final decision unless a request for reconsideration has been filed, in which case the petition shall be filed within fifteen (15) days of the ***board's*** [~~commission's~~] decision not to reconsider or notice of its decision on reconsideration. The petition shall state completely the grounds upon which the review is sought and shall assign all errors relied upon. The petitioner shall serve a copy of the petition to each person who was a party to the proceedings. Summons shall be issued upon the petition directing the adverse party or parties to file an answer within twenty (20) days after service of summons. The ***board*** [~~commission or cabinet~~] shall, upon being served with the summons and within thirty (30) days thereafter, file a copy of the record, duly certified by the [~~cabinet or the~~] chairman of the ***board*** [~~commission~~], the cost of the record to be taxed as costs upon appeal. In lieu of filing of the record, an abstract thereof may be filed if all parties to the appeal agree.

Section 61. KRS 216B.120 is amended to read as follows:

(1) Each party to the proceedings may participate as a party in the proceedings in the Circuit Court on an appeal.

(2) In case of an appeal, no new or additional evidence may be introduced in the Circuit Court except as to fraud or misconduct of some person engaged in the administration of this chapter and affecting the decision or order; the court shall hear the case upon the certified record or abstract thereof, and shall dispose of the case in a summary manner, its review being limited to determining whether the ***board*** [~~commission~~] or cabinet acted within its jurisdiction, whether the decision or order was procured by fraud, and whether the findings of fact in issue are supported by substantial evidence and are not clearly erroneous based upon a review of the record as a whole.

(3) The court shall enter judgment affirming, modifying, reversing, or setting aside the decision or, in its discretion, remanding the case to the ***board*** [~~commission~~] or cabinet for proceedings in conformity with the directions of the court. If the court affirms the issuance of the certificate of need, the holder of the certificate shall be entitled to recover its costs of defense of the appeal, including its attorney's fees. The decision of the Circuit Court shall be final and nonappealable.

(4) In any case in which the granting of a license or certificate of need is appealed by a competing health care provider, the court shall require the appellant to post a bond, with good and sufficient surety, in ***the*** [~~such~~] sum [~~as~~] the court deems proper, for the payment of the costs and damages as may be incurred or suffered by the certificate of need or license applicant as a result of the filing and pendency of the appeal. Failure to post the bond as required by the court shall result in the dismissal of the appeal. If the decision of the ***board*** [~~commission~~] granting the certificate of need or license is sustained, the court shall order the appellant health care provider to pay the applicant its costs incurred and damages suffered as a result of the filing and pendency of the appeal, which shall not be limited to the amount of the bond. The court shall not withhold the finality of its decision on the merits of the appeal pending the determination as to ***the*** [~~such~~] costs and damages. As used in this section, "competing health care provider" means any health facility or health maintenance organization which competes with the applicant for patients, customers, the services of health care personnel, or policy holders.

Section 62. KRS 216B.125 is amended to read as follows:

If [~~In the event~~] the cabinet or ***board*** [~~commission~~] fails to issue or deny a certificate of need or an exemption pursuant to this chapter within the time prescribed under this chapter or administrative regulations promulgated by the ***board*** [~~commission~~], the applicant may seek judicial enforcement of this chapter by filing a civil action in Franklin Circuit Court.

Section 63. KRS 216B.130 is amended to read as follows:

Any other provisions of this chapter notwithstanding, any expenditure minimum or limit as provided in this chapter shall be adjusted for each twelve (12) month period beginning twelve (12) months after ***the effective date of this Act*** [~~July 15, 1980~~], to reflect the changes in the preceding twelve (12) month period in a cost index designated by regulation for the purposes of making ***the*** [~~such~~] adjustment. The ***board*** [~~commission~~] shall effect ***the*** [~~such~~] adjustment by administrative regulations.

Section 64. KRS 216B.455 is amended to read as follows:

(1) A certificate of need shall be required for all psychiatric residential treatment facilities. The application for a certificate of need shall include formal written agreements of cooperation that identify the nature and extent of the proposed working relationship between the proposed psychiatric residential treatment facility and each of the following agencies, organizations, or facilities located in the service area of the proposed facility:

  (a) Regional interagency council for children with emotional disability or severe emotional disability as defined in KRS 200.509;

  (b) Department for Social Services;

  (c) Local school districts;

  (d) Psychiatric hospitals; and

  (e) Any other agency, organization, or facility deemed appropriate by the ***board*** [~~Commission on Health Economics Control~~].

(2) All psychiatric residential treatment facilities shall comply with the licensure requirements as set forth in KRS 216B.105.

(3) All psychiatric residential treatment facilities shall be certified by the Joint Commission on Accreditation of Healthcare Organizations.

(4) A psychiatric residential treatment facility shall not be located in or on the grounds of a psychiatric hospital.

(5) [~~If a psychiatric residential treatment facility is licensed prior to April 9, 1992, and pursuant to KRS 216B.020, the facility shall be exempt from subsections (1) and (4) of this section, if the facility is in compliance with the administrative regulations in effect on the date of the licensure.~~

~~(6)~~] The total number of psychiatric residential treatment facility beds shall not exceed sixteen (16) beds in any area development district with less than 275,000 population; thirty-two (32) beds in any area development district with 275,000 to 550,000 population; and forty-eight (48) beds in any area development district with over 550,000 population.

PART IX
THE KENTUCKY HEALTH PURCHASING ALLIANCE

SECTION 65. SUBTITLE 17A OF KRS CHAPTER 304 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in Sections 65 to 71 of this Act:

(1) "Accountable health plan" means an organization that integrates health care providers and facilities and assumes financial risk, in order to provide health care services to alliance members, and as certified by the alliance pursuant to Section 71 of this Act.

(2) "Alliance" means the Kentucky Health Purchasing Alliance created by Section 66 of this Act.

(3) "Alliance member" means:

(a) An employer who voluntarily chooses to participate in the alliance except that any employer who provides health plan benefits for one (1) employee shall provide health plan benefits for all employees; and

(b) An individual who voluntarily chooses to participate in the alliance.

(4) "Antitrust laws" means federal and state laws intended to protect commerce from unlawful restraints, monopolies, and unfair business practices.

(5) "Board" means the Kentucky Health Policy Board created by Section 2 of this Act.

(6) "Business health coalition" means a group of employers organized to share information about health services and insurance coverage, to enable the employers to obtain more cost-effective care for their employees.

(7) "Consumer" means an individual user of health care services.

(8) "Department" means the Kentucky Department of Insurance.

(9) "Grievance procedure" means an established set of rules that specify a process for appeal of an organizational decision.

(10) "Health care provider" or "provider" means any facility or service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:

(a) Physicians, osteopaths, and podiatrists licensed pursuant to KRS Chapter 311;

(b) Chiropractors licensed pursuant to KRS Chapter 312;

(c) Dentists licensed pursuant to KRS Chapter 313;

(d) Optometrists licensed pursuant to KRS Chapter 320;

(e) Physician assistants regulated pursuant to KRS Chapter 311;

(f) Nurse practitioners licensed pursuant to KRS Chapter 314;

(g) Psychologists licensed pursuant to KRS Chapter 319;

(h) Licensed clinical social workers pursuant to KRS Chapter 335; and

(i) Other health care practitioners as determined by the board by administrative regulations promulgated pursuant to KRS Chapter 13A.

(11) "Health insurer" or "insurer" means any insurance company; health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky.

(12) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; or health maintenance organization contract; or standard health benefit plans as established in Section 79 of this Act which affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, long-term care, medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(13) "Health status" means an assessment of an individual's mental and physical condition.

(14) "Managed care" means systems or techniques generally used by third party payors or their agents to affect access to and control payment for health care services. Managed care techniques may include one (1) or more of the following:

(a) Prior, concurrent, and retrospective review of the medical necessity and appropriateness of services or site of services;

(b) Contracts with selected health care providers;

(c) Financial incentives or disincentives related to the use of specified providers, services, or service sites;

(d) Controlled access to and coordination of services by a case manager; and

(e) Payor efforts to identify treatment alternatives and modify benefit restrictions for high cost patient care.

(15) "Managed competition" means a process by which purchasers participate in alliances to obtain information on health benefit plans, and purchase from, competing accountable health plans.

(16) "Medical outcomes" means a change in an individual's health status after the provision of health services.

(17) "Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals.

(18) "Purchaser" means an individual, an organization, or the Commonwealth that makes health benefit purchasing decisions on behalf of a group of individuals.

(19) "Self-funded plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for all covered services provided to its enrollees.

(20) "Utilization management" means programs designed to control the overutilization of health services by reviewing their appropriateness relative to established standards or norms.

SECTION 66. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created the Kentucky Health Purchasing Alliance consisting of the entire Commonwealth. The alliance shall operate independently from the Kentucky Health Policy Board but shall be attached to the Kentucky Health Policy Board for administrative purposes. The alliance shall be operational by July 15, 1995.

(2) The alliance designated in subsection (1) of this section shall be the only entity permitted to operate as a statewide health purchasing alliance in the Commonwealth and shall operate for the benefit of the members of the alliance. The alliance is the exclusive entity for the oversight and coordination of alliance member purchases. Any health benefit plan offered through the alliance shall be offered by an accountable health plan, and the alliance shall not:

(a) Directly provide insurance;

(b) Directly contract, for purposes of providing insurance, with a health care provider or provider network; or

(c) Bear any risk, or form self-insurance plans among its members.

Nothing in Sections 65 to 71 of this Act shall limit or authorize the formation of business health coalitions; however, a person or entity that pools together or assists in purchasing health coverage shall not discriminate in its activities based on the health status or historical or projected claims experience of such employers or recipients.

(3) Participation in the alliance shall be voluntary and open to those persons set forth in subsection (3) of Section 65 of this Act.

(4) The alliance shall be governed by a board of directors consisting of five (5) members to be appointed by the Governor and confirmed by the Kentucky Senate. Members shall have expertise in business, finance, economics, or health benefits management and shall represent the interests of employers and health care consumers. No member shall be, nor have been:

(a) A health care provider or health insurer;

(b) An employee of a health care provider, health insurer, or health plan; or

(c) A person having a fiduciary relationship to a health care provider, health insurer, or health plan.

(5) The Governor may at any time remove any member of the alliance board of directors for cause after furnishing the member with a written copy of the charges against the member and affording the member a public hearing if requested.

(6) The alliance may have regional advisory boards with the number of members, terms of office, and conditions of participation to be determined by the alliance and with the members to be appointed by the Governor from a list of three (3) candidates for each open position on each regional advisory board submitted by the President of the Senate and the Speaker of the House; however, the terms of office of any member of a regional advisory board shall not exceed four (4) years. The qualifications for regional advisory board members shall be the same as for alliance board members as set forth in subsection (4) of this section.

(7) The members of the alliance board of directors and regional advisory boards shall be reimbursed for actual expenses incurred in the discharge of the member's duties.

(8) The alliance board of directors shall employ a chief executive officer and comptroller for the alliance. The chief

executive officer shall employ any professional staff necessary to carry out the duties of the alliance and any regional advisory board subject to the approval of the Kentucky Health Policy Board.

(9) No member of the alliance board of directors or any regional advisory board shall be subject to any personal liability for any loss sustained or damage suffered on account of any action or inaction of the alliance.

(10) Nothing in Sections 65 to 71 of this Act shall be construed to prohibit or compel the health purchasing alliance or an accountable health plan from using the services of a licensed insurance agent or broker in order to assist in marketing, consumer education, claims assistance, grievance resolution, and servicing of health benefit coverage offered by the accountable health plan or through the health purchasing alliance. Any commissions or compensation paid by an accountable health plan to a licensed insurance agent or broker shall be determined between the accountable health plan and the agent or broker. An accountable health plan shall not vary compensation or commissions to such agents, brokers, contractors, or producers based directly or indirectly, on the anticipated or actual claims experience or health status associated with particular employers to which each plan is sold.

SECTION 67. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The duties of the Kentucky Health Purchasing Alliance shall be as follows:

(1) Establishing the conditions of alliance membership as set forth in Section 66 of this Act;

(2) Providing assistance to alliance members in selecting and obtaining coverage through accountable health plans and providing alliance members with clear, standardized information in the following areas:

  (a) A description of each accountable health plan under contract with the alliance and each health benefit plan offered by each accountable health plan;

  (b) Price, enrollee costs, quality, patient satisfaction, enrollment, and enrollee responsibilities for each accountable health plan and health benefit plan offered through the alliance; and

  (c) A comparison sheet containing each accountable health plan participating in the alliance with information on basic coverage that may be obtained through the alliance;

(3) Annually offering to all alliance members all accountable health plans and health benefit plans offered by the accountable health plans under contract with the alliance which meet the requirements set forth in Section 71 of this Act, and enrolling alliance members in the health benefit plan of the member's choice;

(4) Requesting proposals for the offering to alliance members of standard benefit plans, as defined by the board, pursuant to Section 79 of this Act, from all accountable health plans in the area served by the alliance in a format to be determined by the alliance. At least one (1) standard benefit plan shall have coverage for alliance members which is comparable to the coverage provided under Kentucky Kare Standard as of January 1, 1994. The alliance shall aggressively negotiate contracts and select accountable health plans to offer to members that best meet cost, quality, access, and service objectives, as determined by the alliance;

(5) Requesting proposals from all accountable health plans in the area served by the alliance for supplemental benefit plans approved by the board, determining if the proposals submitted by the accountable health plans meet the requirements of the request for proposals, and offering them as options through riders to the standard benefit plan;

(6) Distributing to health care purchasers retail price data on prescription drugs and their generic equivalents, durable medical equipment, and disposable medical supplies;

(7) Establishing administrative and accounting procedures for the operation of the alliance and members' services, preparing an annual budget for the alliance, and preparing an annual report on alliance operations for submission to the board;

(8) Developing and implementing a marketing and public information plan to publicize the alliance to potential members;

(9) Developing grievance procedures to be used in resolving disputes between alliance members and the alliance and disputes between the accountable health plans and the alliance. Any member of the alliance or accountable health plan that serves the alliance may appeal to the board any grievance that is not resolved by the alliance;

(10) Maintaining all records, reports, or other information required by the board or state law;

(11) Receiving and accepting grants, loans, advances, contributions, or funds from any public or private agency that are necessary for the operation of the alliance;

(12) Contracting with a qualified, independent third party, subject to approval of the board, for any service necessary to carry out the duties of the alliance;

(13) Developing a plan to facilitate participation of health care providers in accountable health plans in the area served by the alliance, with emphasis on participation by physicians in medically underserved areas;

(14) Ensuring that any accountable health plan that has a market share of fifteen percent (15%) or greater within the

Commonwealth is offered to members of the alliance;

(15) Collecting premiums on behalf of participating accountable health plans, including the remittance of the share of the group premium paid by both an employer and an employee. The alliance shall pay participating accountable health plans their contracting premium amounts on a prepaid monthly basis, or as otherwise mutually agreed upon;

(16) Setting reasonable fees, not to exceed three percent (3%) of annual premiums for health benefit plans offered by the alliance, which shall finance all reasonable and necessary costs incurred in administering the alliance. Imposition of fees shall be subject to the approval of the board;

(17) Administering the risk adjustment process established by the Kentucky Health Policy Board pursuant to Section 76 of this Act if so directed by the board, but only as to accountable health plans participating in the alliance; and

(18) Ensuring that each alliance member always has a choice of one (1) fee-for-service plan.

SECTION 68. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The alliance shall establish conditions of participation in the alliance for employers which shall include:

(a) Assurance that the group is a valid employer. This assurance shall include requirements for sole proprietors and self-employed individuals relating to the length of time the sole proprietor or self-employed individual has been in business, documentation to verify employment status, and any other requirements to ensure that the individual is working;

(b) Assurance that the individuals in the employer group are employees and have not been added for the purpose of securing health benefit coverage;

(c) Assurance that during the first year of membership in the alliance:

1. An employer shall not be required to pay a premium that exceeds the amount of the premium that the employer was charged for a health benefit plan providing the same coverage immediately prior to becoming a member of the alliance; and

2. An employee of an employer that is a member of the alliance shall not be required to pay any premium that exceeds the amount of the premium that the employee was charged for a health benefit plan providing the same coverage immediately prior to the date that the employer became a member of the alliance, if the employee purchased health insurance through a group plan made available to the employer;

(d) Assurance that an employer that lays off or terminates the employment of an employee allows the employee, at the employee's expense, the opportunity to continue coverage with any health benefit plan with which the employee was enrolled at the time of the layoff or termination of employment. The employee shall not be required to pay a premium that exceeds the amount charged to the employer or other employees; and

(e) Assurance that any employee who voluntarily terminates employment with an employer shall be permitted to continue to participate, at the employee's expense, in any health benefit plan with which the employee was enrolled at the effective date of the voluntary termination. The employee shall not be required to pay a premium that exceeds the amount charged to the employer or other employees.

(2) The alliance may require an employer seeking membership to agree to participate in the alliance for a specified minimum period of time, not to exceed one (1) year.

(3) The alliance shall not require an employer to pay any portion of premiums as a condition of participation in the alliance.

(4) If an employer who is a member of the alliance offers more than one (1) health benefit plan and the employer contributes to the coverage of employees or dependents of the employee, the alliance shall require that the employer contribute the same dollar amount for each employee, regardless of the health benefit plan chosen by the employee.

(5) For a minimum of one (1) year after January 1, 1995, an employer that seeks to participate in the alliance shall be allowed to keep the same coverage that the employer offered to its employees immediately prior to becoming a member of the alliance.

SECTION 69. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The Kentucky Health Policy Board created by Section 2 of this Act shall have the following duties with respect to the alliance:

(1) Initially and thereafter annually certifying that the alliance complies with the provisions of Sections 65 to 71 of this Act. The board may decertify the alliance if it determines the alliance fails to comply with the provisions of Sections 65 to 71 of this Act and the administrative regulations adopted by the board pursuant to KRS Chapter 13A. Thereafter, a single new health purchasing alliance may be established in accordance with the procedures under Section 66 of this Act;

(2) Providing administrative startup funds through a loan or grant to the alliance.

(3) Conducting any annual review of the performance of the alliance to ensure the alliance is in compliance with Sections 65 to 71 of this Act. The alliance shall submit data to the board to assist in this review, including:

- *(a) Employer enrollment by employer size, industry sector, and previous insurance status;*
- *(b) Number of total eligible employers in the area served by the alliance and the number participating in the alliance;*
- *(c) Premium ranges for each accountable health plan for alliance member categories;*
- *(d) Type and resolution of member grievances;*
- *(e) Membership fees collected by the alliance; and*
- *(f) Alliance financial statements.*

(4) Establishing a data system to be utilized by accountable health plans including data elements to be filed with the alliance.

SECTION 70. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

In addition to the other duties described in Sections 65 to 71 of this Act, the Kentucky Health Policy Board shall supervise the alliance to ensure that actions that affect market competition are not for private interest, so as to provide the alliance and its board members with protection against violating antitrust laws.

SECTION 71. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) An accountable health plan may be created by health care providers, health maintenance organizations, and health insurers for the purpose of providing health care services to alliance members.

(2) Each accountable health plan that seeks to offer services to members of the alliance shall first be certified by the alliance. The alliance shall promulgate administrative regulations pursuant to KRS Chapter 13A, in consultation with the Kentucky Health Policy Board, for certification of accountable health plans. To qualify as an accountable health plan, an applicant shall submit information acceptable to the alliance to satisfactorily demonstrate that the plan:

- *(a) Is licensed and in good standing with the licensure boards for participating providers;*
- *(b) Has demonstrated the capacity to administer the health plans it is offering;*
- *(c) Has the ability, experience, and structure to arrange for the appropriate level and type of health care services;*
- *(d) Has the ability, policies, and procedures to conduct utilization management activities;*
- *(e) Has the ability to achieve, monitor, and evaluate the quality and cost effectiveness of care provided by its provider network;*
- *(f) Is financially solvent;*
- *(g) Has the ability to assure enrollees adequate access to providers, including geographic availability and adequate numbers and types;*
- *(h) Has the ability and procedures to monitor access to its provider network;*
- *(i) Has a satisfactory grievance procedure and the ability to respond to enrollee's inquiries and complaints;*
- *(j) Has the ability to recruit and retain health care providers in medically underserved areas;*
- *(k) Does not limit the participation of any health care provider in its provider network in another accountable health plan, except for providers who practice on the staff of a health maintenance organization of any other plan that employs providers on a full-time basis;*
- *(l) Has the ability and policies that allow patients to receive care in the most appropriate, least restrictive setting;*
- *(m) Does not discriminate in enrolling members;*
- *(n) Participates in coordination of benefits;*
- *(o) Uses standardized electronic claims and billing processes and formats; and*
- *(p) Discloses to the alliance reimbursement arrangements with providers.*

(3) The alliance shall establish a certification fee to be paid by each accountable health plan to cover the cost in performing the certification review.

(4) An accountable health plan shall require all providers participating in the plan to report to the Kentucky Health Policy Board specified data which can be used in determining medical outcomes in accordance with standards approved by the board and shall comply with all provisions of this subtitle.

PART X
INSURANCE REFORMS

SECTION 72. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in Sections 72 to 79 of this Act, unless the context requires otherwise:

(1) "Board" means the Kentucky Health Policy Board created by Section 2 of this Act.

(2) "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as amended.

(3) "Guaranteed-issue basis" means that no applicant for insurance can be turned down except for nonpayment of premiums.

(4) (a) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; health maintenance organization contract; and standard health benefit plans as established in Section 79 of this Act.

(b) "Health benefit plan" does not include policies covering only accident, credit, dental, disability income, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(c) "Health benefit plan" means a health benefit plan which affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky.

(5) "Insurer" means a person who provides heath benefit plans in this state and is subject to insurance regulation in this state, including an authorized insurance company, health maintenance organization, self-insurer or multiple welfare arrangement not exempt from state regulation by ERISA, accountable health plans as defined in Section 65 of this Act, and nonprofit hospital, medical-surgical, dental, and health service corporation.

SECTION 73. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

All health benefit plans issued or renewed on or after July 15, 1995, shall comply with the following provisions:

(1) All health benefit plans shall be renewable with respect to all eligible persons and dependents at the option of the policyholder or contract holder, except:

(a) For nonpayment of the required premiums by the policyholder or contract holder;

(b) For fraud or misrepresentation of the policyholder or contract holder;

(c) For noncompliance with health benefit plan provisions;

(d) If the insurer ceases doing business in Kentucky and notice of the decision to cease to do business in Kentucky is provided to the Kentucky Health Policy Board, the department, and to either the policyholder or contract holder. Health benefit plans shall not be canceled by the insurer for one (1) year after the date of the notice required under this paragraph unless the business has been sold to another insurer. An insurer that ceases to do business in Kentucky shall not reenter Kentucky for a period of five (5) years from the date of the notice required under this paragraph.

(2) (a) Pre-existing conditions provisions shall not exclude or limit coverage for a period beyond six (6) months following the individual's effective date of coverage and may only relate to conditions which had, during the six (6) months immediately preceding the effective date of coverage, manifested themselves in a manner that would cause an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment or for which medical advice, diagnosis, care, or treatment was recommended or received or as to a pregnancy existing on the effective date of coverage;

(b) In determining whether a pre-existing conditions provision applies to a person covered under a plan, all health benefit plans shall credit the time the person was covered under a previous health benefit plan provided by an insurer if the previous coverage was continuous to a date not more than sixty (60) days prior to the effective date of the new coverage.

(3) Health benefit plans shall not discriminate against any class of health care providers in their coverage of services.

(4) (a) Health benefit plans shall guarantee that all licensed and qualified providers that perform the same service shall be offered the opportunity to bid for contracts with the health benefit plans. Health benefit plans shall accept the lowest and best bid for comparable services.

(b) If the commissioner finds after a hearing that the insurer has violated the provisions of this subsection, the

insurer shall forfeit its license.

(5) It shall be the responsibility of the health care provider who renders services to an insured to initiate and comply with any pre-certification process required by a health benefit plan that requires advance review and authorization to obtain any covered service under the health benefit plan. The insured shall not be liable to the health care provider for any charges for covered services not paid by the plan because of a reduction in benefits due to the failure of the health care provider to comply with the pre-certification provisions in the plan.

SECTION 74. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any other provisions of this chapter to the contrary:

(a) Each insurer maintaining policies or contracts under this chapter on February 1, 1994, shall, by September 1, 1994, file with the Kentucky Health Policy Board its rates, fees, dues, and other charges paid by insureds, members, enrollees, or subscribers in effect on February 1, 1994.

(b) Each insurer that issues, delivers, or renews any policy or contract after October 1, 1994, shall, before use thereof, file with the Kentucky Health Policy Board its rates, fees, dues, and other charges paid by insureds, members, enrollees, or subscribers and shall comply with the provisions of this section. The insurer shall adhere to its rates, fees, dues, and other charges as filed with the Kentucky Health Policy Board. The insurer may submit new filings from time to time as it deems proper, except as provided in paragraph (d) of subsection (2) of this section.

(c) Each insurer that issues, delivers, or renews any standard health benefit plan under Section 79 of this Act shall, before use thereof, file with the Kentucky Health Policy Board its rates, fees, dues, and other charges paid by insureds, members, enrollees, or subscribers and shall comply with the provisions of this section. The insurer shall adhere to its rates, fees, dues, and other charges as filed with the Kentucky Health Policy Board. The insurer may submit new filings from time to time as it deems proper, except as provided in paragraph (d) of subsection (2) of this section.

(2) (a) No filing under paragraphs (b) or (c) of subsection (1) of this section shall become effective until the Kentucky Health Policy Board, created by Section 2 of this Act, has issued an order approving the filing within thirty (30) days after receiving the filing. At the expiration of the thirty (30) day period, the filing shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the Kentucky Health Policy Board or a hearing has been held. The Kentucky Health Policy Board may hold a hearing within thirty (30) days after receiving a filing under this subtitle and shall issue an order approving or disapproving the filing within thirty (30) days following the conclusion of the hearing.

(b) In approving or disapproving a filing under paragraph (a) of this subsection, the Kentucky Health Policy shall consider:

1. Whether the benefits provided are reasonable in relation to the premium or fee charged;

2. Whether the fees paid to providers for the covered services are reasonable in relation to the premium or fee charged;

3. Previous premium rates or fees for the policies or contracts to which the filing applies;

4. The effect of the rate or rate increase on policyholders, enrollees, and subscribers;

5. Whether discounts given to providers are reflected in the premium or fee; and

6. Whether the rates, fees, dues, or other charges are excessive, inadequate, or unfairly discriminatory.

(c) Not less than ten (10) days in advance of a hearing held under paragraph (a) of this subsection, the Kentucky Health Policy Board shall notify the Attorney General in writing of the hearing. The Attorney General shall be considered a party to the hearing if the Attorney General chooses to participate.

(d) No insurer receiving the Kentucky Health Policy Board's approval of a filing under this section shall submit a new filing containing a rate or fee increase for any of the same policies or contracts until at least twelve (12) months have elapsed following the effective date of the approved increase.

(e) At any time, the Kentucky Health Policy Board, after a public hearing of which at least thirty (30) days' notice has been given, may withdraw approval of rates or fees previously approved under this section and may order an appropriate refund to policyholders, enrollees, and subscribers if the board determines that the benefits are no longer reasonable in relation to the premium or fee charged.

(3) The Kentucky Health Policy Board may by administrative regulation prescribe any additional information it deems relevant to be included in the filings and the form of the filings required by this section.

(4) As a condition of doing business in Kentucky, each insurer as defined in Section 72 of this Act shall comply with the provisions of this section.

SECTION 75. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) For all health benefit plans issued or renewed on or after July 15, 1995, insurers shall use a modified community rating methodology filed with and approved by the Kentucky Health Policy Board in which the premium for each individual policy and group policy is determined solely on the basis of age, geography, family composition, benefit plan design and cost containment provisions, and whether or not the product is offered through an alliance.

(2) The board may establish limits on the premium variations based on age of the persons insured.

(3) The Kentucky Health Policy Board shall establish guidelines for geographic rating areas that take into consideration the following:

(a) Geographic rating should not be used to prevent areas with lower cost, more efficient delivery systems from cross-subsidizing areas where health benefit plans and providers operate inefficiently;

(b) Geographic rating shall not increase rates of higher risk and needier populations relative to healthier and wealthier populations, nor to effectively discriminate on the basis of race or socio-economic class; and

(c) Geographic rating areas may include entire communities and single metropolitan statistical areas but shall not fold lower cost and lower income rural areas into the same rating areas as higher cost urban areas.

(4) The rate structure shall differentiate between single individuals, couples, single-parent families, and two-parent families with children.

SECTION 76. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board shall promulgate administrative regulations for the establishment of a risk adjustment process to be used in equalizing risk between insurers which participate within and outside of the Kentucky Health Purchasing Alliance.

(2) Prior to promulgating the administrative regulations, the board shall appoint an expert advisory panel to provide input on the process. The panel shall be comprised of nine (9) members, one (1) of whom shall be designated by the board as chairman. The board shall appoint three (3) members and the President of the Senate and the Speaker of the House of the General Assembly shall each appoint three (3) members to the panel. The appointees shall be named no later than September 1, 1994, and shall consist of individuals with expertise particularly germane to risk adjustment, including representatives of health plans, academics, and actuaries.

(3) The risk adjustment process shall at minimum be based on gender, retiree status, continuation status, and medical condition information which represent the relative risk of individuals participating with various insurers. The risk adjustment process is not intended to, and shall not, neutralize cost variations among insurers based on efficiency, ability to manage health costs and patient care, and the administration of policy provisions. The process shall not base adjustment for insurers on their individual premiums, administrative expenses, claims, or use of health care services. Preset amounts shall be established to reflect the demographic and medical risk characteristics of individuals enrolled by insurers.

(4) The risk adjustment process shall be administered by the board so that the process can be applied on a marketwide basis. All insurers shall submit information designated by the board as necessary to administer the risk adjustment process. All insurers shall contribute on an annual basis a preset amount for each person covered toward the establishment and administration of the risk adjustment process. Insurers shall receive from, or contribute amounts to, the board based on the insurer's relative risk profile as determined by the risk adjustment process.

(5) The risk adjustment process shall be established by no later than April 1, 1995. The board may authorize one (1) or more pilot projects as part of an ongoing reevaluation and refinement of the risk adjustment process.

SECTION 77. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

All health benefit plans issued or renewed on or after July 15, 1995, which provide coverage for a family member of the insured shall provide that the health plan benefits applicable for children shall be payable with respect to legally adopted children of the insured or any child for which the insured is a court-appointed guardian from and after the date of the filing of the petition for adoption or the filing of the application for appointment of guardian.

SECTION 78. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) On and after July 15, 1995, it is an unfair trade practice for an insurer as defined in Section 72 of this Act, agent, broker, or any other person in the business of marketing and selling health plans, to commit or perform any of the following acts:

(a) Encourage individuals or groups to refrain from filing an application for coverage with the insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or

(b) Encourage or direct individuals or groups to seek coverage from another insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or

(c) Encourage an employer to exclude an employee from coverage.

The provisions of paragraphs (a) and (b) of this subsection shall not apply to information provided regarding the established geographic service area of an insurer.

(2) It is an unfair trade practice for an insurer to compensate an agent, broker, or any other person in the business of marketing and selling health plans on the basis of the health status, claims experience, industry, occupation, or geographic location of the insured or prospective insured.

(3) The remedy provided by KRS 304.12-120 shall be available for conduct proscribed by subsections (1) and (2) of this section.

SECTION 79. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board shall define no more than five (5) standard health benefit plans, one (1) of which shall be a basic benefit plan, and one (1) of which shall be comparable to the coverage provided under Kentucky Kare Standard as of January 1, 1994. The board shall submit the plans to the commissioner and the Legislative Research Commission no later than February 1, 1995. The commissioner shall review the plans and return them with written comments to the board within thirty (30) days of receipt. After consideration of the commissioner's and the Legislative Research Commission's comments, the board shall give final approval to the standard health benefit plans no later than April 1, 1995, and the plans shall become operational on July 15, 1995.

(2) Notwithstanding any other provision of this chapter to the contrary, on and after July 15, 1995 the standard benefit plans become operational:

(a) No insurer doing business in Kentucky shall issue or renew health benefit plans other than the standard health benefit plans established by the board, and any of the standard health benefit plans offered shall be offered on a guaranteed-issue basis;

(b) Every insurer shall, as a condition of transacting business in this state, offer and issue the basic health benefit plan on a guaranteed-issue basis;

(c) An insurer may elect to offer health benefit plans only to individuals and groups that purchase coverage through the Kentucky Health Purchasing Alliance and not offer coverage to individuals and groups that purchase coverage outside of the alliance; and

(d) No insurer shall exclude any eligible person or dependent, who would otherwise be covered under a group health benefit plan, on the basis of an actual or expected health condition of the person.

(3) Each of the standard health benefit plans shall be in two (2) forms, one (1) of which shall be in the form of insurance and the second of which shall be consistent with the basic method of operation and benefit plans of health maintenance organizations, including federally-qualified health maintenance organizations. Each of the standard plans shall provide for two (2) levels of cost sharing. The board shall take into consideration the levels of benefits currently provided in health benefit plans in Kentucky and appropriate medical and economic factors. The plans shall include cost containment features, such as utilization review of health care services, including review of medical necessity of hospital and physician services; case management benefit alternatives; selective contracting with hospitals, physicians, and other health care providers; reasonable benefit differentials applicable to participating and nonparticipating providers; and other managed care provisions. If a standard benefit plan issued by an insurer covers services which the plan's beneficiaries lawfully obtain from health departments established pursuant to KRS Chapter 212 in medically-underserved areas designated by the Kentucky Health Policy Board, that insurer shall pay the plan's established rate for those services to the health departments.

(4) All policies and contracts providing health care benefits issued or renewed on or after July 15, 1995, shall be uniform in structure, language, designation, and format to the standard benefit plans defined by the board and shall be filed with and approved by the board before being delivered or issued for delivery in Kentucky.

(5) The board shall inform residents of Kentucky of the existence and provisions of the standard benefit plans. The board shall develop an outline and chart of coverage that describes the features of each of the standard benefit plans available in Kentucky. The board shall broadly publicize a twenty-four hour toll-free telephone number for information on health care benefit plans available in Kentucky.

(6) The commissioner and the department shall render assistance on approval of plans and any other insurance matter as requested by the board.

(7) Any insurer that between the effective date of this Act and July 15, 1995, knowingly and willfully terminates coverage of any insured or dependent solely because the insured is eligible for coverage through the Kentucky Health Purchasing Alliance shall be prohibited from issuing or delivering any health benefit plan in the Commonwealth for a period of five (5) years from the date of exclusion.

SECTION 80. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) On and after July 15, 1995, no health maintenance organization shall deliver or issue for delivery in this state any contract describing health benefits available, or any endorsement, rider, or application which becomes a part thereof, or any amendments thereto or modifications thereof, until a copy of that form has been filed with and approved by the Kentucky Health Policy Board created pursuant to Section 2 of this Act. Each form shall contain a complete and clear statement of:

(a) The health care services to which the enrollee is entitled;

(b) Any limitations on the services, kind of services, benefits to be provided, including any deductible or copayment feature;

(c) Where and in what manner information is available as to how services may be obtained; and

(d) Any other provisions pertaining to the delivery of health care services.

(2) At the expiration of thirty (30) days, the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the board, or a hearing has been scheduled by order of the board. In the event that a hearing is held, the thirty (30) day waiting period shall begin anew after the close of such hearing. Approval of any such form by the board shall constitute a waiver of any unexpired portion of such waiting period. The board may extend by not more than an additional thirty (30) day period within which the board may affirmatively approve or disapprove any such form by giving notice to the insurer of such extension before expiration of the initial thirty (30) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The board may at any time withdraw any such approval.

SECTION 81. A NEW SECTION OF SUBTITLE 32 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) On and after July 15, 1995, no corporation subject to the provisions of this subtitle shall deliver or issue for delivery in this state any subscription certificate or membership certificate describing health benefits available, or any indorsement, rider, or application which becomes a part thereof, until a copy of such form has been filed with and approved by the Kentucky Health Policy Board created pursuant to Section 2 of this Act.

(2) At the expiration of thirty (30) days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the board, or a hearing has been scheduled by order of the board. In the event that a hearing is held, the thirty (30) day waiting period shall begin anew after the close of such hearing. Approval of any such form by the board shall constitute a waiver of any unexpired portion of such waiting period. The board may extend by not more than an additional thirty (30) day period within which the board may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial thirty (30) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The board may at any time withdraw any such approval. Any notice of the board withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonable to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at the expiration of such period, not less than thirty (30) days after the giving of the notice of withdrawal, as the board shall in such notice prescribe.

(3) The board's order disapproving any form or withdrawing previous approval shall state the grounds for disapproval or withdrawal.

(4) The board may, by order, exempt from the requirements of this section for so long as the board deems proper, any document or form specified in the order, to which in the board's opinion this section may not practicably be applied, or the filing and approval of which are, in the board's opinion, not desirable or necessary for the protection of the public.

Section 82. KRS 304.32-160 is amended to read as follows:

(1) On or after June 18, 1970, no corporation subject to the provisions of this subtitle shall deliver or issue for delivery in this state any subscription certificate or membership certificate describing health benefits available, or any indorsement, rider, or application which becomes a part thereof, ~~[or the schedule of rates, dues, fees, or other periodic charges, to be paid by subscribers or members,]~~ until a copy of such form has been filed with and approved by the commissioner.

(2) At the expiration of thirty (30) days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner, or a hearing has been scheduled by order of the commissioner. In the event that a hearing is held, the thirty (30) day waiting period shall begin anew after the close of such hearing. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than an additional thirty (30) day period within which he may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial thirty (30) day period. At the expiration of any such period as so extended, and in the absence of

such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time withdraw any such approval. Any notice of the commissioner withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonable to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at the expiration of such period, not less than thirty (30) days after the giving of the notice of withdrawal, as the commissioner shall in such notice prescribe.

(3) The commissioner's order disapproving any form or withdrawing previous approval shall state the grounds for disapproval or withdrawal.

(4) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper, any document or form specified in the order, to which in his opinion this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(5) After July 14, 1995, KRS 304.32-160 shall become null and void.

Section 83. KRS 304.32-270 is amended to read as follows:

Nonprofit hospital, medical-surgical, dental, and health service corporations shall be subject to the provisions of this subtitle, and to the following provisions of this code, to the extent applicable and not in conflict with the express provisions of this subtitle:

(1) Subtitle 1 -- Scope of Code;

(2) Subtitle 2 -- The Insurance Commissioner;

(3) Subtitle 7 -- Investments;

(4) Subtitle 8 -- Administration of Deposits;

(5) Subtitle 12 -- Trade Practices and Frauds;

(6) Subtitle 25 -- Continuity of Management;

(7) Subtitle 33 -- Rehabilitation and Liquidation;

(8) Subtitle 18 -- KRS 304.18-110, 304.18-120 -- Group Conversion and KRS 304.18-045;

(9) Subtitle 4 -- Fees and Taxes;

(10) Subtitle 99 -- Penalties; ~~[and]~~

(11) Subtitle 14 -- KRS 304.14-500 to 304.14-560***; and***

(12) Subtitle 17A-Health Insurance.

Section 84. KRS 304.38-050 is amended to read as follows:

(1) No health maintenance organization shall deliver or issue for delivery in this state any contract describing health benefits available, or any endorsement, rider, or application which becomes a part thereof, or any amendments thereto or modifications thereof, ~~[or the schedule of fees or other periodic charges to be paid by enrollees,]~~ until a copy of such form has been filed with and approved by the commissioner. Each form shall contain a complete and clear statement of (a) the health care services to which the enrollee is entitled; (b) any limitations on the services, kind of services, benefits to be provided, including any deductible or copayment feature; (c) where and in what manner information is available as to how services may be obtained; and (d) any other provisions pertaining to the delivery of health care services. ~~[Any schedule of fees or other periodic charges to be paid by enrollees submitted to and filed with the commissioner along with adequate supporting information to show that such charges or fees are not excessive, inadequate, or unfairly discriminatory.]~~

(2) At the expiration of thirty (30) days, the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner, or a hearing has been scheduled by order of the commissioner. In the event that a hearing is held, the thirty (30) day waiting period shall begin anew after the close of such hearing. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than an additional thirty (30) day period within which he may affirmatively approve or disapprove any such form by giving notice to the insurer of such extension before expiration of the initial thirty (30) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time withdraw any such approval.

(3) After July 14, 1995, this section shall become null and void.

Section 85. KRS 304.38-130 is amended to read as follows:

(1) The commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization under this Subtitle if he finds that any of the following conditions exist:

(a) The health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under KRS 304.38-040, unless amendments to such submissions have been filed with and approved by the commissioner;

(b) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which do not comply with the requirements of KRS 304.38-050 ***and Section 74 of this Act***;

(c) The health maintenance organization does not provide or arrange for health care services as approved by the commissioner in KRS 304.38-050(1)(a);

(d) The certificate of need and licensure board certifies to the commissioner that the health maintenance organization fails to meet the requirements of the board or that the health maintenance organization is unable to fulfill its obligations to furnish health care services;

(e) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

(f) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;

(g) The continued operation of the health maintenance organization would be hazardous to its enrollees;

(h) The health maintenance organization has otherwise failed to substantially comply with this subtitle.

(2) A certificate of authority shall be suspended or revoked only after compliance with the hearing procedures set out in Subtitle 2.

(3) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of such suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.

(4) When the certificate of authority of a health maintenance organization is revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit such further operation of the organization as he may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage. If the commissioner permits such further operation the health maintenance organization will continue to collect the periodic prepayments required of enrollees.

Section 86. KRS 304.17-060 is amended to read as follows:

There shall be a provision as follows:

"Time Limit on Certain Defenses: [~~(a)~~] After three (3) years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such three (3) year period."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial three (3) year period, nor to limit the application of KRS 304.17-190 to 304.17-230, inclusive, in the event of misstatement with respect to age or occupation or other insurance.)

A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (a) until at least age fifty (50) or (b) in the case of a policy issued after age forty-four (44) for at least five (5) years from its date of issue, may contain in lieu of the foregoing the following provision, from which the clause in parentheses may be omitted at the insurer's option, under the caption "Incontestable":

"After the policy has been in force for a period of three (3) years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."

[~~(b) No claim for loss incurred or disability (as defined in the policy) commencing after two (2) years from the date of issue of this policy, shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.~~]

Section 87. KRS 304.17-270 is amended to read as follows:

[~~Except as provided in KRS 304.17-275,~~] Health insurance policies, other than accident insurance only policies, in which the insurer reserves the right to refuse renewal on an individual basis, shall provide in substance in a provision thereof or in an indorsement thereon or rider attached thereto that subject to the right to terminate the policy upon nonpayment of premium when due, such right to refuse renewal may not be exercised so as to take effect before the renewal date occurring on, or after and nearest, each policy anniversary (or in the case of lapse and reinstatement, at the renewal date occurring on, or after and nearest, each anniversary of the last reinstatement), and that any refusal of renewal shall be without prejudice to any claim originating while the policy is in force. (The parenthetic reference to lapse and reinstatement may be omitted at the insurer's option.)

Section 88. KRS 304.14-120 is amended to read as follows:

(1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or printed rider or indorsement form or form of renewal certificate, shall be delivered, or issued for delivery in this state, unless the form has been filed with and approved by the commissioner. This provision shall not apply to ***standard health care benefit plans established under Section 79 of this Act, or to***

surety bonds, or to specially rated inland marine risks, or to policies, riders, indorsements or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner or distribution of benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to group insurance policies issued and delivered to an association outside this state but covering persons resident in this state, all or substantially all of the premiums for which are payable by the insured members, the group certificates to be delivered or issued for delivery in this state shall be filed with and approved by the commissioner. As to forms for use in property, marine (other than wet marine and transportation insurance), casualty and surety insurance coverages the filing required by this subsection may be made by rating organizations on behalf of its members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

(2) Every such filing shall be made not less than sixty (60) days in advance of any such delivery. At the expiration of such sixty (60) days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than a thirty (30) day period within which he may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial sixty (60) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.

(3) Any order of the commissioner disapproving any such form or any notice of the commissioner withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonably to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at expiration of such period, not less than thirty (30) days after the giving of the notice of withdrawal, as the commissioner shall in such notice prescribe.

(4) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order, to which, in his opinion, this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(5) Appeals from orders of the commissioner disapproving any such form or withdrawing a previous approval shall be taken as provided in Subtitle 2 of this chapter.

Section 89. KRS 304.14-130 is amended to read as follows:

(1) The commissioner shall disapprove any form filed under KRS 304.14-120, or withdraw any previous approval thereof, only on one (1) or more of the following grounds:

  (a) If it is in any respect in violation of, or does not comply with, this code.

  (b) If it contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

  (c) If it has any title, heading, or other indication of its provisions which is misleading, or is printed in such size of type or manner of reproduction as to be substantially illegible.

  (d) ~~[As to an individual health insurance policy, if the benefits provided therein are unreasonable in relation to the premium charged.~~

  ~~(e)~~] If it excludes coverage for human immunodeficiency virus infection or acquired immunodeficiency syndrome or contains limitations in the benefits payable, or in the terms or conditions of the contract, for human immunodeficiency virus infection or acquired immunodeficiency syndrome which are different than those which apply to any other sickness or medical condition.

(2) The insurer shall not use in this state any such form after disapproval or withdrawal of approval.

Section 90. KRS 304.38-200 is amended to read as follows:

Health maintenance organizations shall be subject to the provisions of this subtitle, and to the following provisions of Chapter 304, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

(1) Subtitle 1 -- Scope of Code;

(2) Subtitle 2 -- The Insurance Commissioner;

(3) Subtitle 4 -- Fees and Taxes;

(4) Subtitle 5 -- Kinds of Insurance; Limits of Risk; Reinsurance;

(5) Subtitle 12 -- Trade Practices and Frauds;

(6) Subtitle 14 -- KRS 304.14-500 to 304.14-560;

(7) ***Subtitle 17A--Health Insurance;***

(8) Subtitle 25 -- Continuity of Management;

(9)[~~(8)~~] Subtitle 33 -- Rehabilitation and Liquidation; and

(10)[~~(9)~~] Subtitle 99 -- Penalties.

PART XI
MEDICAL EDUCATION

SECTION 91. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created the Kentucky Health Service at the University of Kentucky and the University of Louisville respectively. With respect to medicine and membership in the Kentucky Health Service, "primary care physicians" are as defined in KRS 164.925 and includes others that may be designated by the legislation as shortage medical disciplines in Kentucky. The appropriate health sciences center official designated by the board of trustees of each institution shall direct the Kentucky Health Service. The Kentucky Health Service shall, at each institution:

(a) Create and oversee the implementation of regional family practice residency training programs in community-based sites, coordinated so that the number of first year post-graduate positions in family practice is comparable to the number of graduates entering family practice; and

(b) In conjunction with the Kentucky Health Policy Board, develop contracts setting forth the amount and nature of stipends and fees to be provided by the service to medical students or residents participating in the Kentucky Health Service and the binding obligation of the student or resident entering into the contract, including requiring each student or resident to sign a binding contract obligating the student to practice primary care medicine in underserved areas of Kentucky for one (1) year for each year of participation in the service.

(2) The Kentucky Higher Education Assistance Authority shall enforce contractual obligations for students participating in the Kentucky Health Service, including the one (1) year primary care practice obligation for each year of Kentucky Health Service participation. Any participant who fails to fulfill this obligation shall be immediately required to repay the service for the full cost of education, stipend, salary, or other benefits paid by the service to the participant. The cost of education shall include all costs as determined by the respective institution from time to time, including that portion in excess of tuition and fees. In addition, the participant shall pay all legal or collection costs incurred by the institution in connection with enforcement of the contract. The only offset allowed shall be for tuition and fees actually paid by the participant. All moneys collected from students shall be paid into the Kentucky Health Service.

(3) The Kentucky Health Policy Board shall periodically establish goals for the medical schools based upon the professional medical needs of the Commonwealth. In admitting students to the Kentucky Health Service, preference shall be given to students making a commitment to locate in a medically-underserved area as designated by the Kentucky Health Policy Board. The students shall meet the academic and related standards for admission to medical school. The service shall provide tuition and fees to cover all medical students participating in the service and an additional annual stipend to medical students and residents who contract to enter the Kentucky Health Service. Subject to the availability of funds, the stipend shall annually increase at the rate of increase in the consumer price index (CPI-U) of the United States Department of Commerce or its successor.

(4) The University of Kentucky and the University of Louisville shall cooperate in the operation of at least six (6) community-based family practice residency programs without further expansion of the Louisville and Lexington based programs until the other programs are established. There shall be at least one (1) of these programs in each Congressional district of the Commonwealth.

(5) All universities and community-based education programs shall be linked together via a single uniform telecommunications system by July 1, 1995.

(6) The Kentucky Health Service at each institution shall increase the number of family practice residency positions from their current level to a level sufficient to accommodate the medical students who are in the family practice track of the service. All additional positions shall be established at the community-based sites.

(7) By September 1, 1994, all students entering medical school and all residents participating in the Kentucky Health Service shall participate in community-based training, including long-term care facility settings, to the extent allowed by appropriate national accrediting boards.

(8) The University of Kentucky and University of Louisville shall increase the training of general pediatric, general internal medicine, geriatric and combined medicine/pediatric resident positions in community-based sites to the extent allowed by appropriate national accrediting boards. The University of Louisville and University of Kentucky colleges of medicine shall enter into contracts with all volunteer and community-based faculty that assist in training medical students. The contracts shall include performance standards and compensation for the faculty members as determined by the universities.

(9) Nonprimary-care residency programs at the University of Kentucky and the University of Louisville shall be capped at the 1994 level, and sufficient accredited primary care residency positions shall be created to accommodate the

number of service participants who graduate each year.

(10) The University of Kentucky and the University of Louisville shall enhance library communications with practitioners throughout the state and with community-based educational sites and shall expand the continuing education capabilities at these sites.

(11) Beginning September 1, 1995, the University of Kentucky and University of Louisville shall provide biennial progress reports on the service at that institution to the board and General Assembly through the Council on Higher Education in Kentucky. The reports shall include the following:

- *(a) The progress made by the institutions of higher education toward meeting the requirements set forth in Sections 91 to 93 of this Act;*
- *(b) The extent to which health professions education courses offered by the institutions of higher education in Kentucky are uniform and transferable among institutions;*
- *(c) The total expenditures of all institutions of higher education as relates to health professions education; and*
- *(d) Recommendations as to funding, allocation, or other matters relating to health professions education.*

(12) The University of Kentucky and the University of Louisville shall request the federal Health Care Financing Administration to permit all graduate and resident medical education funds paid under Title 18 of the Social Security Act be allocated to the deans of the medical school at each institution to fund the regional residency programs established pursuant to this section.

(13) All funds appropriated for off-campus educational experience for medical students outside of Fayette and Jefferson Counties and all funds appropriated for Area Health Education Centers shall be transferred to the Kentucky Health Service at the University of Kentucky and University of Louisville.

SECTION 92. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board, in cooperation with the Council on Higher Education in Kentucky, shall develop a comprehensive minority health professions education program providing for:

- *(a) The recruitment of minority students to attend the University of Kentucky, the University of Louisville, or other state institutions of higher education where appropriate for training in medicine, dentistry, nursing, pharmacy, physical therapy, and other allied health professions;*
- *(b) The payment of stipends, scholarships, and other financial assistance needed by minority students in medicine, dentistry, nursing, pharmacy, physical therapy, and other allied health professions; and*
- *(c) The payment of financial or other incentives to encourage minority graduates in medicine, dentistry, nursing, pharmacy, physical therapy, and other allied health professions to establish a practice in underserved areas as defined by the board.*

(2) The board shall prepare an annual report to the General Assembly which documents:

- *(a) The number of minority students enrolled as a result of the program established pursuant to subsection (1) of this section;*
- *(b) The number of minority students who successfully graduate in medicine, dentistry, nursing, pharmacy, physical therapy, and other allied health professions schools; and*
- *(c) Recommendations for improving the recruitment of minority students in medicine, dentistry, nursing, physical therapy, and other allied health professions.*

SECTION 93. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) The board shall periodically review health professions' manpower needs by service delivery region in cooperation with the Council on Higher Education in Kentucky.

(2) The board shall designate health professions shortages by service delivery region for use by institutions of higher education and the Council on Higher Education in Kentucky.

(3) The board shall biennially prepare a report identifying the special health needs of the minority population in the Commonwealth as compared to the population at-large. The report shall be completed no later than October 1 of each odd-numbered year and transmitted to the Legislative Research Commission. The report shall, at a minimum:

- *(a) Contain an overview of the health status of minority Kentuckians;*
- *(b) Identify the many specific diseases experienced at disproportionate rates within the minority population and the reasons therefor, and explore the reasons the minority population is at greater risk than the general population for these diseases, and the reasons the minority population experiences higher rates of morbidity and mortality;*
- *(c) Identify problems experienced by the minority population in obtaining health services from health care providers and governmental agencies; and*
- *(d) Identify programs at the state and local level designed specifically to meet the health needs of the minority*

population.

(4) In preparing the report required by subsection (3) of this section, the board shall solicit and consider the input of individuals and organizations representing the concerns of the minority population as relates to:

(a) Health programs and services needed by the minority population;

(b) The extent to which existing health programs do not meet the needs of the minority population;

(c) The accessibility of existing health programs to the minority population;

(d) The availability and adequacy of information regarding existing health services;

(e) Health problems the minority experience at a higher rate than the general population; and

(f) Financial, social, and other barriers experienced by the minority population in obtaining health services.

(5) In administering, regulating, and funding all aspects of the health care system, the board shall assure that health services provided by the Commonwealth are designed to meet and address the needs of the minority population as identified pursuant to subsections (3) and (4) of this section.

(6) The board shall prepare a plan for the cross-disciplinary training of health care professionals. The plan shall address cross-training of clinical laboratory and radiology technicians and the cross-training of physical and occupational therapists and shall assure that all courses offered articulate among the colleges and universities offering training. The plan, together with the board's recommendations, shall be presented to the Council on Higher Education by January 1, 1996.

(7) The Council on Higher Education in Kentucky shall authorize regional physician extender training programs to assure that at least one hundred sixty (160) physician extenders shall be graduated each year. The establishment of regional physician extender training programs shall be coordinated through the academic health centers at the University of Kentucky and University of Louisville and in coordination with other institutions of higher education in Kentucky. The council shall employ a request-for-proposal process in the development of the regional physician extender training programs. The council shall identify the need for health professionals within geographic regions. The process shall include a strong emphasis on community experience for program participants and monitoring of the service obligations of the graduates.

(8) Physician extender training programs shall be expanded at a minimum of five (5) additional sites and new programs shall be established so that at least one hundred sixty (160) students can be annually graduated as advanced registered nurse practitioners, advanced registered nurse practitioner-nurse midwives, and physician assistants. When feasible, physician extender students shall be trained along with family practice residents in the community-based training programs. A request-for-proposal process shall be employed in the development of the regional physician extender training programs. Proposals shall be solicited from all accredited colleges or universities in the Commonwealth.

(9) New regional physician extender training sites shall be established as follows:

1. Two (2) by September, 1995;

2. Two (2) by September, 1996; and

3. The remainder as expeditiously as appropriations become available.

(10) Physician extender training programs shall participate in the statewide telecommunications network required by subsection (5) Section 91 of this Act.

(11) To the maximum extent possible, all physician extender courses, medical school courses, and residency training activities shall be provided in team settings.

(12) The students enrolled in each physician extender training program shall be participants in the Kentucky Primary Care Health Service under Section 91 of this Act. Service participants in physician extender training programs shall be eligible for funding equal to tuition, and stipends, if they agree to serve in Kentucky after graduation for one (1) year for every year of training. In admitting students to physician extender training programs, preference shall be given to students making a commitment to locate in medically-underserved areas as designated by the board.

(13) Upon receipt of an application, the board may designate as a generalist physician, any physician who has a practice open to any patient, including:

(a) A general or family practitioner;

(b) An internist who agrees to treat a patient presenting with any medical problem;

(c) A pediatrician who agrees to treat a child eighteen (18) years of age or younger presenting with any medical problem; and

(d) Any other specialist as determined by the board who agrees to treat any patient presenting with any medical problem.

(14) Any physician designated as a generalist by the board who refuses to treat any patient presenting a medical problem

shall be subject to disciplinary action pursuant to KRS 311.595, and shall be required to pay to the board, with interest, all additional reimbursement received by the physician as a result of the generalist designation.

(15) The board, in conjunction with the University of Kentucky and University of Louisville medical schools, shall develop an underserved-area physician respite program.

SECTION 94. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

Each institution of higher education receiving state tuition assistance for its students, including each community college, shall develop a healthy life-styles program at a charge which covers program expenses.

PART XII

PRESCRIPTIVE AUTHORITY

Section 95. KRS 314.011 is amended to read as follows:

As used in KRS 314.011 to 314.161 and 314.991, unless the context thereof requires otherwise:

(1) "Board" shall mean Kentucky Board of Nursing.

(2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A.

(3) "Nurse" shall mean a person licensed under the provisions of this chapter as a registered nurse or as a licensed practical nurse.

(4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:

(a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and

(b) Planning, implementation, and evaluation based on nationally accepted standards of nursing practice.

(5) "Registered nurse" shall mean one who is licensed under the provisions of this chapter to engage in registered nursing practice.

(6) "Registered nursing practice" shall mean the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:

(a) The care, counsel, and health teaching of the ill, injured, or infirm.

(b) The maintenance of health or prevention of illness of others.

(c) The administration of medication and treatment as prescribed by a physician***,*** ~~[or]~~ dentist***, or an advanced registered nurse practitioner*** and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses. Components of medication administration include, but are not limited to:

1. Preparing and giving medications in the prescribed dosage, route, and frequency;
2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
3. Intervening when emergency care is required as a result of drug therapy;
4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
6. Instructing an individual regarding medications.

(d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care.

(e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses.

(7) "Advanced registered nurse practitioner" shall mean one who is registered and designated to engage in advanced registered nursing practice including, but not limited to, the nurse anesthetist, nurse midwife, and nurse practitioner pursuant to KRS 314.042.

(8) "Advanced registered nursing practice" shall mean the performance of additional acts by registered nurses who have gained added knowledge and skills through an organized postbasic program of study and clinical experience and who are certified by the American Nurses' Association or other nationally established organizations or agencies recognized by the board to certify registered nurses for advanced nursing practice. ***The additional acts may, subject to board approval and subject to the provision of Section 96 of this Act, include prescribing treatments, drugs, devices, and ordering***

diagnostic tests; however, advanced registered nurse practitioners granted Board of Nursing approval shall be authorized to issue prescriptions for legend drugs as defined in KRS 217.905, from a limited drug formulary, excluding controlled substances as defined in KRS Chapter 218A and approved by the Kentucky Health Policy Board, but nothing in Sections 95 to 97 of this Act shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to obtain prescriptive authority, pursuant to this chapter to administer anesthesia. The formulary shall be revised annually by the board and shall permit advanced registered nurse practitioners to prescribe under the conditions as set forth under Section 97 of this Act. The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by regulation.

(9) "Licensed practical nurse" shall mean one who is licensed under the provisions of this chapter to engage in licensed practical nursing practice.

(10) "Licensed practical nursing practice" shall mean the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:

(a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist.

(b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board.

(c) The administration of medication or treatment as authorized by a physician***,*** ~~[or]~~ dentist***, or an advanced registered nurse practitioner*** and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally accepted organizations of licensed practical nurses.

(d) Teaching, supervising, and delegating except as limited by the board.

(e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally accepted organizations of licensed practical nurses.

(11) "School of nursing" shall mean a nursing education program preparing persons for licensure as a registered nurse or a practical nurse.

(12) "Continuing education" shall mean offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge.

(13) "Nursing assistance" shall mean the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse.

(14) "Limited license" shall mean a license to practice nursing in a restricted capacity. The restriction may be applied to:

(a) A person with a disability who can practice nursing within the limits defined by regulation by the board; or

(b) A licensee who has been subjected to disciplinary action by the board.

Section 96. KRS 314.042 is amended to read as follows:

(1) An applicant for registration and designation to practice as an advanced registered nurse practitioner shall file with the board a written application for registration and designation and submit evidence, verified by oath, that the applicant is in good physical and mental health; has completed an organized postbasic program of study and clinical experience acceptable to the board; has fulfilled the requirements of KRS 214.615(1); is certified by a nationally established organization or agency recognized by the board to certify registered nurses for advanced nursing practice; and is able to understandably speak and write the English language and to read the English language with comprehension.

(2) The board may issue a registration to practice advanced registered nursing to an applicant who holds a current active registered nurse license issued by the board and meets the qualifications of subsection (1) of this section. An advanced registered nurse practitioner shall be designated by the board as a nurse anesthetist, nurse midwife, nurse practitioner, or such other designation as determined by the board.

(3) The applicant for registration and designation or renewal thereof to practice as an advanced registered nurse practitioner shall pay a fee to the board as set forth in regulation by the board.

(4) An advanced registered nurse practitioner shall maintain a current active registered nurse license issued by the board and maintain current certification by the appropriate national organization or agency recognized by the board.

(5) Any person who holds a registration and designation to practice as an advanced registered nurse practitioner in this state shall have the right to use the title "advanced registered nurse practitioner" and the abbreviation "ARNP." No other person shall assume such title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is an advanced registered nurse practitioner. No person shall practice as an advanced registered nurse practitioner unless registered under this section.

(6) Any person heretofore registered as an advanced registered nurse practitioner under the provisions of this chapter who has allowed the registration to lapse may be reinstated on payment of current fee and by meeting the provisions of this

chapter and regulations promulgated by the board.

(7) In addition to the continuing education requirements of KRS 314.073, any person registered as an advanced registered nurse practitioner shall complete at least five (5) contact hours in pharmacology during each licensure period.

SECTION 97. A NEW SECTION OF KRS CHAPTER 314 IS CREATED TO READ AS FOLLOWS:

An advanced registered nurse practitioner shall be considered as a "practitioner" for the purposes of KRS Chapter 217 and shall have the authority granted to a practitioner pursuant to those chapters.

SECTION 98. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

Physician assistants, authorized to practice under KRS 311.565(22) shall be authorized to issue prescriptions for legend drugs as defined in KRS 217.905, from a limited drug formulary approved by the board. The formulary shall be revised annually by the board and shall not permit physician assistants to prescribe any controlled substance as defined in KRS Chapter 218A and administrative regulations promulgated thereunder pursuant to the provisions of KRS Chapter 13A. Physician assistants shall be required to complete at least five (5) contact hours in pharmacology during each licensure period. This prescriptive authority is in addition to any other prescriptive authority provided by law to physician assistants.

Section 99. KRS 320.210 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Board" means the Kentucky Board of Optometric Examiners;

(2) "Practice of optometry" means the employment of any means including the administration of [~~topical~~] pharmaceutical agents as authorized in KRS 320.240, except surgery [~~or injection~~] in examination, diagnosis and treatment of the human eye and its appendages, to determine the visual efficiency of the human eye, or to determine the powers or defects of vision, provided that superficial foreign bodies may be removed from the eye and its appendages; the prescribing, providing, furnishing, adapting, using or employing lenses, prisms, contact lenses, visual training, orthoptics, ocular exercise or any other means or device including topical pharmaceutical agents as authorized in KRS 320.240, excluding the use of surgery [~~or injection~~] for the aid, relief or correction of the human eye and its appendages;

(3) "Appendages" means the eyelids, the eyebrows, the conjunctiva and the lacrimal apparatus;

(4) "Visual aid glasses" means eyeglasses, spectacles or lenses designed or used to correct visual defects; provided, however, that nothing in the provisions of this chapter relating to the practice of optometry shall be construed to limit or restrict, in any respect, the sale of sunglasses designed and used solely to filter out light; and further provided that nothing in this chapter relating to the practice of optometry shall be construed to limit or restrict, in any respect, the sale of completely assembled eyeglasses or spectacles designed and used solely to magnify; and

(5) An orthoptic technician is a person who trains and directs individuals to engage in ocular exercises designed to correct visual defects, and shall not be required to be licensed under the provisions of this chapter provided that such training and directions are done pursuant to and under the instructions of a duly licensed physician, osteopath or optometrist and consists solely of visual training, orthoptics or ocular exercises.

Section 100. KRS 320.240 is amended to read as follows:

(1) The board shall meet at least once each year at which time it shall choose from among its members the president, vice president, and secretary-treasurer. In addition, the board upon call of its officers, may hold meetings at any time as it deems necessary. The secretary-treasurer shall keep a full record of its proceedings which shall be open to inspection at all reasonable times.

(2) The board shall keep a register containing the name, address, and license number of every person licensed to practice optometry in this state.

(3) The Attorney General shall render to the board legal services as it may require in carrying out and enforcing the provisions of this chapter.

(4) Subject to and consistent with the provisions of this chapter, the board shall make and promulgate reasonable administrative regulations and do any and all things which it may deem necessary or proper for the effective enforcement of this chapter and for the full and efficient performance of its duties hereunder and the reasonable regulation of the profession of optometry and the practice thereof by licensed optometrists.

(5) The board shall have a common seal.

(6) The board shall have authority to administer oaths and to require the attendance of witnesses, the production of books, records, and papers pertinent to any matters coming before the board by the issuance of process which shall be served and returned in the same manner as in civil actions and for the disobedience of which the board shall have the power to invoke the same rights as are provided in the event of disobedience of a subpoena or subpoena duces tecum in a civil action.

(7) The board shall make administrative regulations governing applicants and applications for registration or license under this chapter and governing the conduct of licensing examinations.

(8) The board shall from time to time accredit schools and colleges teaching optometry, the graduates of which shall be

eligible to licensing examinations.

(9) The board shall have the right to determine what acts on the part of any person licensed as an optometrist in this state shall constitute unprofessional conduct under this chapter.

(10) The board shall have authority to assist in the prosecution of any violation of this chapter and in the enforcement of any of the provisions of this chapter.

(11) The board shall have other powers and duties as may be provided in the provisions of this chapter.

(12) The board shall make a report of its proceedings to the Governor on or about January 1 of each year, including an accounting of all moneys received and disbursed.

(13) The board may authorize persons engaging in the practice of optometry under the provisions of this chapter to administer diagnostic pharmaceutical agents limited to miotics for emergency use only, mydriatics, cycloplegics, and anesthetics applied topically only, but excluding any drug classified as a controlled substance pursuant to KRS Chapter 218A. These pharmaceutical agents shall be applied in diagnostic procedures only as part of an eye examination. The application of such diagnostic pharmaceutical agents shall be limited to those persons who have sufficient education and professional competence as determined by the board and who have earned transcript credits of at least six (6) semester hours in a course or courses in general and ocular pharmacology, with particular emphasis on diagnostic pharmaceutical agents applied topically to the eye, from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education.

(14) The board may authorize only those persons who have qualified for use of diagnostic pharmaceutical agents as set out in subsection (13) of this section to utilize and prescribe topical ~~[therapeutic]~~ pharmaceutical agents in the examination or treatment of any condition of the eye or its appendages. ***Any therapeutically-certified optometrist licensed under the provision of this subsection shall be authorized to prescribe oral medication for any condition which an optometrist is authorized to treat under the provisions of this chapter and to use injections to administer benadryl, epinephrine, or equivalent medication to counteract anaphylaxis or anaphylactic reaction.*** The utilization or prescribing of ~~[topical]~~ therapeutic pharmaceutical agents shall be limited to those persons who have sufficient education and professional competence as determined by the board and who have earned transcript credits of at least six (6) semester hours in a course or courses in general and ocular pathology and therapy, with particular emphasis on utilization of therapeutic pharmaceutical agents from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education. These six (6) semester hours are in addition to the six (6) semester hours required by subsection (13) of this section, making a total of twelve (12) semester hours.

(15) Any optometrist authorized by the board to utilize diagnostic pharmaceutical agents shall be permitted to purchase for use in the practice of optometry diagnostic pharmaceutical agents limited to miotics for emergency use only, mydriatics, cycloplegics, and anesthetics to be applied topically only. Any optometrist authorized by the board to utilize topical therapeutic pharmaceutical agents shall be permitted to prescribe in the practice of optometry topical therapeutic pharmaceutical agents. Optometrists so authorized by the board to purchase pharmaceutical agents shall obtain them from licensed drug suppliers or pharmacists on written orders placed in the same or similar manner as any physician or other practitioner authorized by KRS Chapter 217. Purchases shall be limited to those pharmaceutical agents specified in this subsection and in subsection (13) of this section, based upon the authority conferred upon the optometrist by the board consistent with the educational qualifications of the optometrist as set out herein. All purchases of pharmaceutical drugs by optometrists shall be upon purchase order forms approved by the board.

PART XIII

TAX INCENTIVES

Section 101. KRS 141.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Secretary" means the secretary of revenue;

(2) "Cabinet" means the Revenue Cabinet;

(3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 1991, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 1991, that would otherwise terminate, and as modified by KRS 141.0101;

(4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;

(5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;

(6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;

(7) "Individual" means a natural person;

(8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable income as defined in Section 63 of the Internal Revenue Code,

and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;

(9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;

(10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;

(b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;

(e) Exclude Social Security and railroad retirement benefits subject to federal income tax;

(f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;

(g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990; ~~[and]~~

(h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the armed forces of the United States or any dependent of such person who served in Vietnam; ***and***

(i) Exclude any amount paid during the taxable year to any of the following for insurance which constitutes medical care or long-term care for the taxpayer or for the taxpayer's spouse or dependents:

1. A licensed provider of health or long-term care insurance;

2. A health maintenance organization;

3. A self-insured plan;

4. A multiple employer welfare arrangement; or

5. A hospital, medical-surgical or health services corporation.

This exclusion shall be permitted only to the extent that the payments have not already been excluded from gross income, and only to the extent that the total amount excluded as payments made for insurance that constitutes medical care does not exceed the cost of a standard plan, defined by the Kentucky Health Policy Board under Section 77 of this Act. Any amount excluded pursuant to this paragraph shall not be allowable deduction in computing net income under subsection (11) of this section;

(11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202 and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;

(b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);

(c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and

(d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;

(b) Exclude all dividend income received after December 31, 1969;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;

(e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;

(f) Include the amount calculated under KRS 141.205;

(g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income; and

(h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

(13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202 and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:

(a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;

(b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;

(c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;

(d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;

(e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and

(f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;

(b) "Taxable net income," in the case of corporations having property or payroll both within and without this state means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;

(c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction; and

(d) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year;

(15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;

(16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;

(17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;

(18) "Nonresident" means any individual not a resident of this state;

(19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;

(20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;

(21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;

(22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;

(23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;

(24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;

(25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

Section 102. The provisions of Section 101 of this Act shall apply for tax years beginning on or after January 1, 1994.

PART XIV

MEDICAL ASSISTANCE

SECTION 103. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall establish a system within the Medical Assistance Program to reduce unnecessary hospital emergency room utilization and costs by redefining and controlling hospital emergency utilization. The cabinet shall establish by promulgation of administrative regulations, pursuant to KRS Chapter 13A, the following:

(1) Criteria and procedures for determining if a medical emergency exists;

(2) Reimbursement rates that provide for nominal reimbursement of emergency room care for care that does not meet the criteria established for a medical emergency; and

(3) Prohibition of reimbursement at hospital emergency room rates for diagnosis and treatment for a condition that does not meet the criteria established for a medical emergency.

SECTION 104. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall undertake a study to determine whether the use of copayments by medical assistance recipients as allowed by federal law would accomplish the following:

(1) Discourage emergency room utilization for nonemergency care; or

(2) Discourage the appropriate use of preventive health and health services.

SECTION 105. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall review the Medical Assistance Program reimbursement rates for emergency transportation providers to determine if existing rates are fair and reasonable. Notwithstanding this review, the cabinet shall by promulgation of administrative regulation, pursuant to KRS Chapter 13A do the following:

(1) Prescribe reimbursement rates for emergency transportation providers to ensure that emergency rates are paid only for transporting medical assistance recipients to the emergency room of a hospital in emergency situations;

(2) Establish, in nonemergency cases, lower medical assistance reimbursement rates for emergency transportation providers for the transportation of stretcher patients from nursing homes to physician offices or hospitals; and

(3) Establish a verification system that requires medical providers to confirm that medical assistance recipients have appointments for medical services and that medical services were obtained prior to payment by the cabinet to the emergency transportation provider.

SECTION 106. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall review the procedures for medical assistance reimbursement of pharmacists to reduce fraud and abuse. The cabinet shall by promulgation of administrative regulation, pursuant to KRS Chapter 13A, establish the following:

(1) Point-of-sale computer technology, with integration of data at the physician's office and the pharmacy, that will permit prospective drug utilization review;

(2) Usage parameters by drug class to enable medical necessity and appropriateness reviews to be conducted prior to payment;

(3) A dialog among the Department for Medicaid Services, the Kentucky Medical Board of Licensure, and the Kentucky

Board of Pharmacy, to develop recommendations for legislation for the 1996 Regular Session of the General Assembly that will strengthen the generic substitution laws for prescription medication;

(4) A dispensing fee for each prescription in accordance with the findings of the report submitted by the cabinet pursuant to KRS 205.561.

SECTION 107. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall review the available technology associated with the medical assistance system to determine which technology is best suited to enhance program service operation, monitoring ability, and fraud and abuse detection. This shall include the ability to provide on-line access to data files to allow cross-analysis of provider and recipient utilization patterns. The cabinet shall by promulgation of administrative regulations, pursuant to KRS Chapter 13A, establish an integrated system to enhance program integrity, using a combination of staff, computer technology, and contractual services to identify potential fraud, abuse, and misutilization of services. This system shall:

(1) Utilize statisticians, program specialists, accountants, nurses, and other medical specialists to review the Medical Assistance Program to identify patterns of provider and recipient behavior that contributes to unnecessary or abusive use of program services;

(2) Utilize computer capability through contractual services or the purchase of computer software to detect the unbundling of claims and other techniques used by providers to enhance reimbursement;

(3) Impose utilization controls on the expenditures in respiratory, physical, speech, and occupational therapy and durable medical equipment provided to nursing home residents, through the use of established medical criteria or preauthorization of ancillary therapies;

(4) Establish state audit and edit requirements that exceed the federal audit and edit requirements;

(5) Obtain access to necessary data from the fiscal agent of each medical provider;

(6) Review the efficiency and effectiveness of the fraud and abuse detection and investigation process to determine whether changes shall be made;

(7) Direct that fraud and abuse detection and investigation components shall be active in initiating investigations. The fraud and abuse detection, investigation and prosecution functions shall be integrated, with access to information in files maintained by the Department for Social Insurance and the Department for Medicaid Services;

(8) Review penalties for deterrent value for medical providers that are found to have abused Medicaid regulations and statutes; and

(9) Provide for a proactive effort to work in partnership with long-term care providers to reduce costs in the long-term care system. Program officials and long-term care providers shall seek to implement innovative or experimental demonstration programs that aim to control costs, increase access to services, and improve quality patient care.

SECTION 108. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) The secretary for human resources shall take all necessary steps to cause services covered under the Kentucky Medical Assistance Program to be provided through a health maintenance organization certified under KRS Chapter 304. The secretary shall establish a competitive bidding process which shall:

  (a) Allow any qualified health maintenance organization to submit a bid to provide medicaid covered services on an annual basis for all eligible medicaid recipients in the entire Commonwealth or in a specific geographic area designated by the secretary;

  (b) Specify the services to be covered by the health maintenance organization;

  (c) Specify the capitated monthly rate medicaid will pay the health maintenance organization for each eligible recipient;

  (d) Require that health maintenance organizations serving medicaid recipients comply with all applicable state laws and administrative regulations;

  (e) Contain an appeals process for health maintenance organizations whose bids are not accepted; and

  (f) Contain any other requirements deemed necessary by the secretary.

(2) The secretary may elect not to provide medicaid services through a health maintenance organization in those counties or geographic areas where it is determined not to be feasible or will not result in any savings to the medicaid program. This determination must be certified by the secretary and approved by the Kentucky Health Policy Board.

(3) The secretary may exempt high cost medical procedures or technologies from health maintenance organization coverage and employ a selective contracting process to cover these services. The services which may be exempt from health maintenance organization coverage include organ transplants, cardiac surgery, magnetic resonance imaging, and any other service or procedure that the secretary determines can be provided at a substantial savings to the medicaid program by contracting with a specific health care provider to provide the service or procedure to eligible

medicaid recipients. The Kentucky Health Policy Board shall review and approve all contracts to assure that health care providers contracting to provide services have demonstrated a reasonable quality of care based on data collected by the authority.

(4) The secretary shall seek from the Federal Health Care Financing Administration any waivers of federal regulations necessary to implement this section.

SECTION 109. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall seek to strengthen the managed care component of the KenPAC Program. The cabinet shall by promulgation of administrative regulation, pursuant to KRS Chapter 13A, establish the following:

(1) Inclusion of noninstitutionalized blind, aged, and disabled recipients in an effort to reduce inappropriate usage;

(2) Financial incentives for KenPAC physicians who effectively manage the care of their patients. These incentives may include an increase in the case management fee for demonstrated effective case management, or through other arrangements that encourage the effective and efficient management of patients. Clear and concise administrative regulations promulgated under KRS Chapter 13A shall be established by the cabinet to determine physician qualification for the incentives;

(3) An oversight and education program in the KenPAC system to assist with patient education regarding the appropriate and effective use of the system, and to assist providers with more efficient management of patients;

(4) Criteria and procedures to insure that KenPAC physicians are responsible for providing, arranging and avoiding duplication of early and periodic screening, diagnosis, and treatment type services to children in the KenPAC program;

(5) A review of the feasibility of a demonstration project to allow health maintenance organizations to bid on the provision of services to KenPAC participants;

(6) Extension of KenPAC to all counties within the state. The cabinet shall determine the feasibility of working with state-supported medical schools to obtain physicians in the counties where KenPAC does not operate; and

(7) More stringent reporting and verification requirements in contracts with KenPAC physicians regarding verification of services provided to KenPAC patients.

SECTION 110. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall seek to prohibit the sheltering of assets in medical assistance long-term care cases by promulgation of administrative regulations, pursuant to KRS Chapter 13A, that establish the following:

(1) Consideration of assets placed in Medicaid qualifying trusts as a prohibited transfer of resources, to the extent prohibited by federal law;

(2) Revision of Medicaid policy to provide that assets funding the purchase of an annuity shall be treated as a transfer of resources;

(3) Revision of Medicaid policy to treat income producing property as an available resource;

(4) Review of Medicaid eligibility procedures and operation to improve eligibility verification and detection of fraud and abuse; and

(5) Review of the feasibility of instituting a photographic identification card, possibly in conjunction with other entitlement programs, to reduce fraud and abuse through misuse of medical cards.

SECTION 111. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall by promulgation of administrative regulations enhance third-party resource collection capacity in Medicaid cases through utilization of in-house personnel and selective contracting for high-volume or high-technological services.

SECTION 112. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall review all medical assistance reimbursement systems for appropriateness and cost effectiveness. The review shall include:

(1) Review of cost-based reimbursement policies for hospitals and nursing homes to determine the effectiveness and appropriateness of alternate systems. Consideration shall be given to the use of modified diagnostic related groups and resource utilization groups systems, and using capitated payment methods; and

(2) Review of reimbursement rates for physicians to determine whether savings or cost containment would be better achieved through using a relative based resource value scale system, a capitated payment method, or other alternative methods of reimbursement.

SECTION 113. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall promulgate administrative regulations that establish a system providing for the reporting to the General Assembly, on a quarterly basis, as to the progress in implementing the provisions of Sections 103 to 115 of this Act, the findings of any reports or studies authorized by Sections 103 to 115 of this Act, and recommendations

regarding the reports or studies.

SECTION 114. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall promote access to preventive health services by low-income Kentuckians through local health departments by recognizing qualified local and district health departments as primary care centers for purposes of Medicaid reimbursement.

SECTION 115. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Department for Medicaid Services shall develop and implement, effective July 1, 1995, a system for monitoring the use of medical assistance program covered services by medical assistance recipients using smart card technology. As used in this section, "smart card" means an identification card issued to each medical assistance recipient containing a photograph of the recipient and an electronic device which enables computer tracking of:

(1) All drugs and durable medical equipment prescribed for and dispensed to the recipient;

(2) All medical assistance covered physician office visits made by the recipient; and

(3) Any other medical assistance program covered service provided to the medical assistance recipient as defined by administrative regulation promulgated pursuant to KRS Chapter 13A and under this chapter.

SECTION 116. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall request any waivers of federal law that are necessary to implement the provisions of Sections 103 to 115 of this Act.

PART XV

CONFORMING AMENDMENTS

Section 117. KRS 205.640 is amended to read as follows:

(1) The commissioner of medicaid services shall adopt a disproportionate share program consistent with the requirements of Title XIX of the Social Security Act which shall include to the extent possible, but not limited to, the provisions of this section.

(2) The "Medical Assistance Revolving Trust Fund (MART)" shall be established in the State Treasury and all provider tax revenues collected pursuant to KRS 142.201 to 142.259 shall be deposited in the State Treasury to the credit of the fund. All investment earnings of the fund shall be credited to the fund. It is the intent of the General Assembly that provider tax revenues collected in accordance with KRS 142.201 to 142.259 shall be used to fund the ***provisions of Sections 5 to 10 of this Act*** ~~[Health Care Data Commission created in KRS 216.273]~~ and to supplement the medical assistance-related general fund appropriations for fiscal year 1994 and subsequent fiscal years, and that all funds credited to the MART fund will be matched with federal medicaid funds to the greatest extent possible.

(3) The "Medical Assistance Indigent Trust Fund (MAIT)" shall be established in the State Treasury for the purpose of receiving any funds transferred from the MART fund or from federal funds for the operation of the disproportionate share program established by the commissioner of medicaid services in accordance with the provisions of subsection (1) of this section. All investment earnings of the fund shall be credited to the fund. It is the intent of the General Assembly that all funds transferred to the MAIT fund will be matched with federal medicaid funds. The MAIT fund shall be exempt from any state budget reduction acts.

(4) An amount, including provider tax revenues and federal matching funds, to the extent possible, shall be transferred from the MART fund or from federal funds to the MAIT fund for the purpose of funding the disproportionate share program established by the commissioner of medicaid services.

(5) The commissioner of the Department for Medicaid Services shall implement a disproportionate share program which will take into consideration the amount of service provided by hospitals for medicaid recipients beyond the covered days and individuals and families with incomes up to one hundred percent (100%) of the federal poverty level, as determined by the hospital pursuant to guidelines established by the Cabinet for Human Resources; the percentage of total services rendered by the hospital that consists of services provided to medicaid recipients and persons receiving SSI benefits; and hospitals serving a federally designated medically underserved area, a federally designated health manpower shortage area, or a primary care physician shortage area designated under the rural Kentucky medical scholarship fund. Provided that no individual hospital shall receive distributions from the MAIT fund that exceed indigent care provided by the hospital and documented to the Department for Medicaid Services, based upon compensation for the services at the facility's medicaid rate. Hospitals receiving reimbursement from the MAIT fund shall not bill for services provided to patients not eligible for medical assistance with family incomes up to one hundred percent (100%) of the federal poverty level.

(6) The secretary of the Cabinet for Human Resources shall promulgate administrative regulations necessary***, pursuant to KRS Chapter 13A,*** for the administration and implementation of this section.

(7) All hospitals receiving reimbursement from the MAIT fund shall:

(a) Display prominently a sign which reads as follows: "This hospital will accept patients regardless of race, creed, ethnic background, or ability to pay.";

(b) Accept benefits of state health insurance coverage described in KRS 18A.229 and 18A.2281;

(c) Provide to medicaid recipients any additional days of coverage per hospital stay, based on medical necessity determined in the usual manner, without responsibility for payment for such days of care accruing to the patient or the medicaid program; and

(d) Collect and report to the department data on the number of indigent patient days provided pursuant to this section, including additional days of coverage for medicaid recipients. ***The cabinet shall annually, no later than July 1, compile a report for the Governor and the Legislative Research Commission on the implementation of this section.***

Section 118. KRS 205.560 is amended to read as follows:

(1) The scope of medical care for which the Cabinet for Human Resources undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section. Within the limitations of any appropriation therefor, the provision of complete upper and lower dentures to recipients of Medical Assistance Program benefits who have their teeth removed by a dentist resulting in the total absence of teeth shall be a mandatory class in the scope of medical care. Payment to a dentist of any Medical Assistance Program benefits for complete upper and lower dentures shall only be provided on the condition of a preauthorized agreement between an authorized representative of the Medical Assistance Program and the dentist prior to the removal of the teeth. The selection of another class or other classes of medical care shall be recommended by the council to the secretary for Human Resources after taking into consideration, among other things, the amount of federal and state funds available, the most essential needs of recipients, and the meeting of such need on a basis insuring the greatest amount of medical care as defined in KRS 205.510 consonant with the funds available, including, but not limited to, the following categories, except where the aid is for the purpose of obtaining an abortion:

(a) Hospital care, including drugs, and medical supplies and services during any period of actual hospitalization;

(b) Nursing home care, including medical supplies and services, and drugs during confinement therein on prescription of a physician, dentist, or podiatrist;

(c) Drugs, nursing care, medical supplies, and services during the time when a recipient is not in a hospital but is under treatment and on the prescription of a physician, dentist, or podiatrist;

(d) Physician, podiatric, and dental services;

(e) Optometric services for all age groups shall be limited to prescription services, services to frames and lenses, and diagnostic services provided by an optometrist, to the extent the optometrist is licensed to perform the services and to the extent the services are covered in the ophthalmologist portion of the physician's program. Eyeglasses shall be provided only to children under age twenty-one (21);

(f) Drugs on the prescription of a physician used to prevent the rejection of transplanted organs if the patient is indigent;

(g) Nonprofit neighborhood health organizations or clinics where some or all of the medical services are provided by licensed registered nurses or by advanced medical students presently enrolled in a medical school accredited by the Association of American Medical Colleges and where the students or licensed registered nurses are under the direct supervision of a licensed physician who rotates his services in this supervisory capacity between two (2) or more of the nonprofit neighborhood health organizations or clinics specified herein;

(h) Services provided by health care delivery networks as defined in KRS 216.900; and

(i) Services provided by midlevel health care practitioners as defined in KRS 216.900.

(2) Payments for hospital care, nursing home care, and drugs or other medical, ophthalmic, podiatric, and dental supplies shall be on bases which relate the amount of the payment to the cost of providing the services or supplies. It shall be one (1) of the functions of the council to make recommendations to the Cabinet for Human Resources with respect to the bases for payment. In determining the rates of reimbursement for long-term care facilities participating in the Medical Assistance Program, the Cabinet for Human Resources shall, to the extent permitted by federal law, not allow the following items to be considered as a cost to the facility for purposes of reimbursement:

(a) Motor vehicles that are not owned by the facility, including motor vehicles that are registered or owned by the facility but used primarily by the owner or family members thereof;

(b) The cost of motor vehicles, including vans or trucks, used for facility business shall be allowed up to fifteen thousand dollars ($15,000) per facility, adjusted annually for inflation according to the increase in the consumer price index-u for the most recent twelve (12) month period, as determined by the U. S. Department of Labor. Medically equipped motor vehicles, vans or trucks shall be exempt from the fifteen thousand dollar ($15,000) limitation. Costs exceeding this limit shall not be reimbursable and shall be borne by the facility. Costs for additional motor vehicles, not to exceed a total of three (3) per facility, may be approved by the Cabinet for Human Resources if the facility demonstrates that each additional vehicle is necessary for the operation of the facility as required by regulations of the cabinet;

(c) Salaries paid to immediate family members of the owner or administrator, or both, of a facility, to the extent that services are not actually performed and are not a necessary function as required by regulation of the cabinet for the operation of the facility. The facility shall keep a record of all work actually performed by family members;

(d) The cost of contracts, loans, or other payments made by the facility to owners, administrators or both, unless the payments are for services which would otherwise be necessary to the operation of the facility and the services are required by regulations of the Cabinet for Human Resources. Any other payments shall be deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Human Resources. Interest paid to the facility for loans made to a third party may be used to offset allowable interest claimed by the facility;

(e) Private club memberships for owners or administrators, travel expenses for trips outside the state for owners or administrators, and other indirect payments made to the owner, unless the payments are deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Human Resources; and

(f) Payments made to related organizations supplying the facility with goods or services shall be limited to the actual cost of the goods or services to the related organization, unless it can be demonstrated that no relationship between the facility and the supplier exists. A relationship shall be considered to exist when an individual, including brothers, sisters, father, mother, aunts, uncles, and in-laws, possesses a total of five percent (5%) or more of ownership equity in the facility and the supplying business. An exception to the relationship shall exist if fifty-one percent (51%) or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(3) No vendor payment shall be made unless the class and type of medical care rendered and the cost basis therefor has first been designated by regulation.

(4) The rules and regulations of the Cabinet for Human Resources shall require that a written statement, including the required opinion of a physician, shall accompany any claim for reimbursement for induced premature births. This statement shall indicate the procedures used in providing the medical services.

(5) The range of medical care benefit standards provided and the quality and quantity standards and the methods for determining cost formulae for vendor payments within each category of public assistance and other recipients shall be uniform for the entire state, and shall be designated by regulation promulgated within the limitations established by the Social Security Act and federal regulations. It shall not be necessary that the amount of payments for units of services be uniform for the entire state but amounts may vary from county to county and from city to city, as well as among hospitals, based on the prevailing cost of medical care in each locale and other local economic and geographic conditions, except that insofar as allowed by applicable federal law and regulation, the maximum amounts reimbursable for similar services rendered by physicians within the same specialty of medical practice shall not vary according to the physician's place of residence or place of practice, as long as the place of practice is within the boundaries of the state.

(6) Nothing in this section shall be deemed to deprive a woman of all appropriate medical care necessary to prevent her physical death.

(7) To the extent permitted by federal law, no medical assistance recipient shall be recertified as qualifying for a level of long-term care below the recipient's current level, unless the recertification includes a physical examination conducted by a physician licensed pursuant to KRS Chapter 311 or by an advance registered nurse practitioner licensed pursuant to KRS Chapter 314 and acting under the physician's supervision.

(8) If payments made to community mental health centers, established pursuant to KRS Chapter 210, for services provided to the mentally retarded exceed the actual cost of providing the service, the balance of the payments shall be used solely for the provision of other services to the mentally retarded through community mental health centers.

(9) No long-term care facility, as defined in KRS 216.510, providing inpatient care to recipients of medical assistance under Title XIX of the Social Security Act on July 15, 1986, shall deny admission of a person to a bed certified for reimbursement under the provisions of the Medical Assistance Program solely on the basis of the person's paying status as a medicaid recipient. No person shall be removed or discharged from any facility solely because they became eligible for participation in the Medical Assistance Program, unless the facility can demonstrate the resident or the resident's responsible party was fully notified in writing that the resident was being admitted to a bed not certified for medicaid reimbursement. No facility may decertify a bed occupied by a medicaid recipient or may decertify a bed that is occupied by a resident who has made application for medical assistance.

(10) Family practice physicians practicing in geographic areas with no more than one (1) primary care physician per five thousand (5,000) population, as reported by the United States Department of Health and Human Services, shall be reimbursed one hundred twenty-five percent (125%) of the standard reimbursement rate for physician services.

(11) The Cabinet for Human Resources shall not expand the scope of services or categories of eligible recipients beyond those receiving services on January 1, 1994, unless:

(a) The expansion of the scope of services or eligible recipients is mandated by the federal government; or

(b) The General Assembly has specifically appropriated funds for the expansion of the scope of services or eligible recipients.

(12) The provisions of subsection (11) of this section shall not prevent the Cabinet for Human Resources from petitioning the federal government for waivers to expand or alter the Medicaid program. The cabinet shall notify the Legislative Research Commission in writing prior to petitioning the federal government for any waiver that will expand or alter the Medicaid program. The notification shall describe the expansion or amendment sought and the estimated fiscal impact of the waiver if granted. Any waiver granted that has the effect of expanding the scope of services or eligible recipients shall not be implemented until specifically authorized by the General Assembly. The provisions of this subsection shall apply to any waivers that have been granted but not implemented as of January 1, 1994, as well as any waivers obtained in the future.

(13) For all medicaid covered long-term care services, the Cabinet for Human Resources shall implement a standardized patient assessment tool, develop additional medicaid reimbursement methodologies as may be needed, and implement consistent quality of care mandates.

Section 119. KRS 214.450 is amended to read as follows:

As used in KRS 214.452 to 214.466, unless the context otherwise requires:

(1) "Blood" means any blood, blood product, blood component, or blood derivative including plasma.

(2) "Blood establishment" means a place of business under one (1) management at one (1) general physical location which engages in the collection, preparation, processing, labeling, packaging, and dispensing of blood or blood products to any health care facility, health service, or health care provider.

(3) "Communicable disease" means only a communicable disease which may be transmitted by blood and as set forth in any administrative regulation issued under KRS 214.460 and pursuant to KRS Chapter 13A.

(4) "Health facility" means any health facility set forth under KRS 216B.015***(10)***[~~(11)~~] which provides for the transfusion of blood into a living human body.

(5) "Health care provider" means any licensed dentist, physician, osteopath, registered nurse, practical nurse, certified paramedic, certified emergency medical technician, or physician assistant.

(6) "Health service" means any health service as set forth under KRS 216B.015***(11)***[~~(12)~~] and which provides for the transfusion of blood into a living human body.

(7) "Sexually transmitted disease" means only a blood borne sexually transmitted disease as provided under KRS 214.410(2) and as set forth in any administrative regulation issued under KRS 214.460 and pursuant to KRS Chapter 13A.

(8) "Donor" means either a paid or volunteer donor of blood.

Section 120. KRS 194.030 is amended to read as follows:

The Cabinet for Human Resources shall consist of the following major organizational units which are hereby created:

(1) Office of the Secretary;

(2) The Office for Policy and Budget. The Office for Policy and Budget shall provide the secretary with professional support in planning, budgeting, and policy analysis, including the appraisal of needs, the formulation of policy, and the evaluation of programs. The Office for Policy and Budget shall be headed by an administrator who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;

(3) The Office of the Counsel. The Office of the Counsel shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of the Counsel shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of the Counsel shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be directly responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general in accordance with the provisions of KRS 15.105;

(4) The Office of the Ombudsman. The Office of the Ombudsman shall provide a review of citizen complaints on services of the Cabinet for Human Resources when such complaints cannot be resolved through normal administrative remedies. The Office of the Ombudsman shall be headed by an ombudsman who shall be appointed by the Governor with the advice of the secretary. The ombudsman shall be directly responsible to the secretary;

(5) The Office of Administrative Services. The Office of Administrative Services shall be responsible for providing administrative support services within the Cabinet for Human Resources. All fiscal, facility, and information management functions of the cabinet shall be vested in the Office of Administrative Services. The Office of Administrative Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The executive director shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director shall exercise authority over the office of administrative services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(6) The Department for Social Insurance. The Department for Social Insurance shall develop and operate programs of the

cabinet that provide income maintenance or income supplementation services and social insurance benefit programs not assigned to another department. The Department for Social Insurance shall also be responsible for all eligibility determination and certification functions associated with these programs. The Department for Social Insurance shall be headed by a commissioner for social insurance who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for social insurance shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for social insurance shall exercise authority over the Department for Social Insurance under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(7) The Department for Medicaid Services. The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the federal Social Security Act. The Department for Medicaid Services shall be headed by a commissioner for medicaid services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for medicaid services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for medicaid services shall exercise authority over the Department for Medicaid Services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(8) The Department for Health Services. The Department for Health Services shall develop and operate all programs of the cabinet that provide health services and all programs for the prevention, detection, care, and treatment of physical disability, illness, and disease. The Department for Health Services shall be headed by a commissioner for health services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for health services shall be a duly licensed physician who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner shall advise the head of each major organizational unit enumerated in this section on policies, plans, and programs relating to all matters of public health, including any actions necessary to safeguard the health of the citizens of the Commonwealth. The commissioner shall serve as chief medical officer of the Commonwealth. The commissioner for health services shall exercise authority over the Department for Health Services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(9) The Department for Mental Health and Mental Retardation Services. The Department for Mental Health and Mental Retardation Services shall provide services for all programs for the prevention, detection, and treatment of mental disability, illness, and disease and administer all programs for the assistance of community treatment and prevention of such disability, illness, and disease. The Department for Mental Health and Mental Retardation Services shall be headed by a commissioner for mental health and mental retardation who shall be appointed by the secretary for human resources with the approval of the Governor in accordance with KRS 12.050. The commissioner for mental health and mental retardation shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for mental health and mental retardation shall exercise authority over the department under the direction of the secretary for human resources and shall only fulfill such responsibilities as delegated by the secretary;

(10) The Department for Social Services. The Department for Social Services shall develop and operate all social service programs of the cabinet. The Department for Social Services shall be headed by a commissioner for social services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for social services shall be a person who by education, professional qualification, training, and experience in the administration and management of social service programs is qualified to perform the duties of this office. The commissioner for social services shall exercise authority over the Department for Social Services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(11) The Department for Employment Services. The Department for Employment Services shall develop and operate all employment development and placement programs including all job recruitment and business liaison functions, employability development and training programs, and all job counseling and job placement programs of the cabinet. In addition, the department shall develop and operate all programs relating to unemployment insurance laws of the Commonwealth including responsibilities relating to hearing and judging unemployment insurance benefit appeals. The Department for Employment Services shall be headed by a commissioner for employment services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for employment services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for employment services shall exercise authority over the Department for Employment Services under the direction of the secretary and shall fulfill only such responsibilities as delegated by the secretary;

(12) The Office of the Inspector General. The Office of the Inspector General shall be responsible for:

(a) The conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and the conduct of special investigations requested by the secretary, commissioners, or office heads of the Cabinet for Human Resources into matters related to the cabinet or its programs;

(b) Licensing and regulatory functions as the secretary may delegate;

(c) Review of health facilities participating in transplant programs, as determined by the secretary, for the purpose of determining any violations of KRS 311.165 to 311.247; and

(d) The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority.

The Office of the Inspector General shall be headed by an inspector general who shall be appointed by the secretary with the approval of the Governor. The inspector general shall be directly responsible to the secretary;

(13) The Commission for Handicapped Children. The duties, responsibilities and authority set out in KRS 200.460 to 200.490 shall be performed by the commission. The commission shall advocate the rights of handicapped children, and to the extent that funds are available, shall provide such services and facilities for handicapped children as are deemed appropriate by the commission. The commission shall be composed of seven (7) members appointed by the Governor to serve a term of office of four (4) years. The commission may promulgate such administrative regulations pursuant to KRS Chapter 13A as may be necessary to implement and administer its responsibilities. The duties, responsibilities, and authority of the commission for handicapped children shall be performed through the Office of the Executive Director of the Commission. The executive director shall be appointed by the Governor pursuant to KRS 12.040, and the commission may at any time recommend the removal of the executive director upon filing with the Governor a full written statement of its reasons for such removal. The executive director shall report directly to the Commission for Handicapped Children and serve as the commission's secretary; and

(14) The ***Kentucky Health Policy Board*** [~~Commission for Health Economics Control in Kentucky~~]. The duties, responsibilities and authority pertaining to the certificate of need functions and the licensure appeal functions, as set out in KRS 216B.010 to 216B.990, shall be performed by the commission. The commission may promulgate administrative regulations pursuant to KRS Chapter 13A necessary to implement and administer its responsibilities.

Section 121. KRS 194.120 is amended to read as follows:

The ***Kentucky Health Policy Board*** [~~Commission for Health Economics Control in Kentucky~~] and the Commission for Handicapped Children shall be the only statutory bodies attached to the cabinet that shall have the authority to issue administrative regulations. No other corporate body or instrumentality of the Commonwealth, advisory committee, interstate compact, or other statutory body, presently or hereinafter attached to the cabinet, shall issue administrative regulations, but shall operate only in an advisory capacity.

Section 122. KRS 216.510 is amended to read as follows:

As used in KRS 216.515 to 216.530:

(1) "Long-term care facilities" means those health care facilities in the Commonwealth which are defined by the ***Kentucky Health Policy Board*** [~~Commission for Health Economics Control in Kentucky~~] to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing facilities as defined in Public Law 100-203, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.

(2) "Resident" means any person who is admitted to a long-term care facility as defined in KRS 216.515 to 216.530 for the purpose of receiving personal care and assistance.

(3) "Cabinet" means the Cabinet for Human Resources.

Section 123. KRS 216.535 is amended to read as follows:

As used in KRS 216.537 to 216.590:

(1) "Long-term care facilities" means those health care facilities in the Commonwealth which are defined by the ***Kentucky Health Policy Board*** [~~Commission for Health Economics Control in Kentucky~~] to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing facilities as defined in Public Law 100-203, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.

(2) "Cabinet" means the Cabinet for Human Resources.

(3) "Resident" means any person admitted to a long-term care facility as defined by this section.

(4) "Licensee" in the case of a licensee who is an individual means the individual, and in the case of a licensee who is a corporation, partnership, or association means the corporation, partnership, or association.

(5) "Secretary" means the secretary of the Cabinet for Human Resources.

(6) "Long-term care ombudsman" means the person responsible for the operation of a long-term care ombudsman program which investigates and resolves complaints made by or on behalf of residents of long-term care facilities.

(7) "Willful interference" means an intentional, knowing, or purposeful act or omission which hinders or impedes the lawful performance of the duties and responsibilities of the ombudsman as set forth in this chapter.

Section 124. KRS 216.885 is amended to read as follows:

(1) It is unlawful to operate or maintain a PPEC center without first obtaining a certificate of need from the ***Kentucky Health Policy Board*** [~~Commission for Health Economics Control in Kentucky~~] and a license for the PPEC center from the cabinet. The cabinet is responsible for licensing PPEC centers in accordance with the provisions of KRS Chapter

216B.

(2) Separate licenses are required for PPEC centers maintained on separate premises, even though they are operated under the same management. Separate licenses are not required for separate buildings on the same grounds.

(3) The Cabinet for Human Resources may deny, revoke, modify or suspend a license in accordance with KRS 216B.105.

PART XVI

MISCELLANEOUS PROVISIONS

SECTION 125. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) The Secretary of the Finance and Administration Cabinet, after consultation with the Secretary for the Cabinet for Human Resources, shall on a quarterly basis, certify to the Interim Committee on Appropriations and Revenue the general fund savings realized from the procedures required by Sections 103 to 115 of this Act and any other procedures adopted by the Cabinet for Human Resources or the Kentucky Health Policy Board to control the cost of health care.

(2) The certification shall indicate the following:

(a) The means by which savings were achieved, including a description of the discrete procedure used to achieve the savings; and

(b) The amount saved as a result of the specific procedure, including an explanation as to the calculations and assumptions used in determining the amount.

(3) The amount certified by the secretary under this section shall be transferred to a trust account to be utilized by the secretary of the Cabinet for Human Resources to provide health care coverage for additional categories of citizens, but the funds in the trust account shall not be spent until appropriated by the General Assembly. The funds in the trust account shall not lapse. The secretary shall give priority in utilizing any appropriated trust account funds to matching available federal funds in the Medicaid program.

(4) Savings in the general fund appropriation for the Medicaid program shall be determined as follows:

(a) To the extent that the average cost per month per eligible actually experienced by the Medicaid program is less than the average cost per month per eligible reflected in the enacted budget, the savings attributable to that difference shall be deemed to be eligible for certification under this section.

(b) To the extend that the number of eligibles actually participating in the Medicaid program is less than the number reflected in the enacted budget, the savings attributable to that difference shall be deemed not eligible for certification under this section.

(5) Savings in the general fund appropriation to the Department of Mental Health shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.

(6) Savings in the general fund appropriation to the Department of Health Services shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.

(7) Savings in the general fund appropriation to the Department of Social Services shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.

(8) Only those savings that can be certified as being recurring shall be transferred to the trust fund.

Section 126. KRS 216B.250 is amended to read as follows:

(1) For purposes of this section, "paying patient" means persons receiving health care services who pay directly for services rendered, patients with private health insurance or health maintenance organization coverage, persons receiving medicaid or medicaid benefits under Title XVIII and Title XIX of the Social Security Act and persons receiving veteran's health care benefits. "Paying patient" does not include medically indigent persons with no source of payment whatsoever.

(2) When a copy of an itemized statement is requested by any paying patient, each health *care provider as defined in Section 1 of this Act* [~~facility~~] shall furnish to the patient within thirty (30) days of the patient's discharge or within fifteen (15) days of the patient's request, whichever is later, one (1) copy free of charge of the itemized statement of services rendered and charges incurred by the patient. The itemized statement shall be stamped "Kentucky Revised Statutes prohibit the use of this statement for insurance payment purposes where benefits have been assigned."

(3) Each health *care provider as defined in Section 1 of this Act* [~~facility~~] shall post in a publicly visible place in their admission, outpatient areas and, where applicable, emergency areas that an itemized statement is available to any paying patient upon request.

(4) The itemized statement rendered shall be the record maintained by the health *care provider* [~~facility~~] that details the charges made for services rendered to patients and shall indicate whether an assignment of benefits has been obtained.

(5) Each health ***care provider as defined in Section 1 of this Act*** ~~[facility]~~ shall designate and make available appropriate staff to provide, upon patient request, an explanation of charges listed in the itemized statement.

(6) If a health ***care provider*** ~~[facility]~~ knows of a discrepancy in the total charges as reported in an itemized statement and that which is reported to a third party payor, or at any time that a health ***care provider*** ~~[facility]~~ becomes aware of such a discrepancy, the health ***care provider*** ~~[facility]~~ shall provide the patient and third party payor with notification, an explanation and, if applicable, any reconciliation of the discrepancy in total charges.

Section 127. KRS 216B.990 is amended to read as follows:

(1) Any person who, in willful violation of this chapter, operates a health facility without first obtaining a license or continues to operate a health facility after a final decision suspending or revoking a license, shall be fined not less than five hundred dollars ($500) nor more than ten thousand dollars ($10,000) for each violation.

(2) Any person who, in willful violation of this chapter, acquires major medical equipment, establishes a health facility, or obligates a capital expenditure without first obtaining a certificate of need, or after the applicable certificate of need has been withdrawn, shall be fined one percent (1%) of the capital expenditure involved but not less than five hundred dollars ($500) for each violation.

(3) Any hospital acting by or through its agents or employees which violates any provision of KRS 216B.400 shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(4) Any hospital acting by or through its agents or employees which violates any provision of KRS 311.241 to 311.245 shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(5) Any hospital violating the provisions of KRS 311.241 may be denied a license to operate under the provisions of this chapter.

(6) Any health ***care provider who*** ~~[facility which]~~ willfully violates KRS 216B.250 shall be fined one hundred dollars ($100) per day for failure to post required notices and one hundred dollars ($100) per instance for willfully failing to provide an itemized statement within the required time frames.

(7) Any boarding home which does not register as required by KRS 216B.305, shall be fined one hundred dollars ($100) and ten dollars ($10) per day thereafter until they have registered.

PART XVII

RATE SETTING

SECTION 128. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) On or before July 1, 1995, the board shall develop a rate setting system for hospitals, including inpatient and outpatient hospital based physician services, and for nonhospital-based emergency outpatient services.

(2) On or before July 1, 1996, the board shall develop a rate-setting system for physician services.

(3) On or before July 1, 1996, the board shall develop a rate-setting system for all other services of providers, as defined in Section 1 of this Act.

SECTION 129. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) Except for the development of a rate-setting methodology under Section 128 of this Act, the implementation of Sections 128 to 135 of this Act, shall only become effective when the board, in its discretion, makes a finding that the state's total health-care expenditure in the target year, defined as the most recent year for which data is available, exceed the state's health expenditure target for the same year. The health expenditure target shall be defined as a baseline dollar amount, equal to the state's total health expenditures in the baseline year, adjusted in each subsequent year by the health-expenditure inflation factor. The health-expenditure inflation factor shall be defined as the greater of:

  (a) The percent change in the annual average Consumer Price Index for Urban Consumers (CPI-U) between the year previous to the target year and the target year; and

  (b) The percent change in the annual average Consumer Price Index for Urban Consumers (CPI-U) between the year previous to the target year and the target year, adjusted by the change in the state's population and a weighted change in the state's age composition, as given by the formula: A + B + 4C, with A equaling the percent change in the annual average CPI-U, B equaling the percent change in the state's population; and C equaling the point change in the percentage of Kentuckians aged sixty-five (65) or over, with all changes being between the year previous to the target year and the target year.

(2) Prior to the implementation of any rate setting system or methodology, the Health Policy Board shall seek approval of the methodology from the United States Department of Health and Human Services.

(3) The Kentucky Health Policy Board shall not implement any rate setting system under Sections 128 to 135 of this Act unless specifically authorized by the General Assembly at the next regular or extraordinary session of the General Assembly held after the board makes a finding supporting rate setting pursuant to subsection (1) of this section.

SECTION 130. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) Except for a facility or health care provider that does not charge or bill for any health service provided and for the purposes of rate setting or negotiation, the board has jurisdiction over services provided in hospitals, facilities, and over all services offered by a health care provider as defined in Section 1 of this Act.

(2) Nothing in this section shall preclude providers from charging less than the maximum allowable rate for services, nor shall health insurers and health maintenance organizations be precluded from developing rate schedules that result in payments for services rendered that are less than the applicable maximum allowable rate. If provider rates are less than the maximum allowable rates established by the board, they shall be deemed approved.

(3) For purposes of delivering more efficient and cost effective health care, the board may establish and modify reimbursement methodologies. The board may also establish utilization targets, rates, annual budgets, and revenue caps for providers, with proscriptions on excess volume or revenue.

(4) The Kentucky Medical Assistance Program shall not be bound by rates established or negotiated by the board until:

(a) State law authorizes the Kentucky Medical Assistance Program to reimburse providers at board set or negotiated rates; and

(b) The United States Department of Health and Human Services agrees to accept board set or negotiated rates as a method of providing federal financial participation in the Kentucky Medical Assistance Program.

(5) The board shall exempt any health care service from rate-setting or negotiated activity that the United States Health Care Financing Administration deems necessary to obtain approval to include medicaid or medicare services in rate-setting activities.

(6) The board shall review costs and rates and make any investigation that the board considers necessary to assure each purchaser of services provided at a facility that:

(a) The total costs of all services offered by or through a facility are reasonable;

(b) The aggregate rates of the facility are related reasonably to the aggregate costs of the facility; and

(c) The rates are set equitably among all purchasers or classes of purchasers without undue discrimination or preference.

(7) A facility shall charge for services only at a rate set or negotiated in accordance with this section.

(8) In determining the reasonableness of any rate set or negotiated under this section, the board may take into account objective standards of efficiency and effectiveness and the following methods of reimbursement:

(a) The rates paid by the medicaid and medicare programs;

(b) Rates for services not reimbursed by medicare and which are derived on the basis of the methodology underlying the initial calculation of the Federal Health Care Financing Administration's resource based relative value scale and diagnostic related groups;

(c) Factors used by the Federal Prospective Payment Advisory Commission in developing reimbursement rates for the medicare program; and

(d) A price-indexing system deemed appropriate by the board.

(9) To have the statistical information needed for rate review and approval, the board shall compile all relevant financial and accounting information including:

(a) Necessary operating expenses;

(b) Appropriate expenses that are incurred in providing services to patients who cannot or do not pay;

(c) Incurred interest charges; and

(d) The relative value of services provided by providers other than facilities.

(10) The board shall obtain from each facility its current rate schedule and each later change in the schedule that the board requires.

SECTION 131. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

The board shall:

(1) Review for reasonableness and certify the rates set or negotiated for each health care provider. The board shall establish or negotiate rates for services that may be charged for each class of health care providers as defined in Section 1 of this Act. The board shall promulgate, and may periodically revise, by administrative regulation a schedule of the allowable or negotiated rates that may be charged by health care providers for services provided to patients;

(2) Consider whether a health care provider has enough resources to meet its financial requirements; and

(3) Recommend solutions if an efficiently operated health care provider does not have enough resources to provide services for which there is a demonstrated need.

SECTION 132. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The board shall promulgate by administrative regulation, pursuant to KRS Chapter 13A, a uniform accounting and financial reporting system that:

(a) Includes any cost allocation method that the board determines; and

(b) Requires each health care provider, for that provider's professional practice, to record its income, revenues, assets, expenses, outlays, liabilities, and units of service.

(2) Each health care provider shall use the uniform accounting and financial reporting system.

(3) As required by this section, the board may allow and provide for modifications in the uniform accounting and financial reporting system to reflect correctly any differences among health care providers by type, size, financial structure, or scope or type of service.

(4) The board shall use generally accepted accounting principles to establish or negotiate rates for each health care provider or class of health care providers.

SECTION 133. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) For the purpose of setting or negotiating rates, in any matter that relates to the cost of services in facilities or services offered by a health care provider, the board may:

(a) Hold a public hearing;

(b) Conduct an investigation;

(c) Require the filing of any information that relates to costs; or

(d) Subpoena any witness or evidence.

(2) The executive director of the board may administer oaths in connection with any hearing or investigation under this section.

(3) If the board considers a further investigation necessary to authenticate the information in a report that a health care provider files under this chapter, the board may make further investigation of the records or accounts of the health care provider.

(4) The investigation under this section may include a full or partial audit of the provider's records or accounts supplied to the board by the health care provider. The audit may be performed by the staff of the board or a third party for the board.

SECTION 134. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) As a condition of licensure, a health care provider shall not charge for services at a rate more than that set or negotiated in accordance with Sections 128 to 135 of this Act.

(2) To promote the most efficient and effective use of health care services, the board may promote and approve alternative methods of rate determination and payment that are of an experimental nature.

(3) Except as otherwise provided by law, in reviewing rates or considering or negotiating a request for changes in rates, the board shall not hold executive sessions.

SECTION 135. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

A health care provider or group of providers may file a written request to the board to permit or negotiate a change in rates in a manner determined by administrative regulations promulgated by the board, pursuant to KRS Chapter 13A.

PART XVIII

REPEALERS

Section 136. The following KRS sections are repealed:

216.270 Definitions for KRS 216.273 to 216.287.

216.273 Kentucky Health Care Data Commission -- Membership -- Terms -- Executive director and staff -- Liability of members.

216.275 Powers and duties of commission.

216.277 Limitation of powers of Cabinet for Human Resources with respect to commission.

216.280 Data required to be submitted to commission -- Promulgation of administrative regulations -- Other duties of commission.

216.283 Private data -- Treatment and use of personal and aggregate data -- Penalty.

216.285 Reports by commission.

216.287 Furnishing of data as condition of licensure of provider.

304.17-275 Renewal of hospital or surgical or medical expense insurance.

304.17-380 Filing of rates.

304.17-383 Procedure for approval of rate filing containing increase -- Exception for loss ratio guarantor.

PART XIX

NONCODIFIED MATERIAL

Section 137. The Kentucky Health Policy Board shall be the successor to the Kentucky Health Data commission, repealed under Section 136 of this Act, and all records, materials, and work of that Commission shall be transferred to the Kentucky Health Policy Board.

The Committee on Natural Resources and Environment reported **HB 330, HB 331, HB 377,** with Committee Amendment attached thereto, **HB 385, HB 399,** with Committee Substitute attached thereto, and **HB 439** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 330, AN ACT relating to community river and stream protection and awareness and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 147A IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly declares that the river resources of Kentucky play a critical economic, social, and cultural role in communities throughout the Commonwealth. It is in the public interest to promote state and local partnerships in the protection and development of river and stream resources to ensure the balanced and full use of these resources for drinking, transportation, recreation and tourism, agriculture, and economic development while maintaining and improving the natural and environmental qualities of these resources.

(2) The Department for Local Government and the Kentucky Heritage Council shall jointly administer a grant and technical assistance program for the purpose of promoting community and local government participation in restoring, maintaining, and enhancing local and regional river resources and their accompanying watersheds, streams, and riparian areas.

(3) The department and the council, in cooperation with an advisory committee appointed by the Governor and composed of one (1) representative each from the Natural Resources and Environmental Protection Cabinet, the Environmental Council, the Cabinet for Economic Development, the Department of Agriculture, and the Tourism Cabinet, shall develop applications and general grant rating criteria that will encourage cooperative and innovative efforts to address river resources issues and needs. These efforts may include:

- *(a) Stream cleanups;*
- *(b) Activities to promote tourism, recreation, economic development, and other river-related opportunities; and*
- *(c) Development of stream and watershed protection strategies.*

(4) Grants shall be available to municipal and county governments. Cooperative initiatives between counties, such as the demonstration Elkhorn Creek Interlocal Planning Consortium, to foster stream planning and river resource multi-use management shall be encouraged.

(5) Grant applications shall be jointly reviewed by the Department for Local Government, the Kentucky Heritage Council, and the cooperating agencies. The Department for Local Government and the Kentucky Heritage Council shall approve grants for up to five thousand dollars ($5,000) per project. Preference shall be given to those projects providing matching funds.

(6) Each approved project shall submit to the administering agencies progress reports and a final report as determined by the agencies. The administering agencies shall submit to the Governor and the Legislative Research Commission an annual report on the program at the end of each fiscal year.

(7) Grants shall not be made for the purpose of water infrastructure development, maintenance, or operation.

Section 2. The sum of $100,000 for the fiscal year 1994-95 and the sum of $100,000 for the fiscal year 1995-96 is appropriated out of the general fund to the Department for Local Government to carry out the purpose of Section 1 of this Act.

HB 331, AN ACT relating to river resource and watershed resource management and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly declares that it is the policy of the Commonwealth to ensure the continued viability of the rivers of Kentucky as valued economic, social, historic, recreational, and ecological assets for the benefit of present and future generations.

(2) The Commonwealth shall target its goals and limited resources in a more focused and coordinated manner to

achieve cost effective and measurable results in restoring, maintaining, and enhancing the biological and physical nature and values of rivers and their accompanying watersheds, streams, and riparian areas.

(3) The Secretary of the Natural Resources and Environmental Protection Cabinet shall be responsible for the development and implementation of a statewide river protection policy. The secretary shall submit to the Governor and the General Assembly by December 1995 a statewide river protection policy and strategy that shall include, but not be limited to: measurable short and long-term river protection goals that foster the balanced protection and management of the state's thirteen (13) river basins; quantitative indicators to assess annually the progress of achieving goals; a coordinated river basin monitoring program and geographic database; and integrated statewide and regional programs and initiatives tailored to the values and uses of the riverine resource.

(4) There is established a River Protection Policy Advisory Committee to assist the secretary in the development of a statewide river protection and management strategy. The committee's membership shall be appointed by the secretary and include persons representing the business and agriculture community, environmental and public interest groups, historic preservation groups, recreational organizations, federal and local governments, area development districts, and statewide and local planning organizations and agencies. The secretary shall designate appropriate cabinet and division personnel to serve on or assist the committee. The secretary may establish working subcommittees as deemed appropriate to facilitate the development of a statewide river policy. The secretary shall seek and provide opportunities for public input and comments on the statewide river policy and strategy.

(5) The secretary, with the assistance of the advisory committee, shall: review the need for a small stream protection and management initiative that considers the cumulative impacts of development and modification activities, discharges, and dredging activities on streams, watershed and river quality, uses, and values; review current riparian policies and priorities and make recommendations to foster its protection and enhancement; expand the state's comprehensive river assessment and make recommendations for the protection and management of special river resources; strengthen programs to educate the public on river-related matters and promote public participation in river protection; assess local government and other state and federal agency roles and responsibilities to facilitate coordinated river resource management; and review any other matter affecting rivers.

(6) There are established, within the Division of Water, demonstration projects for the Salt River and Elkhorn Creek Basin based on the whole river basin management approach. These demonstration projects, to be conducted over a three-year period, shall promote cooperative and coordinated federal, state, and local initiatives designed to identify and address local and regional river resource needs. The secretary shall submit six-month status reports to the Governor and the Legislative Research Commission and a final report on the benefits and feasibility of a statewide whole basin management approach by December 1995.

Section 2. To carry out the purposes of this Act, there is appropriated to the Natural Resources and Environmental Protection Cabinet out of the general fund in the State Treasury the sum of $100,000 for fiscal year 1994-95 and $100,000 for fiscal year 1995-96.

HB 377, AN ACT relating to soil and water conservation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

(1) There is established the Kentucky Soil Erosion and Water Quality Cost-Share Fund to be administered by the Soil and Water Conservation Commission. Moneys from the fund shall be used for cost-share programs to provide financial assistance for implementation of best management practices for the following purposes:

(a) Providing cleaner water through the reduction in sediment loading of Kentucky streams, rivers, and lakes;

(b) Reducing the loss of topsoil vital to the sustained production of food and fiber; and

(c) Preventing surface water and groundwater pollution.

(2) The commission is empowered to promulgate administrative regulations establishing practices eligible for cost-sharing funds, prioritizing applications, and prescribing amounts and limits of cost sharing. Practices eligible for cost-sharing funds shall include agricultural and silvicultural practices. Local conservation districts shall determine the eligibility of persons to receive the funds allocated to the districts by the commission. Priority for funding within each local conservation district shall be given to animal waste management systems, where animal waste has been identified as a water pollution problem, and to members of an agricultural district.

(3) Any person engaged in agricultural or silvicultural production may be considered for funding under this section if the person has had prepared a soil and water conservation plan with the local conservation district, has executed a forest management or forest stewardship plan, or has prepared a groundwater protection plan and agrees to maintain best management practices for a period of time specified by the commission.

(4) Up to five percent (5%) of any total annual appropriation may be used for administrative costs of the local conservation districts and the commission.

Section 2. KRS 146.110 is amended to read as follows:

(1) The commission shall have the general power to take any action it may consider necessary or proper to assist soil and water conservation districts***, agricultural districts,*** or watershed conservancy districts in carrying out their functions, powers, duties, and programs in accordance with the provisions of KRS Chapter 262, and for such purpose it may furnish financial and other aid to the districts and perform such services for them at their request as may be possible under available appropriations and resources;

(2) The commission has all the powers and duties formerly possessed by the State Soil Conservation Committee;

(3) The commission shall take any action it may consider necessary or proper in order to discharge for the state any of the state's functions, responsibilities or duties relating to flood control, drainage, and other activities with respect to the conservation, utilization, or control of soil or water resources;

(4) The commission may ***promulgate those administrative*** [~~prescribe such rules and~~] regulations as may be necessary to the performance of its duties and may enter into and execute any agreements or legal instruments that may be necessary for ***these purposes,*** [~~such purpose~~] and it shall have the authority to acquire necessary supplies, materials and equipment, and warehousing, servicing, and maintenance facilities for [~~such~~] equipment.

The Committee Amendment No. 1 to **HB 377** is as follows:

On page 1, line 24, by deleting "***executed***" and inserting "***had prepared***"; and

On page 1, line 25, by inserting "***had***" after "***has***".

HB 385, AN ACT relating to fish and wildlife resources.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 150.520 is amended to read as follows:

The department shall make such requirements by administrative regulations governing the taking***, selling, and buying*** of mussels ***and the reporting of musseling operations*** as it may deem best for the proper enforcement of this chapter. To prevent depletion of the mussel beds and to insure proper propagation of the mussels, the department may close any beds to operators at any time and for such length of time as it deems necessary. During such closed season on any bed no one shall take mussels therefrom. When an order is issued closing any mussel bed, due notice of the same shall be published pursuant to KRS Chapter 424.

Section 2. KRS 150.110 is amended to read as follows:

The commissioner and conservation officers may arrest without warrant anyone violating any of the provisions of KRS [~~150.510 and~~] 150.520 or any of the rules and regulations made by the department for the protection of mussels under this chapter. They may inspect mussels in any warehouse, boat, store, car or receptacle when they have good cause to believe that any of the provisions of KRS [~~150.510 and~~] 150.520 or any of the rules or regulations made thereunder have been or are being violated. This authority does not include the right to enter any dwelling house without a search warrant. When the officers find mussels in the possession of anyone in violation of this chapter, the mussels shall be confiscated and sold in the manner provided by KRS 150.120 for the sale of confiscated wildlife.

Section 3. KRS 150.150 is amended to read as follows:

(1) Except as provided in this chapter, all moneys derived from the sale of licenses or from any other source connected with the administration of this chapter shall be promptly paid over to the State Treasurer, who shall deposit such moneys in a special fund, known as the game and fish fund. The game and fish fund shall be used to carry out the purposes of this chapter and any law or regulation for the protection of wildlife and for no other purpose.

(2) All funds received under KRS 150.110[~~, 150.510~~] and 150.520 shall be used by the department for the purpose of enforcing those sections and for the protection and propagation of mussel beds. Any surplus remaining in the fund at the close of each calendar year shall be turned into the general fund of the department.

Section 4. KRS 150.990 is amended to read as follows:

(1) Each bird, fish, or animal taken, possessed, bought, sold, or transported and each device used or possessed contrary to the provisions of this chapter or any regulation adopted by the commission thereunder shall constitute a separate offense. The penalties prescribed in this section shall be for each offense.

(2) Any person who violates any of the provisions of this chapter or any regulations adopted by the commission thereunder may, in addition to the penalties provided in subsection (3), (4), (5), (6), (7), and (8) of this section, forfeit his license, or if that person is license exempt, may forfeit the privilege to perform the acts authorized by the license, and shall not be permitted to purchase another license or exercise the privileges granted by a license during the same license year. No fines, penalty, or judgment assessed or rendered under this chapter shall be suspended, reduced, or remitted otherwise than expressly provided by law. Any person who violates any regulation which has been or may be adopted by the commission under any provisions of this chapter or which is adopted to supplement, explain, carry out, or limit any

provision of this chapter, shall be subject to the same penalty as is provided for the violation of any provisions of this chapter under which the regulation is adopted or which the regulation supplements, explains, carries out, or limits.

(3) Any person who violates any of the provisions of KRS 150.120, 150.170, 150.280, 150.320, 150.355, 150.362, 150.400, 150.410, 150.415, 150.416, 150.603, subsections (1) or (2) of KRS 150.092, subsection (1) of KRS 150.235, subsection (2) of KRS 150.330 or 150.470, or any of the provisions of this chapter or any regulation adopted by the commission for which no definite fine or imprisonment is fixed shall be fined not less than twenty-five dollars ($25) nor more than two hundred dollars ($200).

(4) Any person who violates any of the provisions of KRS 150.290, 150.300, 150.340, 150.360, 150.445, 150.485, 150.600, 150.630, 150.660, subsection (1) of KRS 150.450 or 150.470, subsection (3) of KRS 150.660 shall be fined not less than twenty-five dollars ($25) nor more than two hundred dollars ($200) or be imprisoned for not more than six (6) months, or both. Also, any person violating the provisions of KRS 150.300 shall be assessed treble damages as provided in KRS 150.690 or 150.700.

(5) Any person who violates any of the provisions of KRS 150.190, 150.411, 150.412, or 150.417 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(6) Any person who violates any of the provisions of KRS 150.183, 150.305, 150.365, 150.370, subsection (1) of KRS 150.330, or subsections (2), (3), or (4) of KRS 150.235 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisonment for not more than six (6) months or both.

(7) Any person who violates any of the provisions of KRS 150.460 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500), or imprisoned for not more than six (6) months, or both, and in addition to these penalties shall be liable to the department in an amount ***not to exceed the replacement value of the fish and wildlife*** ~~[reasonably necessary to restock the fish or replenish other wildlife]~~ which has been killed or destroyed.

(8) Any person who violates the provisions of KRS 150.180, ~~[150.510,]~~ 150.520, 150.525, or administrative regulations issued thereunder shall, for the first offense be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1000); and shall for a second offense be fined not less than five hundred dollars ($500) nor more than one thousand five hundred dollars ($1500); and for any subsequent offense, be fined two thousand dollars ($2000).

(9) Any person who violates the provisions of KRS 150.520 or administrative regulations issued thereunder shall, if the violation relates to methods of taking mussels, for a first offense be imprisoned in the county jail for no more than thirty (30) days; for a second offense be imprisoned in the county jail for no more than six (6) months; and for any subsequent offense be imprisoned in the county jail for no more than one (1) year. The penalties for violation of subsection (9) shall be in addition to the penalties for violation of subsection (8).

(10) Any person who violates any of the provisions of KRS 150.4111, 150.640, or subsections (2) or (3) of KRS 150.450 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(11) Any person who violates any of the provisions of KRS 150.390, or subsection (3) of KRS 150.092 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or imprisoned for not less than thirty (30) days nor more than one (1) year or both. In addition to the penalties prescribed above, he shall forfeit his license or, if license exempt, the privilege to perform the acts authorized by the license for a period of one (1) to three (3) years and shall be liable to the department in an amount reasonably necessary to replace any deer, wild turkey, or bear taken in violation of KRS 150.390 and for violations of subsection (3) of KRS 150.092 shall be liable to the landowner or occupant for reasonable compensation for damages.

(12) Any person who violates any of the provisions of KRS 150.090 other than a criminal homicide or an assault against an officer enforcing the provisions of this chapter or the administrative regulations issued thereunder shall be guilty of a Class A misdemeanor.

(13) Any person who commits a criminal homicide or an assault against an officer enforcing the provisions of this chapter or the administrative regulations issued thereunder shall be subject to the penalties specified for such offense under KRS Chapter 507 or 508, as appropriate.

(14) A person shall be guilty of a Class B misdemeanor upon the first violation of KRS 150.710. A subsequent violation shall be a Class A misdemeanor.

Section 5. The following KRS section is repealed:

150.510 Report of musseling operations.

HB 399, AN ACT relating to waste tires.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 224.50-830 is amended to read as follows:

(1) No person shall:

(a) Accumulate more than one hundred (100) waste tires without registering with the cabinet and certifying compliance with the waste tire control program requirements;

(b) ***Engage in the opening burning of*** [~~Burn~~] waste tires;

(c) Dispose of waste tires at a ***contained*** landfill [~~unless the landfill operator has provided a means of rendering waste tires suitable for disposal in a landfill by preventing the entrapment of air or water in the tires~~]; or

(d) Dispose of waste tires at an incinerator unless the incinerator has a permit allowing the burning of waste tires.

Section 2. KRS 224.50-844 is amended to read as follows:

(1) Any person making retail sales of new motor vehicle tires[~~, who has contracted for the lawful disposal of waste tires,~~] may apply to the cabinet for an exemption from the requirements of KRS 224.50-822. The cabinet shall grant the exemption if the ***person making retail sales of new motor vehicle tires enters into and provides to the cabinet a copy of a contract with the operator of a residual landfill, a recovered material processing facility, or a recycling facility for the lawful disposal or management of the waste tires*** [~~contract satisfies the intent of KRS 224.50-820 to 224.50-846~~].

(2) The cabinet shall allow the permitting of residual landfills, defined by administrative regulations of the cabinet, to accept waste tires rendered suitable for disposal in a landfill. However, a residual landfill that applies for a permit to accept waste tires shall be permitted to accept only waste tires.

The Committee Substitute to **HB** 399 is as follows:

HB 399, AN ACT relating to waste tires.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 224.50-830 is amended to read as follows:

(1) No person shall:

(a) Accumulate more than one hundred (100) waste tires without registering with the cabinet and certifying compliance with the waste tire control program requirements;

(b) ***Engage in the opening burning of*** [~~Burn~~] waste tires;

(c) Dispose of waste tires at a ***contained*** landfill [~~unless the landfill operator has provided a means of rendering waste tires suitable for disposal in a landfill by preventing the entrapment of air or water in the tires~~]; or

(d) Dispose of waste tires at an incinerator unless the incinerator has a permit allowing the burning of waste tires. ***Any facility burning waste tires shall also comply with the consistency requirements of KRS 224.40-315(1).***

Section 2. KRS 224.50-844 is amended to read as follows:

Any person making retail sales of new motor vehicle tires[~~, who has contracted for the lawful disposal of waste tires,~~] may apply to the cabinet for an exemption from the requirements of KRS 224.50-822. The cabinet shall grant the exemption if the ***person making retail sales of new motor vehicle tires enters into and provides to the cabinet a copy of a contract with the operator of a recovered material processing facility or a recycling facility for the lawful disposal or management of the waste tires*** [~~contract satisfies the intent of KRS 224.50-820 to 224.50-846~~].

SECTION 3. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) Any person making retail sales of new motor vehicle tires within the Commonwealth shall report to the Revenue Cabinet on or before the twentieth day of each month the number of new motor vehicle tires sold for the preceding month. The person making retail sales of new motor vehicle tires shall also report the number of waste tires disposed of each month.

(2) Any person making retail sales of new motor vehicle tires within the Commonwealth, who pays the fee required by KRS 224.50-822, shall report the information required by subsection (1) of this section while reporting the fee required by KRS 224.50-822.

(3) Any person making retail sales of new motor vehicle tires within the Commonwealth, who is exempt because of KRS 224.50-838 or 224.50-844 from paying the fee required by KRS 224.50-822, shall not be exempt from reporting the information required by subsection (1) of this section or from complying with requirements of the Revenue Cabinet for administering and collecting the reports. Filing the reports required by subsection (1) of this section shall be a condition that must be met in order to receive or to continue receiving an exemption under KRS 224.50-838 or 224.50-844. Violation of this section shall be subject to the penalty provision of KRS 224.99-010(8).

HB 439, AN ACT relating to a seismic monitoring network and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

It is a finding of the General Assembly that Kentucky is located in an active seismic zone and the possibility of occurrence

of a major earthquake in Kentucky is significant. The New Madrid earthquakes of 1811-1812 were some of the most severe earthquakes recorded in the history of the United States. The earthquakes caused damage as far east as Cincinnati, Ohio, and Maysville, Kentucky, and ground subsidence along the Kentucky-Tennessee border that resulted in the formation of Reelfoot Lake. Thousands of earthquakes have been recorded in Kentucky, from the New Madrid seismic zone in the western tip of the state to Greenup, Bell, and other counties in the east. It is imperative that the people of the Commonwealth of Kentucky be provided with the information needed to plan for a major earthquake, including the information for improved building designs that will assist in the construction of buildings such as schools, hospitals, police and fire stations, college dormitories, and nursing homes, so that they will withstand a major earthquake. The same type of information is also needed to help protect bridges and roadways, water supplies, airports, and energy and food supplies by implementing needed policies and procedures. Current data indicate that an earthquake of a magnitude similar to the four great ones that occurred in the winter of 1811-1812 in the New Madrid seismic zone would close most of the major highways west of Louisville, including those across the Ohio and Mississippi Rivers. Major natural gas transmission lines would also be in jeopardy. Data from the statewide seismic monitoring network would provide the tools needed to prepare for and mitigate the effects a major earthquake in the Commonwealth.

SECTION 2. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Geological Survey shall establish a program to initiate and develop a long-term seismic monitoring network for the purpose of characterizing seismic activity in and adjacent to the Commonwealth of Kentucky to protect the citizens of the state in event of a catastrophic earthquake.

(2) The program shall include the installation and maintenance of a statewide seismic monitoring network and provide for long-term data collection to determine the nature of earthquakes throughout the state. The Kentucky Geological Survey shall utilize the data to support state efforts to develop models of seismic zones and to determine actions to be taken to protect the welfare of Kentucky's citizens from a catastrophic earthquake.

(3) The Kentucky Geological Survey shall enter data from the seismic network into a seismic data base which will be readily available to the public, government agencies, industry, and other entities that need and request access. The analyzed data shall also be made available in the forms of maps, seismic records, bulletins, and reports.

(4) The Kentucky Geological Survey shall solicit information from state and local agencies, industry, universities, and the public to assist in determining priority areas to be covered by the network as it is developed.

(5) The Kentucky Geological Survey, through the University of Kentucky, shall annually provide to the Governor or his designated representative a summary of the data collected by the seismic monitoring network and an analysis of the activities associated with the network.

SECTION 3. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

(1) There is established a technical advisory board whose purpose shall be to provide assistance to the Kentucky Geological Survey in the development and maintenance of the seismic monitoring network.

(2) The board shall consist of the following members:

(a) The executive director of the Kentucky Division of Disaster and Emergency Services or designee;

(b) A designee from the Governor's Earthquake Hazards and Safety Technical Advisory Panel;

(c) The commissioner of the Department of Housing, Buildings, and Construction or designee;

(d) The commissioner of the Kentucky Department of Highways or designee;

(e) The commissioner of the Kentucky Department for Natural Resources or designee;

(f) A designee of the Kentucky Transportation Center;

(g) A registered professional engineer appointed by the Governor, from two (2) persons nominated by the Kentucky Society of Professional Engineers;

(h) A registered professional geologist appointed by the Governor, from two (2) persons nominated by the Kentucky Board of Registration for Professional Geologists;

(i) A representative of the public at large appointed by the Governor; and

(j) The director of the Kentucky Geological Survey or designee.

The executive director of the Kentucky Division of Disaster and Emergency Services or designee shall act as chairman of the technical advisory board. For members identified in paragraphs (g), (h), and (i), appointments shall be for three (3) year terms and members may be reappointed.

Section 4. For the purposes of this Act, there is appropriated to the Kentucky Geological Survey from the general fund of the State Treasury $93,600 for fiscal year 1994-95 and $81,400 for fiscal year 1995-96.

Calendar

HB 9, HB 114, HB 138, HB 276, HB 278, HB 345, HB 396, HB 470, HB 264, HB 265, HB 266, HB 267, HB 268, HB 334, HB 355, HCR 24, HCR 25, HCR 34, HCR 35, HCR 38, HCR 39, HCR 40, SCR 44, SB 61, HB 57, HB 225, HB 492, HB 533, SB 85, SB 106, SJR 13 AND SJR 27 taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Floor Amendments

Floor Amendment No. 5 to the Committee Substitute to **HB 115**, by Representative Damron:

On page 4, lines 23 and 24, after the word "***of***" on line 23, by deleting the following:

"***an offense under KRS Chapter 510, KRS 530.020, 530.064, or 531.310,*** " and inserting in lieu thereof the following:

"***a misdemeanor offense under KRS Chapter 510 involving a student, or a felony offense under KRS Chapter 510, 530.064, or 531.310, or*** ";

on page 15, lines 10 and 11, after the word "***of***" on line 10, by deleting the following:

"***an offense under KRS Chapter 510, KRS 530.020, 530.064, or 531.310***" and inserting in lieu thereof the following:

"***a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064, or 531.310***";

on page 18, lines 1 and 2, after the word "***of***" on line 1, by deleting the following:

"***an offense under KRS Chapter 510, KRS 530.020, 530.064, or 531.310***" and inserting in lieu thereof the following:

"***a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064, or 531.310***";

on page 25, lines 26 and 27, after the word "***of***" on line 26, by deleting the following:

"***an offense under KRS Chapter 510, KRS 530.020, 530.064, or 531.310***" and inserting in lieu thereof the following:

"***a misdemeanor offense under KRS Chapter 510 involving a client, patient, or student, or a felony offense under KRS Chapter 510, 530.064, or 531.310, or been found by the board to have had sexual contact as defined in KRS 510.010 with a client, patient, student, or supervisee***";

on page 31, lines 24 and 25, after the word "***of***" on line 24, by deleting the following:

"***an offense under KRS Chapter 510, KRS 530.020, 530.064, or 531.310***" and inserting in lieu thereof the following:

"***a misdemeanor offense under KRS Chapter 510 involving a client or a felony offense under KRS Chapter 510, 530.064, or 531.310***"; and

on page 35, after line 13 by inserting the following:

"Section 16. KRS 312.019 is amended to read as follows:

(1) The board shall administer the provisions of this chapter and the administrative regulations promulgated by the board relating to the practice of chiropractic.

(2) The board shall pass upon the qualifications of applicants for a license, certification, or registration to practice chiropractic. It shall examine, license, certify, register, and renew the license, certification, or registration of duly qualified applicants.

(3) The board may deny, revoke, refuse to renew, or suspend any license, certification, or registration issued by it.

(4) The board shall adopt a seal which shall be affixed to all licenses, certifications, and registrations issued by the board and to such other documents as the board deems necessary.

(5) The board shall regulate the practice of chiropractic by persons licensed or certified by it and shall enforce the provisions of this chapter and the administrative regulations of the board. The board may investigate violations and cause the prosecution of persons violating the provisions of this chapter or the administrative regulations promulgated by the board.

(6) The board may employ such personnel and incur such expenses as may be necessary for the performance of its duties and the enforcement of this chapter.

(7) The board may prescribe and collect reasonable fees for the issuance and renewal of licenses, certifications, and registrations and the administration of examinations as provided in KRS 312.095 and 312.175.

(8) The board may inspect at all reasonable times any chiropractic office or place where chiropractic services are performed.

(9) The board may promulgate and from time to time amend administrative regulations, consistent with the provisions of this chapter and in accordance with the provisions of KRS Chapter 13A, governing the practice of chiropractic and the diagnosis and treatment of patients, the enforcement of this chapter and the proper performance of its duties, including but not limited to:

(a) A code of ethical conduct governing the practice of chiropractic;

(b) Requirements, standards, and examinations to determine the moral, physical, intellectual, educational, scientific, technical, and professional qualifications of applicants for licenses and certifications;

(c) Matters pertaining to the content and conduct of examinations;

(d) Matters pertaining to the operation and registration of chiropractic clinics;

(e) Matters pertaining to the practice and certification of chiropractic specialties by licensed doctors of chiropractic;

(f) The type and character of postgraduate study to be done by any licensee in order to comply with the provisions of KRS 312.175;

(g) Regulation of forms of advertising or solicitation that are false, misleading, or deceptive or otherwise in violation of this chapter. The board may require a seventy-two (72) hour rescission period for consumers responding to certain forms of solicitation or advertising proposing or offering a series or course of treatments. The board may require that advertisements or solicitations stating coverage available from third-party payors include a conspicuous notice that persons may be required to submit to an independent evaluation which may result in a determination that the all or part of the services are unreasonable or unnecessary;

(h) Establishing a recommended course of pre-chiropractic education to be completed prior to entry into chiropractic college and the establishment of a preceptorship program for students enrolled in accredited chiropractic colleges that conform to KRS 312.085 to meet the standards of accreditation of the Council on Chiropractic Education.

(i) Registration and regulation of chiropractic management consultants operating in Kentucky. The board may impose annual registration fees not to exceed two hundred dollars ($200); and

(j) Establishing minimum standards for recordkeeping in chiropractic offices, the issuance of itemized statements, and requiring that any record or report include the name of the treating chiropractor.

(10) The board shall develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by a chiropractor licensed by the board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure the process does not revictimize the alleged victim or cause harm if a chiropractor is falsely accused.

(11) The board, the hearing officer, and investigators hired by the board shall receive training on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, the characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedure in sex offense cases, and effective intervention with victims and offenders.

Section 17. KRS 312.150 is amended to read as follows:

(1) Charges may be preferred by the board against the holder of a license to practice chiropractic in this state on any of the following grounds:

(a) That fraud or deceit was used in securing the license;

(b) That the licensee no longer possesses a good moral character;

(c) That the licensee has been convicted of a felony or violation of any law involving moral turpitude;

(d) That the licensee solicits patients through an agent;

(e) That the licensee is addicted to the use of narcotic drugs or is a chronic alcoholic;

(f) That the licensee is in any way guilty of any deception, misrepresentation, fraud, or unethical conduct in the practice of chiropractic;

(g) That the licensee has violated any of the provisions of this chapter, or any of the administrative regulations of the board;

(h) That the licensee failed to attend and complete annual continuing chiropractic education courses as provided in KRS 312.175; or

(i) That the licensee failed to provide an itemized statement to the patient immediately upon request.

(2) Unprofessional conduct shall include any departure or the failure to conform to the minimal standards of acceptable chiropractic practice or the willful or careless disregard for the health, welfare, or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a chiropractor:

(a) Gross ignorance of, or incompetence in, the practice of chiropractic;

(b) Performing unnecessary services;

(c) Charging a patient an unconscionable fee or charging for services not rendered;

(d) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques, including having patients enter into a contract for a course of treatment;

(e) Perpetrating fraud upon patients, third-party payors, or others, relating to the practice of chiropractic, including violations of the federal medicare law;

(f) Advertising that the licensee shall accept for services rendered assigned payments from any third-party payor as payment in full, if the effect is to give the impression of eliminating the need for payment by the patient of any required deductible or copayment applicable in the patient's health benefit plan; or advertising a fee or charge for a service or treatment different from the fee or charge the licensee submits to a third-party payor for that service of treatment. The licensee shall attach to any claim form submitted to any third-party payor a copy of any coupon or a summary of the terms of any discount given; ~~[or]~~

(g) Accepting for services rendered assigned payments from any third-party payor as payment in full, if the effect is to eliminate the need for payment by the patient of any required deductible or copayment applicable in the patient's health benefit plan, or collecting a fee or charge the licensee submits to a third-party payor for that service or treatment. However, in instances where the intent is not to collect excessive remuneration from a third-party payor but rather to provide services at a reduced rate to a patient unable to afford the deductible or copayment, the services may be performed for a lesser charge or fee. The third-party payor shall be informed by the licensee of the reduced charge*; or*

(h) Conviction of a misdemeanor offense under KRS Chapter 510 involving a patient while the patient was under the care of the chiropractor, or a felony offense under KRS Chapter 510, 530.064, or 531.310, or the chiropractor having been found by the board to have had sexual contact as defined in KRS 510.010 with a patient while the patient was under the care of the chiropractor.

(3) Upon receipt and due consideration of such charges, the board upon an affirmative vote of a majority of its members shall determine whether the nature and quality of the charges are such that further investigation or initiation of formal or informal disciplinary proceedings against the charged licensee is indicated. If the board determines that disciplinary proceedings are appropriate the charges shall be set down for hearing at a future meeting of the board, and the charged licensee shall be notified of this action in writing and shall be furnished a copy of said charges at least twenty (20) days before the date set for the hearing.

(4) Except for revocation for nonrenewal, no license shall be revoked or suspended without a hearing. The board may at any time proceed against a licensee on its own initiative either on the basis of information contained in its own records or on the basis of information obtained through its informal investigation. When a formal complaint verified by affidavit is filed with the board by a responsible citizen or organization and containing allegations that if true would warrant suspension or revocation of a license, the board shall proceed against the licensee within three (3) months.

(5) A written notice stating grounds for possible suspension or revocation of the license, setting forth with reasonable particularity the facts constituting the alleged offense and the time and place of the hearing before the board on the charges, shall be served on the charged licensee not less than twenty (20) days prior to the date of the hearing either personally or by mailing a copy thereof by certified mail, return receipt requested to the address of the licensee last known to the board.

(6) If the board substantiates that sexual contact occurred between the chiropractor and a patient while the patient was under the care of or in a professional relationship with the chiropractor, the chiropractor's license may be revoked or suspended with mandatory treatment of the chiropractor as prescribed by the board. The board may require the chiropractor to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact."

Orders of the Day

SB 4, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Callahan moved the adoption of the Committee Substitute to **SB 4**. Agreed.

Representative Callahan moved that **SB 4**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 76, Nays 7. (See February 18, 1994 roll call on **SB 4** - Appendix)

SB 4, by way of Committee Substitute, was passed and the title agreed to.

Representative Callahan moved that the vote by which **SB 4**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 41, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lee moved the adoption of the Committee Substitute to **HB 41**. Agreed.

Representative Lee moved that **HB 41**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 87, Nays 0. (See February 18, 1994 roll call on **HB 41** - Appendix)

HB 41, by way of Committee Substitute, was passed and the title agreed to.

Representative Lee moved that the vote by which **HB 41**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 204, with Committee Substitute, Title Amendment and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Geveden moved the adoption of the Committee Substitute to **HB 204**. Agreed.

Representative Geveden moved the adoption of Floor Amendment No. 2 to **HB 204**. Agreed.

Representative Geveden moved that **HB 204**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 85, Nays 0. (See February 18, 1994 roll call on **HB 204** - Appendix)

HB 204, by way of Committee Substitute as amended, was passed.

Representative Geveden moved the adoption of the Committee Title Amendment to the Committee Substitute to **HB 204**. Agreed; and the title was agreed to.

Representative Geveden moved that the vote by which **HB 204**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 426 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative B. Smith moved that **HB 426** be passed.

On the roll call the vote was: Yeas 71, Nays 11. (See February 18 , 1994 roll call on **HB 426** - Appendix)

HB 426 was passed and the title agreed to.

Representative Stumbo moved that the vote by which **HB 426** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 436 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative B. Smith moved that **HB 436** be passed.

On the roll call the vote was: Yeas 87, Nays 0. (See February 18 , 1994 roll call on **HB 436** - Appendix)

HB 436 was passed and the title agreed to.

Representative B. Smith moved that the vote by which **HB 436** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 427, with Floor Amendment and Committee Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Cave moved the adoption of Floor Amendment No. 1 to **HB 427**. Agreed.

Representative B. Smith moved the adoption of Committee Amendment No. 1 to **HB 427**. Agreed.

Representative B. Smith moved the adoption of Committee Amendment No. 2 to **HB 427**. Agreed.

Representative B. Smith moved that **HB 427**, as amended, be passed.

On the roll call the vote was: Yeas 87, Nays 0. (See February 18, 1994 roll call on **HB 427** - Appendix)

HB 427, as amended, was passed and the title agreed to.

Representative B. Smith moved that the vote by which **HB 427**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Report On Enrolled Bills

The Committee on Enrollment reported that **SB 60** and **SB 120** have been examined and found correctly enrolled. Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time - 9:39 a.m.)

Floor Amendments (Continued)

Floor Title Amendment to the Committee Substitute to **SB 4**, by Representative Callahan:

Amend title to read as follows: "AN ACT relating to the jurisdiction of police officers in cities."

Floor Amendment No. 1 to the Committee Substitute to **HB 187**, by Representative Lindsay:

On page 4, after line 10, by adding the following:

"Section 2. KRS 160.345 is amended to read as follows:

(1) The term "teacher" for the purpose of this section means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.

(2) By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy shall also address and comply with the following:

(a) Each participating school shall form a school council which shall be composed of ***four (4) parent or community representatives, three (3) of whom shall be parents and one (1) of whom may be a parent or a community resident of the school attendance area;*** [~~two (2) parents,~~] three (3) teachers***;***[~~,~~] and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. The parent ***or community*** representatives on the council shall not be employees of the district or employees' relatives, nor shall they be a local board member or his spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees. By July 1, 1993, the State Board for Elementary and Secondary Education shall submit recommendations to the Legislative Research Commission relating to policies and procedures to insure minority representation on school councils.

(b) The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent ***or community*** representatives shall be selected for one (1) year terms. The parent ***or community representatives*** [~~members~~] shall be elected by the ***parents of students enrolled in the school in an election conducted by*** [~~parent members of~~] the parent teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. The principal or head teacher shall be the chair of the school council.

(c) The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.

(d) All certified staff at a school may be participants in the school-based decision making. The staff may divide into committees according to their areas of interest, such as, but not limited to, grouped grade levels, subject areas, and special programs. Each committee shall elect by a majority of the committee a chair, who shall serve for a term of one (1) year. The committee shall submit its recommendations to the school council for consideration.

(e) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.

(f) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.

(g) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.

(h) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council.

(i) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.

(j) The school council shall adopt a policy to be implemented by the principal in the following additional areas:

1. Determination of curriculum, including needs assessment and curriculum development;
2. Assignment of all instructional and noninstructional staff time;
3. Assignment of students to classes and programs within the school;
4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
5. Determination of use of school space during the school day;
6. Planning and resolution of issues regarding instructional practices;
7. Selection and implementation of discipline and classroom management techniques, including responsibilities of the student, parent, teacher, counselor, and principal;
8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision; and
9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal.

(3) The policy adopted by the local board to implement school-based decision making shall also address the following:

(a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;

(b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;

(c) School improvement plans, including the form and function of strategic planning and its relationship to district planning;

(d) Professional development plans developed pursuant to KRS 156.095 and 156.0951;

(e) Parent, citizen, and community participation including the relationship of the council with other groups;

(f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;

(g) Requirements for waiver of district policies;

(h) Requirements for record keeping by the school council; and

(i) A process for appealing a decision made by a school council.

(4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

(5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon a favorable vote of a majority of the faculty at the school, a school performing above its threshold level requirement as determined by the Department of Education pursuant to KRS 158.6455 may apply to the State Board for Elementary and Secondary Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

(6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making.

(7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the State Board for Elementary and Secondary Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.

(8) The State Board for Elementary and Secondary Education, upon recommendation of the chief state school officer, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council.

(9) (a) No board member, superintendent of schools, or district employee shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (j) of subsection (2) of this section.

(b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the State Board for Elementary and Secondary Education.

(c) The State Board for Elementary and Secondary Education shall establish by administrative regulation a hearing process for complaints referred by the Office of Education Accountability.

(d) If the State Board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty."

Floor Amendment No. 2 to the Committee Substitute to **HB 187**, by Representative Lindsay:

On page 1, line 14, after "***in***", by changing "***subparagraph***" to "***subparagraphs***";

On page 1, line 15, after "***1.b.***" by adding "***and 1.c.***";

On page 2, between lines 3 and 4, by inserting the following:

"***c. A school council established pursuant to KRS 160.345 may establish a traditional track primary program in addition to the primary program established pursuant to subparagraph 1.a. of this paragraph that includes, but is not limited to, a graded organization, assignment to grade based on student age and ability, and the use of textbooks. If the council establishes a traditional track, the parents shall determine which primary program organization their child attends.***

d. The results from assessments administered pursuant to KRS 158.6453 for students who participated in a traditional track primary program shall not be used to calculate that school's assessment results pursuant to KRS 158.6455 for the fourth grade or eighth grade if applicable."

Floor Amendment No. 3 to **HB 187**, by Representative Lindsay:

On page 4, after line 15, by adding the following:

"Section 2. KRS 160.345 is amended to read as follows:

(1) The term "teacher" for the purpose of this section means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.

(2) By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy shall also address and comply with the following:

(a) Each participating school shall form a school council which shall be composed of ***four (4) parent or community representatives, three (3) of whom shall be parents and one (1) of whom may be a parent or a community resident of the school attendance area;*** ~~[two (2) parents,]~~ three (3) teachers***;***~~[,]~~ and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. The parent ***or community*** representatives on the council shall not be employees of the district or employees' relatives, nor shall they be a local board member or his spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees. By July 1, 1993, the State Board for Elementary and Secondary Education shall submit recommendations to the Legislative Research Commission relating to policies and procedures to insure minority representation on school councils.

(b) The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent ***or***

community representatives shall be selected for one (1) year terms. The parent ***or community representatives*** [~~members~~] shall be elected by the ***parents of students enrolled in the school in an election conducted by*** [~~parent members of~~] the parent teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. The principal or head teacher shall be the chair of the school council.

(c) The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.

(d) All certified staff at a school may be participants in the school-based decision making. The staff may divide into committees according to their areas of interest, such as, but not limited to, grouped grade levels, subject areas, and special programs. Each committee shall elect by a majority of the committee a chair, who shall serve for a term of one (1) year. The committee shall submit its recommendations to the school council for consideration.

(e) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.

(f) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.

(g) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.

(h) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council.

(i) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.

(j) The school council shall adopt a policy to be implemented by the principal in the following additional areas:

1. Determination of curriculum, including needs assessment and curriculum development;
2. Assignment of all instructional and noninstructional staff time;
3. Assignment of students to classes and programs within the school;
4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
5. Determination of use of school space during the school day;
6. Planning and resolution of issues regarding instructional practices;
7. Selection and implementation of discipline and classroom management techniques, including responsibilities of the student, parent, teacher, counselor, and principal;
8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision; and
9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal.

(3) The policy adopted by the local board to implement school-based decision making shall also address the following:

(a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;

(b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;

(c) School improvement plans, including the form and function of strategic planning and its relationship to district planning;

(d) Professional development plans developed pursuant to KRS 156.095 and 156.0951;

(e) Parent, citizen, and community participation including the relationship of the council with other groups;

(f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;

(g) Requirements for waiver of district policies;

(h) Requirements for record keeping by the school council; and

(i) A process for appealing a decision made by a school council.

(4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

(5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon a favorable vote of a majority of the faculty at the school, a school performing above its threshold level requirement as determined by the Department of Education pursuant to KRS 158.6455 may apply to the State Board for Elementary and Secondary Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

(6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making.

(7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the State Board for Elementary and Secondary Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.

(8) The State Board for Elementary and Secondary Education, upon recommendation of the chief state school officer, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council.

(9) (a) No board member, superintendent of schools, or district employee shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (j) of subsection (2) of this section.

(b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the State Board for Elementary and Secondary Education.

(c) The State Board for Elementary and Secondary Education shall establish by administrative regulation a hearing process for complaints referred by the Office of Education Accountability.

(d) If the State Board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty."

Floor Amendment No. 4 to **HB 187**, by Representative Lindsay:

On page 1, line 14, after "***in***", by changing "***subparagraph***" to "***subparagraphs***", and after "***1.b.***" by adding "***and 1.c.***";

On page 2, between lines 8 and 9, by inserting the following:

"***c. One alternative primary program that may be offered in addition to a primary program established pursuant to subdivision a. of this subparagraph, is a traditional program that includes, but is not limited to, a graded organization, assignment to grade based on student age and ability, and the use of textbooks. If the council establishes a traditional track, the parents shall determine which primary program organization their child attends.***

d ***The results from assessments administered pursuant to KRS 158.6453 for students who participated in a traditional track primary program shall not be used to calculate that school's assessment results pursuant to KRS 158.6455 for the fourth grade or eighth grade if applicable.***"

Floor Amendment No. 2 to **HB 256**, by Representative Lindsay:

On page 2, between lines 16 and 17, by inserting the following:

"Section 2. KRS 158.6453 is amended to read as follows:

(1) The State Board for Elementary and Secondary Education shall be responsible for creating and implementing a statewide, primarily performance-based assessment program to ensure school accountability for student achievement of the goals set forth in KRS 158.645. ***The statewide assessment program shall not include measurement of a student's ability to become a self-sufficient individual or to become a responsible member of a family, work group, or community.*** The program shall be implemented as early as the 1993-94 school year but no later than the 1995-96 school year. The board shall also be responsible for administering an interim testing program to assess student skills in reading, mathematics, writing, science, and social studies in grades four (4), eight (8), and twelve (12). The tests shall be designed to provide the state with national comparisons and shall be the same as, or similar to those used by the National Assessment of Educational Progress. The interim testing program shall begin during the 1991-92 school year and shall be administered to a sample of students representative of each school and the state as a whole. The test scores shall be used, along with other factors described in KRS 158.6451, to establish a baseline for determining school success during the 1993-94 school year.

(2) Upon July 13, 1990, the state board shall contract with three (3) or more authorities in the field of performance assessment to design the specifications for the interim and full-scale statewide assessment development effort. The bid specifications shall include requirements that the successful bidder:

(a) Be a consultant to the Council on School Performance Standards as it develops the educational outcomes expected of students;

(b) Direct the development of the interim and full-scale assessment program; and

(c) Direct the development of the formula to be used to determine successful schools pursuant to KRS 158.6455.

The assessment authorities shall review the bids and make a recommendation to the board. The authorities shall have no pecuniary interest with the successful bidder.

(3) In addition to statewide testing for the purpose of determining school success, the board shall have the responsibility of assisting local school districts and schools in developing and using continuous assessment strategies needed to assure student progress.

(4) By October 1 of each year, local boards of education shall publish in the newspaper with the largest circulation in the county an annual performance report on district accomplishments and activities pertaining to performance goals including, but not limited to, retention rates and student performance, the districts' goals for the succeeding year, and other items as may be set forth in State Board for Elementary and Secondary Education administrative regulations.

"Section 3. KRS 158.6451 is amended to read as follows:

(1) Upon July 13, 1990, the Council on School Performance Standards established by Executive Order 89-151 shall be reconvened by the chairman to frame the following six (6) goals for the schools of the Commonwealth in measurable terms which define the outcomes expected of students:

(a) Schools shall expect a high level of achievement of all students.

(b) Schools shall develop their students' ability to:

1. Use basic communication and mathematics skills for purposes and situations they will encounter throughout their lives;

2. Apply core concepts and principles from mathematics, the sciences, the arts, the humanities, social studies, and practical living studies to situations they will encounter throughout their lives;

3. Become a self-sufficient individual;

4. Become responsible members of a family, work group, or community, including demonstrating effectiveness in community service;

5. Think and solve problems in school situations and in a variety of situations they will encounter in life; and

6. Connect and integrate experiences and new knowledge from all subject matter fields with what they have previously learned and build on past learning experiences to acquire new information through various media sources.

(c) Schools shall increase their students' rate of school attendance.

(d) Schools shall reduce their students' dropout and retention rates.

(e) Schools shall reduce physical and mental health barriers to learning.

(f) Schools shall be measured on the proportion of students who make a successful transition to work, post-secondary education, and the military.

(2) The Council on School Performance Standards shall employ necessary staff and shall be attached to the Department of Education for administrative purposes. Members of the council and its committees may receive reimbursement of actual expenses for attending meetings and may be reimbursed for other actual and necessary expenses incurred in the performance of their duties authorized by the council. The expenses shall be paid out of the appropriation for the council.

(3) ***(a)*** The Council on School Performance Standards shall establish a number of committees with statewide representation of certified personnel to frame the goals in measurable terms which specify the expected outcomes. The council shall make periodic progress reports and a final report by December 1, 1991, to the Governor, the State Board for Elementary and Secondary Education, and the Legislative Research Commission. After submitting its final report the council shall cease to exist. The State Board for Elementary and Secondary Education shall adopt the goals of the council.

(b) By December, 1994, the State Board for Elementary and Secondary Education shall review and revise the learner outcomes for the goals to assure that all outcomes are measurable.

(4) By July 1, 1993, the State Board for Elementary and Secondary Education shall disseminate to local school districts and schools a model curriculum framework which is directly tied to the goals, outcomes, and assessment strategies developed pursuant to this section and KRS 158.645 and 158.6453. The framework shall provide direction to local districts and schools as they develop their curriculum. The framework shall identify teaching and assessment strategies, instructional material resources, ideas on how to incorporate the resources of the community, a directory of model teaching sites, and alternative ways of using school time.

Section 4. KRS 158.6455 is amended to read as follows:

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

(1) The State Board for Elementary and Secondary Education shall promulgate administrative regulations to establish a system of determining successful schools and dispensing appropriate rewards. The system shall be based on the following:

(a) A school shall be the unit of measure to determine success;

(b) School success shall be determined by measuring a school's improvement over a two (2) year period;

(c) A school shall be rewarded for an increased proportion of successful students, including those students who are at risk of school failure;

(d) A threshold level for school improvement shall be established by the board to determine the amount of success needed for a school to receive a reward. The threshold definition shall establish the percentage of increase required in a school's percentage of successful students as compared to a school's present proportion of successful students, with consideration given to the fact that a school closest to having one hundred percent (100%) successful students will have a lower percentage increase required;

(e) Rewards shall be given to the school on behalf of the full-time, part-time, and itinerant instructional staff of a school who generate the reward when the school achieves at least one percent (1%) gain over its threshold as defined in paragraph (d) of this subsection. Substitute teachers shall not be used in calculating the reward;

(f) Rewards shall be calculated by applying the percentage set by the General Assembly in the biennial budget to the current annual salary of each certified staff person employed in the school on the last working day of the year of the reward. The reward for part-time and itinerant staff shall be calculated for the proportion of time spent in the school. In determining the percentage to be applied to a school for calculation of the rewards for the school's staff, consideration shall be given to the fact that schools already having a high percentage of successful students shall have a lower requirement for a percentage increase in its number of successful students. The staff person's identity in connection to his share of the reward shall be maintained when his share of the reward is deposited to the school's account;

(g) The certified staff members shall by majority rule collectively decide on the ways the reward funds shall be spent. Each individual staff person shall use the amount he earned in accordance with the decisions made by the total staff. Rewards shall not be added to a staff person's base salary and shall not be defined as compensation for retirement purposes under KRS 161.220(10); and

(h) The Department of Education shall send the school's reward to the local district office for transmittal to the school.

(2) The State Board for Elementary and Secondary Education, after adopting the goals of the Council on School Performance Standards and determining the definition of a successful student, shall adopt by administrative regulation the formula to be used to determine successful schools. The formula shall be a calculus of factors which reflect the school

goals[~~outcomes~~] described in KRS 158.6451***, except there shall be no measurement of the goals included in subsection (1)(b)3 and (1)(b)4***.

(3) A school that does not reach its threshold level as defined in paragraph (d) of subsection (1) of this section but maintains the previous proportion of successful students shall be required to develop a school improvement plan and shall be eligible to receive funds from the school improvement fund pursuant to KRS 158.805. A school that does not reach its threshold level but maintains the previous proportion of successful students after the second biennial review shall be required to meet the provisions of subsection (4) of this section.

(4) A school in which the proportion of successful students declines by less than five percent (5%) shall be required to develop a school improvement plan, shall be eligible to receive funds from the school improvement fund, and shall have one (1) or more Kentucky distinguished educators assigned to the school to carry out the duties as described in KRS 158.782. If the school does not meet its original threshold after the next biennial review, the school shall be subject to the requirements of subsection (5) of this section.

(5) ***(a) Except as provided in paragraph (b) of this subsection,*** a school in which the proportion of successful students declines by five percent (5%) or more shall be declared by the State Board for Elementary and Secondary Education to be a "school in crisis." When a school is declared to be a "school in crisis," the following actions shall be required:

1.[~~(a)~~] The full-time and part-time certified staff of that school shall be placed on probation;

2.[~~(b)~~] The principal shall immediately notify the students' parents of the students' right to transfer to a successful school, with procedures for initiating the request;

3.[~~(c)~~] Within thirty (30) days after the declaration by the state board under this subsection or no later than thirty (30) days before the start of the next school year, whichever is later, any student in that school may request and shall be allowed to transfer to a successful school as determined under the provisions of subsection (2) of this section. The superintendent shall select the receiving successful school in the home district or make arrangements with a neighboring district. If two (2) districts cannot agree, the superintendent of the student's resident district shall request the State Board for Elementary and Secondary Education to resolve the issue and make a decision on the placement of the student within thirty (30) days of the request. The board of the district in which the student resides shall be responsible for all tuition and transportation costs incurred as a result of a student transferring from a "school in crisis" to a successful school. If a decline in student enrollment causes overstaffing at the "school in crisis," personnel shall be reduced or transferred pursuant to KRS 161.760 and 161.800.

4.[~~(d)~~] One (1) or more Kentucky distinguished educators shall be assigned to the school by the commissioner of education to carry out the duties as described in KRS 158.782. Notwithstanding any other statute to the contrary, at the end of six (6) months, the Kentucky distinquished educator shall evaluate and make a recommendation to the superintendent regarding the retention, dismissal, or transfer of each full-time and part-time certified staff member. Recommendations for transfer shall conform to any employer-employee bargained contract which is in effect. Recommendations for dismissal shall be binding on the superintendent who shall notify the staff member pursuant to KRS 161.790. This evaluation process shall continue every six (6) months until the school is no longer a "school in crisis" as determined by the State Board for Elementary and Secondary Education; and

5.[~~(e)~~] The school shall be required to develop a school improvement plan and shall be eligible to receive funds from the school improvement fund.

(b) A school qualifying as a "school in crisis" pursuant to paragraph (a) of this subsection on the basis of the 1992-94 biennium assessment results shall be subject to subsection (4) of this section until it is determined if the school met its threshold for the 1994-96 biennium.

(6) The State Board for Elementary and Secondary Education shall develop a system of rewards and sanctions for certified staff who are not assigned to a school in a local school district. The system shall be analogous to the system described in subsections (1) through (5) of this section. Rewards shall be given to non-school-based staff when the district's proportion of successful students increases above a threshold adopted by the state board and comparable to the threshold adopted for schools. Sanctions shall be imposed when the proportion of successful students in the district declines in the same proportion used to determine school sanctions under subsections (3), (4), and (5) of this section. A school district that does not meet its threshold shall be required to develop a district improvement plan defined in KRS 158.650.

(7) ***(a) Except as provided in paragraph (b) of this subsection,*** a school district in which the proportion of successful students declines by five percent (5%) or more shall be assigned one (1) or more Kentucky distinguished educators to assist the system, evaluate personnel, and notwithstanding any other statute to the contrary, make personnel recommendations every six (6) months on retention, dismissal, or transfer. Personnel recommendations shall be made to the superintendent. Recommendations on the superintendent's status shall be made to the local board of education. If the recommendation is to terminate the superintendent, the board shall terminate the contract pursuant to KRS 160.350. If a district has a declining proportion of successful students for two (2)

consecutive biennial assessment periods, the district shall be declared an education development district pursuant to KRS 158.685 and the board members and the superintendent shall be removed under the provisions of KRS 156.132 and 156.136.

(b) A school district qualifying for sanctions pursuant to paragraph (a) of this subsection on the basis of the 1992-94 biennium assessment results shall be subject to subsection (6) of this section until it is determined if the district has met its threshold for the 1994-96 biennium.

(8) The State Board for Elementary and Secondary Education shall adopt administrative regulations to establish a process whereby a school shall be allowed to appeal a performance judgment which it considers grossly unfair. The state board may adjust a performance judgment on appeal when evidence of highly unusual circumstances warrants the conclusion that the performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the biennial assessment period which are beyond the control of the school."

On page 2, line 17, after "Section" by changing "2" to "5".

Orders of the Day (Continued)

Representative Stumbo moved that the rules be suspended to allow floor privileges to Congressman Ron Mazzoli. Agreed.

Congressman Mazzoli briefly addressed the House.

Representative Gray moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Gray moved the adoption of the following **Legislative Citation No. 71**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby pays homage to the illustrious Romano Louis Mazzoli, United States Congressman. This prestigious body joins Speaker Joe Clarke in commending one of Kentucky's finest native sons, Congressman Romano Louis Mazzoli for his superb work in government. His many projects have created an improved quality of existence for all United States citizens.

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 50, HB 185** and **HB 294** have been examined and found correctly enrolled . Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -9:43 a.m.)

HB 50, HB 185 and **HB 294** delivered to the Senate and signed by the President. Delivered to the Governor on February 18, 1994 at 9:55 a.m.

Orders of the Day (Continued)

HB 166, with Senate Committee Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Committee Amendment No. 1 to **HB 166** is as follows:

On page 1, line 19, by deleting "***if the estimated cost of purchasing the***"; and

On page 1, line 20, by deleting "***real property***" and inserting "***whose value***" in lieu thereof.

Representative Bowling moved that the House concur in Senate Committee Amendment No. 1 to **HB 166**. Agreed.

Representative Bowling moved that **HB 166**, as amended by the Senate, be passed.

On the roll call the vote was: Yeas 81, Nays 0. (See February 18, 1994 roll call on **HB 166** - Appendix)

HB 166, as amended by the Senate, was passed and the title agreed to.

Representative Stumbo moved that the rules be suspended to act upon the Title Amendment to **SB 4**. Agreed.

Representative Stumbo moved the adoption of the Committee Title Amendment to **SB 4**. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Representative Stumbo moved that **SB 92** be reassigned to the Committee on Education. Agreed.

Representative Stumbo moved that **HB 304** be recommitted to the Committee on Education. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 620, by Representative Burch: AN ACT relating to the school breakfast program.

HB 621, by Representative Stacy: AN ACT relating to rural economic development.

HB 622, by Representatives Callahan, Reinhardt, Harper, Walton, Kerr, French, Simpson and B. Smith: AN ACT relating to license fees.

HB 623, by Representative Lewis: AN ACT relating to testamentary additions to trusts.

HB 624, by Representatives Cyrus and Adkins: AN ACT relating to economic development and declaring an emergency.

HB 625, by Representative Morris: AN ACT relating to state commissions.

HB 626, by Representative Simpson: AN ACT relating to crimes and punishments.

HB 627, by Representative Gray: AN ACT relating to civil rights.

HB 628, by Representative Palumbo: AN ACT relating to the protection of senior citizens.

HB 629, by Representative Damron: AN ACT relating to water districts.

HB 630, by Representatives Damron and Noland: AN ACT relating to retirement.

HB 631, by Representative Damron: AN ACT relating to the creation of a merit system of personnel administration for local health departments.

HB 632, by Representative Burch: AN ACT relating to the school breakfast program.

HB 633, by Representatives Fox, Maggard, Yates, Stacy, L. Clark and Brown: AN ACT relating to Section 401 water quality certifications.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills have been posted for Committee consideration:

Business Organizations and Professions: **HB 474, HB 432**

Counties and Special Districts: **HB 306, HB 433, HB 450, HB 571, HB 364, SB 87, SB 140**

Motions, Petitions and Communications (Continued)

Representative Scorsone moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Scorsone moved the adoption of the following **Legislative Citation No. 72**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest condolences and expressions of sympathy to The Scott E. Reed Family on the passing of Scott E. Reed. Judge Scott E. Reed became the first ever chief justice of the Kentucky Supreme Court. Judge Reed was extremely instrumental in the overhaul of the Kentucky court system during the mid-1970s. In 1979 Judge Reed was named U. S. district judge for the Eastern District of Kentucky, a lifetime post. This eminent body joins on this somber occasion in memory of a friend and one of the greatest jurists of the century in the history of Kentucky.

Representative Stumbo moved that the rules be suspended to allow the Committee on Rules to meet upon Recess. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to **SB 62**, by Representative Riner:

On page 104, line 21, by inserting after "KRS 158.645.", the following: "*The assessment program shall not include any test, questionnaire, survey, or examination containing any questions about the student's personal beliefs or practices in sex, family life, morality and religion, or any questions about his parents' or guardians' beliefs and practices in sex, family life, morality, and religion, unless the parent or guardian of the student is notified in writing that the test, questionnaire, survey, or examination is to be administered, and the parent or guardian of the student gives informed written permission for the student to take the test, and upon request, the parent or guardian has an opportunity to inspect the test, questionnaire, survey, or examination.*";

On page 231, after line 19 by adding the following:

"SECTION 177. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

Local school districts shall not administer or include on any test, questionnaire, survey, or examination containing any questions about the student's personal beliefs or practices in sex, family life, morality and religion, or any questions about his parents' or guardians' beliefs and practices in sex, family life, morality, and religion, unless the parent or guardian of the student is notified in writing that the test, questionnaire, survey, or examination is to be administered, and the parent or guardian of the student gives written permission for the student to take the test, and upon request, the parent or guardian has an opportunity to inspect the test, questionnaire, survey or examination."

On page 231, line 20 after the word "Section" by changing "177" to "178".

Motions, Petitions and Communications (Continued)

Representative Harper moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Harper moved that he be recorded as voting "yea" on **HB 50, HB 127, HB 180, HB 272, HR 46, HJR 26, SB 27, SB 60, SB 91** and **SB 120**. Agreed.

Representative Bentley moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Bentley moved that his vote be changed from "yea" to "nay" on **HB 427**. Agreed.

Representative Mullinix moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Mullinix moved that he be recorded as voting "yea" on **HB 41** and **SB 4**. Agreed.

Representative Mason moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Mason moved that his vote be changed from "abstain" to "nay" on **HB 427**. Agreed.

Representative Stumbo moved that the rules be suspended to make adjournment plans. Agreed.

Representative Stumbo moved that when the House does adjourn, it does so by voice vote. Agreed.

Representative Stumbo moved that no further business be conducted this day except for filing of Floor Amendments. Agreed.

Representative Stumbo moved that when the House does adjourn, it does so until 4:00 p.m., Tuesday, February 22, 1994. Agreed.

The following members filed requests to have their names added as co-sponosrs to Bills and Resolutions under rules previously suspended: **HB 130**, Representative Lile; **483**, Representative Graham; **HB 531, HCR 4**, Representative Donnermeyer; **HB 546**, Representative Treesh.

Recess

Representative Stumbo moved that the House recess for a meeting of the Committee on Rules. Agreed.

At the appointed hour, the SpeakerPro Tem resumed the Chair and called the House to order.

Announcements

The Clerk announced the following meetings:

Agriculture and Small Business, 9:00 a.m., February 22, 1994

Business Organizations and Professions, 2:00 p.m., February 22, 1994

Budget Review Subcommittee on Human Resources, 9:00 a.m., February 21, 1994

Health and Welfare, 8:00 a.m., February 22, 1994

Budget Review Subcommittee on General Government, 10:00 a.m., February 21, 1994

Appropriations and Revenue Chairs, fifteen minutes upon adjournment in Don Judy's Office

Banking and Insurance, 10:00 a.m., February 22, 1994, Room 125

Budget Review Subcommittee on Transportation, 9:00 a.m., February 22, 1994

Counties and Special Districts, 12 Noon, February 22, 1994

Committee on Rules, upon adjournment, Speaker's Office

Appropriations and Revenue, canceled, February 22, 1994

Adjournment

Representative Stumbo moved that the House adjourn.

The motion to adjourn was adopted by voice vote.

TUESDAY, FEBRUARY 22, 1994

THIRTY-SECOND LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend K. L. Moore, First Baptist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Ackerson, Bruce, Cave, Deskins, Reinhardt, and R. Smith.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of February 18, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 131, SB 174**. Message received on **HB 4, HB 88,** and **HB 154** : The Senate has passed **HB 4**, by way of Senate Committee Substitute and with Senate Floor Amendment, **HB 88**, with Senate Floor Amendment, and **HB 154** , with Senate Committee Amendment, and respectfully request concurrence of this Honorable Body. (Time: 4:05 p.m.)

Introduction of Bills and Resolutions

HB 634, by Representatives Lee and Lewis: AN ACT relating to a fingerprint matching identification system for welfare recipients.

HB 635, by Representative Donnermeyer: AN ACT relating to criminal record background checks.

HB 636, by Representative Farley: AN ACT relating to the East Kentucky Corporation.

HB 637, by Representative Burch: AN ACT relating to probation and conditional discharge.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Counties and Special Districts: **HB 617, HB 622, HB 629**

Economic Development: **HB 621, HB 624**

Education: **HB 616, HB 620, HB 632**

Health and Welfare: **HB 628, HB 631, SB 152**

Judiciary: **HB 623**

Natural Resources and Environment: **HB 618, HB 633**

State Government: **SB 141, SB 158, HB 625, HB 626, HB 627, HB 630**

Tourism Development and Energy: **HB 619**

Transportation: **SB 171**

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 166** has been examined and found correctly enrolled . Said Bill was read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -4:07 p.m.)

Report of Committees

The Committee on Rules reported **HB 500, HB 505, HB 511, HB 532, HB 9, HB 57, HB 114, HB 264, HB 267, HB 268, HB 276, HB 278, HB 345, HB 355, HB 396, HB 533, HCR 24, HCR 25, HCR 34, HCR 35, HCR 38, HCR 39, HCR 40, SB 61, SCR 44, SJR 13** and **SJR 27** have been posted for passage in the Orders of the Day for February 23, 1994.

The Committee on Rules reported that the following Bill has been recommitted:

Appropriations and Revenue: **HB 138**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Health and Welfare: **HB 188, HB 200, HB 323, HB 428, HB 460, HB 467, HB 535, HB 555, HB 563, HB 600, SB 86, SB 137, SB 107, SB 37**

Report of Committees (Continued)

The Committee on Agriculture and Small Business reported **HB 482** and **HB 519** with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 482, AN ACT relating to the sale and distribution of fertilizers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 250.366 is amended to read as follows:

As used in KRS ***250.361*** [~~250.371~~] to 250.451, unless the context otherwise requires:

(1) "Fertilizer" means any substance containing one (1) or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes and other products exempted by regulation by the director.

(2) "Fertilizer material" means a fertilizer which either:

(a) Contains important quantities of no more than one (1) of the primary plant nutrients: nitrogen (N), phosphorus (P) and potassium (K); or

(b) Has eighty-five percent (85%) or more of its plant nutrient content present in the form of a single chemical compound; or

(c) Is derived from a plant or animal residue or by-product or natural material deposit which has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

(3) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.

(4) "Specialty fertilizer" means a fertilizer distributed for nonfarm use.

(5) "Bulk fertilizer" means a fertilizer distributed in a nonpackaged form.

(6) "Brand" means a term, design, or trademark used in connection with one (1) or several grades of fertilizer but shall not include any numeral ***that is misleading or confusing***.

(7) "Guaranteed analysis" means, until the director prescribes the alternative form of "guaranteed analysis" in accordance with the provisions of this subsection, the minimum percentage of plant nutrients claimed in the following order and form:

Total nitrogen (N)	----percent
Available ***phosphate*** [~~phosphoric acid~~] (P205)	----percent
Soluble potash (K20)	----percent

For unacidulated mineral phosphatic material and basic slag, bone, tankage and other organic phosphatic materials, the total ***phosphate*** [~~phosphoric acid~~] or degree of fineness may also be guaranteed. Guarantees for plant nutrients other than nitrogen, phosphorus and potassium may be permitted or required by regulation by the director. The guarantees for such other nutrients shall be expressed in the form of the element. The source, e.g. oxides, salts, chelates, etc. of such other nutrients may be required to be stated on the application for registration and may be included on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission and advice of the director. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and regulations prescribed by the director. When the director finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, he may require by regulation thereafter that the "guaranteed analysis" shall be in the following form:

Total nitrogen (N) ----percent
Available phosphorus (P) ----percent
Soluble potassium (K) ----percent

The effective date of ***the*** [~~said~~] regulation shall be not less than six (6) months following the issuance thereof, except that the equivalent of phosphorus and potassium may also be shown in the form of available ***phosphate*** [~~phosphoric acid~~] and soluble potash for a period of two (2) years following the effective date of ***the*** [~~said~~] regulation. After the effective date of ***the*** [~~said~~] regulation total nitrogen, available phosphorus, and soluble potassium shall constitute the grade.

(8) "Grade" means the percentage of total nitrogen, available phosphorus or ***phosphate***[~~phosphoric acid~~], and soluble potassium or potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis; except specialty fertilizers may be guaranteed in fractional units of less than one percent (1%) of total nitrogen, available phosphorus or ***phosphate***[~~phosphoric acid~~], and soluble potassium or potash and fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units.

(9) "Official sample" means any sample of fertilizer taken by the director and designated as "official" by the director.

(10) "Ton" means a net weight of two thousand (2,000) pounds avoirdupois.

(11) "Primary nutrient" means total nitrogen, available ***phosphate*** [~~phosphoric acid~~] or phosphorus, and soluble potash or potassium.

(12) "Percent" or "percentage" means the percentage by weight.

(13) "Person" means individual, partnership, association, firm or corporation.

(14) "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend fertilizer, or to offer for sale, sell, barter or otherwise supply fertilizer in this state.

(15) "Distributor" means any person who distributes ***fertilizer in this Commonwealth***.

(16) "Registrant" means the person who registers fertilizer under the provisions of KRS ***250.361***[~~250.371~~] to 250.451.

(17) "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer.

(18) "Labeling" means all written, printed, or graphic matter, upon or accompanying any fertilizer, or verbal statements, advertisements, brochures, posters, television or radio announcements used in promoting the sale of ***the*** [~~such~~] fertilizer.

(19) "Investigational allowance" means an allowance for variations inherent in the taking, preparation and analysis of an official sample of fertilizer.

(20) "Manufacturer" means any person engaged in the business of preparing, mixing, or manufacturing fertilizers or the person whose name appears on the label as being responsible for the guarantee.

(21) "Manufacturing" means preparing, mixing, or combining fertilizer materials chemically or physically, including the mixing through the simultaneous application of two (2) or more fertilizer materials, by a manufacturer or contract applicator.

(22) "Lot" means an identifiable quantity of fertilizer that can be sampled according to ***AOAC International*** [~~Association of Official Analytical Chemists~~] procedures, such as, the amount contained in a single vehicle, or the amount delivered under a single invoice, and, in the case of bagged fertilizer, not more than twenty-five (25) tons.

(23) "Blending" means physically mixing or combining two (2) or more fertilizer materials including the mixing through the simultaneous application of two (2) or more fertilizer materials by a blender or another person.

(24) "Blender" means any person who is engaged in the business of blending fertilizers.

(25) "Custom-mixed fertilizer" means a fertilizer blended according to specifications that are furnished to a blender by the consumer prior to blending.

(26) "Licensee" means the person who is licensed to distribute fertilizer.

Section 2. KRS 250.371 is amended to read as follows:

(1) Each brand and grade of fertilizer shall be registered in the name of that person whose name appears upon the label before being distributed in this state. The application for registration shall be submitted to the director on a form furnished by the director. For specialty fertilizers a registration fee of fifty dollars ($50) per each grade of each brand shall accompany the registration application. Upon approval by the director, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the following information:

(a) The net weight of packages;

(b) The brand and grade;

(c) The guaranteed analysis; and

(d) The name and address of the registrant.

(2) A distributor shall not be required to register any fertilizer which is already registered under KRS ***250.361*** [~~250.371~~] to 250.451 by another person, ***if*** [~~providing~~] the label does not differ in any respect.

(3) A ***blender*** [~~distributor~~] shall not be required to register each ***custom-mixed farm*** [~~grade of~~] fertilizer [~~formulated according to specifications which are furnished by a consumer prior to mixing~~], but shall be required to ***license*** [~~register~~] his firm on a form furnished by the director and to label ***the*** [~~such~~] fertilizer as provided in subsection (2) of KRS 250.376. ***The label of each custom-mixed fertilizer shall be maintained by the blender for one (1) year for inspection by the director.***

(4) A distributor of custom-mixed specialty fertilizers or bulk specialty fertilizers for home lawns, golf courses, recreational areas, or other nonfarm areas shall not be required to register each grade distributed but shall license his firm on a form furnished by the director for an annual fee of one hundred dollars ($100) and label the fertilizers as provided in subsection (1) of KRS 250.376. The label of each fertilizer distributed under this subsection shall be maintained by the distributor for one (1) year for inspection by the director.

Section 3. KRS 250.376 is amended to read as follows:

(1) Any fertilizer distributed in this state in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

(a) Net weight;

(b) Brand and grade, except that the grade shall not be required when no primary nutrients are claimed;

(c) Guaranteed analysis; ***and***

(d) Name and address of the registrant ***or licensee***.

In case of bulk shipments, this information in written or printed form shall accompany each delivery and be supplied to the purchaser at time of delivery.

(2) A ***custom-mixed farm*** fertilizer [~~formulated according to specifications which are furnished by or for a consumer prior to mixing~~] shall be labeled to show the net weight, the guaranteed analysis***,*** or the guaranteed analysis and net weight of each material used in the formulation or both, and the name and address of the ***licensee*** [~~registrant~~] and the consumer.

Section 4. KRS 250.381 is amended to read as follows:

(1) There shall be paid to the Kentucky Agricultural Experiment Station for all fertilizers distributed in this state to nonregistrants ***or nonlicensees*** an inspection fee at the rate of fifty cents ($0.50) per ton; except sales or exchanges between importers, manufacturers, distributors***, licensees,*** or registrants are [~~hereby~~] exempted.

(2) Every registrant ***or licensee*** who distributes fertilizer in the state shall file on forms approved by the director a monthly, quarterly, or semiannual statement for the reporting period setting forth the number of net tons of each grade of fertilizer [~~so~~] distributed in this state during ***the*** [~~such~~] period. The report shall be due on or before twenty (20) days following the close of the filing period and upon ***the filing of the*** [~~such~~] statement shall pay the inspection fee at the rate stated in subsection (1) of this section. If the tonnage report is not filed and the payment of inspection fees is not made within thirty (30) days after the due date, a collection fee, amounting to ten percent (10%), with a minimum of fifty dollars ($50), of the amount due shall be assessed against the registrant ***or licensee*** and added to the amount due.

(3) When more than one (1) person is involved in the distribution of a fertilizer, the last person who has the fertilizer registered ***or is licensed*** and who distributed to a nonregistrant dealer or consumer ***shall be*** [~~is~~] responsible for reporting the tonnage and paying the inspection fee, unless the report and payment is made by a prior distributor of the fertilizer.

(4) On individual packages of fertilizer containing ten (10) pounds or less***,*** there shall be paid, in lieu of the inspection fee of fifty cents ($0.50) per ton required by subsection (1) of this section and the tonnage report required by KRS 250.386, an annual inspection fee of fifty dollars ($50) for each grade of each brand sold or distributed. ***If*** [~~Where~~] a person distributes fertilizer in packages of ten (10) pounds or less and in packages over ten (10) pounds, the annual fee shall apply only to that portion distributed in packages of ten (10) pounds or less.

(5) Fees [~~so~~] collected shall be used for the payment of the costs of inspection, sampling***,*** [~~and~~] analysis, and other expenses necessary for the administration of KRS ***250.361*** [~~250.371~~] to 250.451.

Section 5. KRS 250.386 is amended to read as follows:

(1) The person distributing or selling fertilizer to a nonregistrant ***or nonlicensee*** shall furnish to the director a report showing the county of the consignee, the amounts in tons of each grade of fertilizer, the form in which the fertilizer was distributed, e.g. bags, bulk, liquid, etc., and whether the fertilizer was for farm or nonfarm use. This information shall be reported by submitting a summary report approved by the director on or before the twentieth day of each month covering shipments made during the preceding month.

(2) No information furnished to the director under this section shall be disclosed in [~~such~~] a way [~~as~~] to divulge the operation of any person.

Section 6. KRS 250.391 is amended to read as follows:

(1) It shall be the duty of the director to sample, inspect, make analyses of, and test fertilizers distributed within this state at any time and place and to ***the*** [~~such an~~] extent he may deem necessary to determine whether ***the*** [~~such~~] fertilizers are in compliance with the provisions of KRS ***250.361*** [~~250.371~~] to 250.451. The director ***may*** [~~is authorized to~~] enter upon any public or private premises or carriers during regular business hours in order to have access to fertilizer subject to the provisions of KRS ***250.361*** [~~250.371~~] to 250.451 and the ***administrative*** regulations pertaining thereto, and to the records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the ***AOAC International, 2200 Wilson Boulevard, Suite 400, Arlington, VA 22201-3301***[~~Association of Official Analytical Chemists (AOAC)~~]. In cases not covered by such methods, or in cases where methods are available in which improved applicability has been demonstrated, the director may adopt [~~such~~] appropriate methods from other sources.

(3) The director, in determining for administrative purposes whether any fertilizer is deficient in plant food, shall be guided [~~solely~~] by the official sample as defined in subsection (9) of KRS 250.366, and obtained and analyzed as provided for in subsection (2) of this section.

(4) The results of official analysis of fertilizers and portions of official samples shall be distributed by the director as provided by ***administrative*** regulation and in KRS 250.416. Official samples establishing a penalty for nutrient deficiency shall be retained for a minimum of ninety (90) days from issuance of a deficiency report.

Section 7. KRS 250.396 is amended to read as follows:

(1) If the analysis shall show that a fertilizer is deficient in one (1) or more of its guaranteed primary plant nutrients beyond the investigational allowances as established by regulation, or if the overall index value of the fertilizer is below the level established by ***administrative*** regulation, a penalty payment shall be assessed. The penalty shall not exceed three (3) times the monetary value of the deficiency or the retail value of the lot of fertilizer, whichever is less, with the penalty assessment being adjusted for the magnitude of the deficiency and the value of any overages of guaranteed nutrients as established by regulation.

(2) Deficiencies beyond the investigational allowances as established by regulation in constituents other than total nitrogen (N), available ***phosphate*** [~~phosphoric acid~~] (P205), or soluble potash (K20), which the registrant ***or licensee*** is required to or may guarantee, shall be evaluated and penalty payments assessed and paid as established by ***administrative*** regulation.

(3) If, upon satisfactory evidence, a person is shown to have altered the content of a fertilizer shipped to him by a registrant or to have mixed or commingled fertilizer from two (2) or more suppliers so that the result of either alteration changes the analysis of the fertilizer as originally guaranteed, [~~then~~] that person shall become responsible for obtaining a registration and shall be held liable for all penalty payments and be subject to other provisions of KRS ***250.361*** [~~250.371~~] to 250.451, including seizure, condemnation***,*** and stop sale.

(4) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction praying for judgment as to the justification of ***the*** [~~such~~] penalty payments.

Section 8. KRS 250.401 is amended to read as follows:

For the purpose of determining the commercial value to be applied under the provisions of KRS 250.396, the director shall determine and publish annually the values per unit of nitrogen, available ***phosphate*** [~~phosphoric acid~~], and soluble potash in fertilizers in this state. If guarantees are as provided in subsection (7) of KRS 250.366, the values shall be per unit of nitrogen, phosphorus***,*** and potassium. The values [~~so~~] determined and published shall be used in determining and assessing penalty payments.

Section 9. KRS 250.431 is amended to read as follows:

The director ***may*** [~~is authorized and empowered to~~] cancel the registration of any brand of fertilizer or ***the license of any person*** [~~distributor~~] or [~~to~~] refuse to register any brand of fertilizer or ***license any person*** [~~distributor as herein provided,~~] upon satisfactory evidence that the registrant ***or licensee*** has used fraudulent or deceptive practices in the evasion or attempted evasion of the provisions of KRS ***250.361*** [~~250.371~~] to 250.451 or any ***administrative*** regulations promulgated thereunder***.***[~~, except~~] No registration ***or license*** shall be revoked or refused until the person (registrant ***or licensee***) shall have been given the opportunity to appear for a hearing by the director.

Section 10. KRS 250.446 is amended to read as follows:

(1) If it shall appear from the examination of any fertilizer that any of the provisions of KRS ***250.361*** [~~250.371~~] to 250.451 or regulations issued thereunder have been violated, the director shall cause notice of the violations to be given to the registrant, ***licensee,*** distributor, or processor from whom ***the*** [~~said~~] sample was taken; any person so notified shall be given opportunity to be heard under ***administrative*** [~~such~~] regulations ***promulgated*** [~~as may be prescribed~~] by the director. If it appears after ***the*** [~~such~~] hearing, either in the presence or absence of the person so notified, that any of the provisions of KRS ***250.361*** [~~250.371~~] to 250.451 or ***administrative*** regulations ***promulgated*** [~~issued~~] thereunder have

been violated, the director may certify the facts to the proper prosecuting attorney.

(2) Any person convicted of violating any provision of KRS ***250.361*** ~~[250.371]~~ to 250.451 or the ***administrative*** regulations ***promulgated*** ~~[issued]~~ thereunder shall be punished in the discretion of the court.

(3) Nothing in KRS ***250.361*** ~~[250.371]~~ to 250.451 shall be construed as requiring the director to report for prosecution or for the institution of seizure proceedings minor violations of KRS ***250.361*** ~~[250.371]~~ to 250.451, when he believes that the public interests will be best served by a suitable notice of warning in writing.

(4) It shall be the duty of the Attorney General or appropriate county attorney to whom any violations are reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(5) The director ***may*** ~~[is hereby authorized to]~~ apply for, and the court to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of KRS ***250.361*** ~~[250.371]~~ to 250.451 or any ***administrative*** regulation promulgated under KRS ***250.361*** ~~[250.371]~~ to 250.451, notwithstanding the existence of other remedies at law. The injunction ***shall*** ~~[is to]~~ be issued without bond.

Section 11. KRS 250.451 is amended to read as follows:

Nothing in KRS ***250.361*** 250.371 to 250.451 shall be construed to restrict or avoid sales or exchanges of fertilizers to each other by distributors who mix fertilizer materials for sale, or ***prevent*** ~~[as preventing]~~ the free and unrestricted shipments of fertilizer to distributors who have registered their brands ***or are licensed*** as required by provisions of KRS ***250.361*** ~~[250.371]~~ to 250.451.

Section 12. KRS 250.461 is amended to read as follows:

KRS 250.361 to 250.451 shall be known as the "Kentucky Fertilizer Law ~~[of 1984]~~."

HB 519, AN ACT relating to tobacco plants, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 9 of this Act, unless the context requires otherwise:

(1) "Advertised" means all representations, other than those on the label, disseminated by the public press, circular, or catalog, relating to tobacco seedlings or finished tobacco plants within the scope of Sections 1 to 9 of this Act.

(2) "Certified seed" means seed for which a certificate or any other instrument has been issued by an agency authorized under laws of a state, territory, or possession to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified.

(3) "Dealer" means a person who distributes advertised tobacco seedlings or finished tobacco plants and is not a permit holder.

(4) "Director" means the director of the Kentucky Agricultural Experiment Station or his designee.

(5) "Distribute" means to consign, offer for sale, sell, advertise for sale, barter, or otherwise supply tobacco seedlings or finished tobacco plants in Kentucky.

(6) "Finished tobacco plant" means a young tobacco plant, grown from seed or seedling, that is being distributed for transplanting into the field.

(7) "Inspection fee" means a fee, based on the number of tobacco seedlings or finished tobacco plants distributed, collected by the director from persons distributing tobacco seedlings or finished tobacco plants in Kentucky.

(8) "Label" includes a tag or other device attached to any container of tobacco seedlings or finished tobacco plants purporting to set forth the information required by Section 3 of this Act, and it may include other information relating to the tobacco seedlings or finished tobacco plants.

(9) "Permit holder" means a person who has obtained a permit from the director to label tobacco seedlings or finished tobacco plants distributed in Kentucky, and whose name and address are required to appear on labels of containers of tobacco seedlings or finished tobacco plants distributed in Kentucky, as a condition for obtaining the permit.

(10) "Person" means an individual, partnership, company, corporation, or other type of business establishment.

(11) "Private hearing" means a discussion of facts between the person involved in an apparent violation of Sections 1 to 9 of this Act and the director.

(12) "Records" means all information which relates to the origin, kind and variety, and disposition of each lot of tobacco seedlings or finished tobacco plants distributed in Kentucky.

(13) "Seedling lot" means a definite quantity of tobacco seedlings or finished tobacco plants grown from one planting of seeds from a single seed lot.

(14) "Stop sale" means an administrative order, provided by law, which restrains the distribution of a specified lot of tobacco seedlings or finished tobacco plants.

(15) "Tobacco seedling" means a young tobacco plant grown from seed and distributed for transplanting in greenhouses or float beds for the production of finished tobacco plants.

(16) "Type" means a particular category of tobacco which may include: burley, dark fire-cured, dark air-cured, or dark one-sucker.

(17) "Variety" means a subdivision of a species which is distinct, uniform, and stable: distinct in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other publicly known varieties: uniform in the sense that the variations in essential and distinctive characteristics are describable; and stable in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted.

SECTION 2. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

The provisions of Sections 1 to 9 of this Act do not apply to tobacco seedlings or finished tobacco plants grown, distributed, and delivered by a producer on his own premises to the purchaser himself. If, however, the tobacco seedlings or finished tobacco plants are advertised by the public press, circular, or catalog or if the tobacco seedlings or finished tobacco plants are delivered by a common carrier, the tobacco seedlings or finished tobacco plants and the person distributing them shall be subject to the requirements of Sections 1 to 9 of this Act.

SECTION 3. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

(1) The initial seed source for all tobacco seedlings and finished tobacco plants distributed in Kentucky shall be certified seed.

(2) Each container of tobacco seedlings or finished tobacco plants distributed in Kentucky for planting purposes, unless exempted in Section 2 of this Act, shall have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language providing this information:

(a) The name and address of the permit holder;

(b) The name of the type and variety of the tobacco seedlings or finished tobacco plants; and

(c) The lot number or other lot identification.

(3) The label shall be delivered to the purchaser with every distribution of tobacco seedlings or finished plants covered by Sections 1 to 9 of this Act.

SECTION 4. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

(1) Any person whose name appears on tobacco seedling or finished tobacco plant labels as required in Section 3 of this Act shall obtain a permit from the director. Permit holders shall be assessed a registration fee of fifty dollars ($50) per registration year plus an inspection fee. The inspection fee shall be fifteen cents ($0.15) per one thousand (1,000) tobacco seedlings and twenty-five cents ($0.25) per one thousand (1,000) finished tobacco plants distributed in Kentucky unless the finished plants were grown from seedlings for which a prior inspection fee had been paid in Kentucky, in which case the inspection fee shall be ten cents ($0.10) per one thousand (1,000). The registration year shall be twelve (12) months, or any fraction of twelve (12) months, beginning January 1 and ending December 31.

(2) A person distributing tobacco seedlings or finished tobacco plants shall register as a dealer unless registered as a permit holder or exempted by the provisions of Section 2 of this Act. Dealers shall be assessed a registration fee of twenty-five dollars ($25) per calendar year. The registration year shall be twelve (12) months, or any fraction of twelve (12) months, beginning January 1 and ending December 31.

SECTION 5. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

Every person registered as a dealer or permit holder shall keep complete records concerning the origin, sale, shipping, and disposition of tobacco seedlings or finished tobacco plants distributed in Kentucky for a period of at least one (1) year after final disposition of the tobacco seedlings or finished tobacco plants and shall make all records accessible for inspection by the director during customary business hours.

SECTION 6. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

It is unlawful for any person in Kentucky who is not exempted under Section 2 of this Act:

(a) To distribute tobacco seedlings or finished tobacco plants which are visibly unhealthy or diseased.

(b) To detach, alter, deface, or destroy any label provided for in Section 3 of this Act or the administrative regulations promulgated thereunder, or to falsely label tobacco seedlings or finished plants.

(c) To disseminate any false or misleading advertisements concerning tobacco seedlings or finished tobacco plants subject to Sections 1 to 9 of this Act in any manner or by any means.

(d) To hinder or obstruct any authorized person in the performance of his or her duties under Sections 1 to 9 this Act.

(e) To fail to comply with a "stop sale" order or to move or otherwise distribute, handle, or dispose of any lot of tobacco seedlings or finished tobacco plants, or tags attached thereto, being held under a "stop sale" order, except with express permission of the director and for the purpose specified by him.

SECTION 7. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

(1) The duty of enforcing Sections 1 to 9 of this Act, and carrying out provisions of administrative regulations promulgated thereunder, is vested in the director. The director shall promulgate administrative regulations governing:

(a) The procedures for registering dealers and permit holders and for submitting reports of seedling distributions associated therewith;

(b) Means for distinguishing tobacco seedlings or finished tobacco plants intended for distribution from tobacco seedlings or finished tobacco plants not intended for distribution, in establishments where only a portion of the tobacco seedlings or finished tobacco plants being processed, grown, or held are to be distributed;

(c) Procedures for issuing and releasing "stop sales" and handling tobacco seedlings or finished tobacco plants which have been placed under "stop sale"; and

(d) Other matters which are required by Sections 1 to 9 of this Act.

(2) The director is further authorized for the purpose of carrying out the provisions of Sections 1 to 9 of this Act to:

(a) Enter upon any public or private premises during regular business hours in order to have access to tobacco seedlings or finished tobacco plants and the records connected therewith subject to the provisions of Sections 1 to 9 of this Act and administrative regulations promulgated thereunder, and enter any truck or other conveyer by land, water, or air at any time when the conveyer is accessible, for the same purpose.

(b) Issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of tobacco seedlings or finished tobacco plants subject to the provisions of Sections 1 to 9 of this Act which the director finds is in violation of any of the provisions of Sections 1 to 9 of this Act or administrative regulations promulgated thereunder. This order shall prohibit further distribution of the tobacco seedlings or finished tobacco plants, except on approval of the director, until the director has evidence that the law has been complied with and has issued a release from the "stop sale" order of the tobacco seedlings or finished tobacco plants.

(c) Inspect, take samples, and arrange for grow-out tests of tobacco seedlings or finished tobacco plants, if deemed necessary.

(d) Revoke permits for labeling or dealer registrations in cases where requirements associated therewith have not been met.

(3) The director may publish or cause to be published the results of the examination, analysis, and tests of any and all tobacco seedlings or finished tobacco plants, inspected as provided in Sections 1 to 9 of this Act together with any other information he may deem advisable.

SECTION 8. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

(1) If the director finds upon examination, analysis, or test that any person has violated any of the provisions of Sections 1 to 9 of this Act, he may institute proceedings to have that person convicted, or the director at his discretion may report the results of the examination to the Attorney General of the Commonwealth of Kentucky together with the available evidence of the violation. The Attorney General, acting personally or through the attorney representing the Commonwealth in the county, district, or city in which the violation occurred, shall institute proceedings at once against the person charged with the violation.

(2) Prosecutions shall be instituted in the following manner; When the director finds that any of the provisions of Sections 1 to 9 of this Act have been violated, he shall give notice to the person in apparent violation designating a time and place for a private hearing. At the hearing, the person involved may introduce evidence either in person, by agent, or by attorney. If, after the hearing, or without the hearing in case the person fails to appear, the director decides that the evidence warrants prosecution, he shall proceed as provided in this section.

SECTION 9. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

Any person who is found to be in violation of any of the provisions of Sections 1 to 9 of this Act shall be fined not less than one hundred dollars ($100), nor more than seven hundred fifty dollars ($750) for each violation.

Section 10. KRS 250.040 is amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, every lot of agricultural seeds, when in bulk or a container of one (1) pound or more, or in the case of tobacco seed of one-twelfth (1/12) ounce or more, shall have affixed, in a conspicuous place on the exterior of the container of the seeds, a label in plainly written or printed English, in a manner prescribed by the director, stating:

(a) The name of the kind and variety for each agricultural seed component present in excess of five percent (5%) of the whole and the percentage by weight of each. The director may by regulation omit the requirement for variety designation for those kinds of seeds not commonly sold by variety name, and if the person labeling the seed does not know and is unable to determine the variety, the term "Variety Unknown" may be used in lieu of the variety designation. Hybrids shall be labeled as hybrids;

(b) Lot number or other lot identification;

(c) Percentage by weight of all weed seeds;

(d) Percentage by weight of inert matter;

(e) Percentage by weight of agricultural seeds other than those required to be on the label;

(f) The name and rate of occurrence per pound of noxious weed seed present;

(g) For each named agricultural seed:

1. Percentage of germination, exclusive of hard seed;
2. Percentage of hard seeds, if present;
3. Origin, state or foreign country, if known. If the origin is unknown, this fact shall be stated; and
4. The calendar month and year in which the germination test was completed; and

(h) Name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within this state.

(2) The seal of certification of the Kentucky Seed Improvement Association approved by the director of the Kentucky Agricultural Experiment Station shall be accepted in lieu of the written or printed tag or label required herein.

(3) No tobacco seed or winter rape (Canola) seed for seeding purposes shall be sold or offered for sale unless the seed has been certified by the Kentucky Seed Improvement Association or by the agency responsible for certification in the state, province, or country where the seed originated, and then only when the standards there are in no way lower than those of the Kentucky Seed Improvement Association, except as provided in KRS 250.030.

(4) [~~No tobacco seedlings shall be sold or offered for sale in Kentucky unless the seedlings have been certified by the Kentucky Seed Improvement Association or by the agency responsible for certification in the state, province, or country where the seed originated, and then only when the standards there are in no way lower than those of the Kentucky Seed Improvement Association.~~

~~(5)~~] All soybean seed shall be labeled by variety name.

Section 11. Whereas the tobacco seedling growing season and decisions relating to it begin very early in the calendar year, an emergency is declared to exist, and this Act shall become effective upon passage and approval by the Governor.

The Committee Amendment No. 1 to **HB 519** is as follows:

On page 3, line 17, after "(2)" by deleting the rest of the line and all of lines 18 and 19, and by deleting the word "***tag***" on line 20, and inserting in lieu thereof, the following:

"***Tobacco seedlings or finished tobacco plants, when distributed, shall be identified by attached labels on the containers or by an accompanying bill of sale, receipt, or other statement plainly written***".

The Committee on Banking and Insurance reported **HB 547** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 547, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.20-040 is amended to read as follows:

(1) As used in this section:

(a) "Policy" means an automobile liability insurance policy, delivered or issued for delivery in this state, insuring a single individual or husband and wife resident of the same household, as named insured, and under which the insured vehicles therein designated are of the following types only:

1. A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others;
2. Any other four-wheel motor vehicle with a load capacity of fifteen hundred (1500) pounds or less which is not used in the occupation, profession, or business of the insured; provided, however, that this section shall not apply:
   - a. To any policy issued under an automobile assigned risk plan;
   - b. To any policy insuring more than four (4) automobiles; or
   - c. To any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards;

(b) "Automobile liability insurance policy" includes only coverage for bodily injury and property damage liability, basic reparations benefits and the provisions therein, if any, relating to medical payments, uninsured motorists coverage, and automobile physical damage coverage;

(c) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than three (3) months shall for the purpose of this section be considered as if written for a policy period or term of three (3) months. Provided, further, that any policy written for a term longer than one (1) year or any policy with no fixed expiration date, shall for the purpose of this section, be considered as if written for successive policy periods or terms of one (1) year, and such policy may be terminated at the expiration of any annual period upon giving seventy-five (75) days' notice of cancellation prior to such anniversary date, and such cancellation shall not be subject to any other provisions of this section; and

(d) "Nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premiums on a policy, or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

(2) (a) A notice of cancellation of a policy shall be effective only if it is based on one (1) or more of the following reasons:

1. Nonpayment of premium; or

2. The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty (180) days immediately preceding its effective date;

(b) This subsection shall not apply to any policy or coverage which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy;

(c) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars ($100) shall not be deemed a cancellation of the coverage or of the policy; and

(d) This subsection shall not apply to nonrenewal.

(3) No notice of cancellation of a policy to which subsection (2) of this section applies shall be effective unless mailed or delivered by the insurer to the named insured at least twenty (20) days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium at least fourteen (14) days' notice of cancellation accompanied by the reason therefor shall be given. This subsection shall not apply to renewals.

(4) No insurer shall refuse to renew a policy of automobile insurance solely because of the age of the insured.

(5) No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least seventy-five (75) days' advance notice of its intention not to renew.

(6) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(7) If the insurer has manifested its willingness to renew by mailing or delivering a renewal notice, bill, certificate, or policy to the first-named insured at his last known address at least thirty (30) days before the end of the current policy period with the amount of the renewal premium charge and its due date clearly set forth therein, then the policy shall expire and terminate without further notice to the insured on the due date, unless the renewal premium is received by the insurer or its authorized agent on or before that date. When any policy terminates pursuant to this subsection because the renewal premium was not received on or before the due date, the insurer shall, within fifteen (15) days, deliver or mail to the first-named insured at his last known address a notice that the policy was not renewed and the date on which the coverage under it ceased to exist.

(8) (a) Proof of mailing of renewal premium to the insurer or its agent, when authorized, on or before the due date, shall constitute a presumption of receipt pursuant to subsection (7) of this section.

(b) Proof of mailing of notice of cancellation or of intention not to renew or of reasons for cancellation or nonrenewal to the named insured at the address shown in the policy, shall be sufficient proof of notice.

(9) No insurer shall impose or request an additional premium higher than its standard premium for automobile insurance, cancel or refuse to issue a policy, or refuse to renew a policy solely because the insured or the applicant is handicapped or a physically disabled person, so long as the handicap or physical disability does not substantially impair the person's mechanically assisted driving ability.

(10) When an automobile liability insurance policy is canceled other than for nonpayment of premium, or in the event of failure to renew a policy of automobile liability insurance to which subsection (5) of this section applies, the insurer shall notify the named insured of his possible eligibility for automobile liability insurance coverage through the Kentucky automobile assigned risk plan. Such notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew. Such notice shall also inform the insured that he may, within four (4) days, request the commissioner in writing to determine whether there is sufficient reason to cancel or not to renew the policy. Within fourteen (14) days

of receiving such a written request, the commissioner shall send his findings to the insurer and to the insured. When he sends his findings, the commissioner shall notify both parties of their right to request a hearing under KRS 304.2-310(2)(b). ***The party requesting the hearing shall give the commissioner written confirmation of attendance at the hearing not more than four (4) days before, nor less than twenty-four (24) hours before, the scheduled hearing. If the requesting party fails to give the required written confirmation, the commissioner shall cancel the hearing.***

(11) The reason for nonrenewal or cancellation shall accompany or be included in the notice of nonrenewal or cancellation.

(12) Except where the maximum limits of coverage have been purchased, every notice of first renewal shall include a provision or be accompanied by a notice stating in substance that added uninsured motorists, underinsured motorists, and personal injury protection coverages may be purchased by the insured.

(13) There shall be no liability on the part of and no cause of action of any nature shall arise against the commissioner or against any insurer, its authorized representative, its agents, its employees, or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or in any other communication, oral or written specifying the reasons for cancellation or nonrenewal, or the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.

The Committee on Banking and Insurance reported **HB 548**, with Committee Amendment attached thereto, and **HB 562**, with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 548, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.32-180 is amended to read as follows:

(1) "Agent" means any person authorized by a corporation subject to the provisions of this subtitle and on its behalf to solicit applications for subscription or membership, or offers or assumes to act in the negotiation thereof. To qualify for an agent's license an applicant shall:

(a) Be above the age of eighteen (18) years;

(b) Be a bona fide resident of and actually reside in this state;

(c) Be a trustworthy person;

(d) ***Be financially responsible and demonstrate financial responsibility as provided in KRS 304.9-105(5);***

(e) Be appointed as an agent by one (1) or more corporations subject to the provisions of this subtitle;

(f)[~~(e)~~] Make application to the commissioner in the manner and form prescribed by him. As a part or in connection with any application, the applicant shall furnish information concerning his identity, personal history, experience, business record, purposes, and any other information the commissioner may reasonably require;

(g)[~~(f)~~] Pay the fee provided in Subtitle 4 of this chapter; [~~and~~]

(h) Successfully complete specific courses of instruction in the field of insurance that the commissioner shall by administrative regulation prescribe for the license when initially issued, which courses of instruction shall in the aggregate consist of or equal forty (40) hours of classroom instruction administered by or under the supervision of persons qualifying with and approved by the commissioner for that purpose and the successful completion of which shall be certified to the commissioner, on forms prescribed by him, by the person under whose supervision the instruction was administered; and

(i)[~~(g)~~] ***Successfully pass*** [~~Take~~] an examination given by the commissioner as a test of his qualifications and competence.

(2) Agents' licenses shall expire at midnight on March 31 unless the licensee prior thereto has filed with the commissioner, on forms prescribed and furnished by him, a request for continuation of license accompanied by payment of the renewal fee as provided in Subtitle 4 of this chapter, except that any request for continuation filed with the commissioner after such March 31 and prior to the next following June 30 may be accepted and effectuated by the commissioner, in his discretion, if accompanied by a penalty as prescribed in Subtitle 99 of this chapter.

(3) Agents who hold licenses issued on or after July 1, 1994, shall be subject to continuing education requirements as specified in KRS 304.9-295(4) to (10).

The Committee Amendment No. 1 to **HB 548** is as follows:

On page 2, after line 13, by adding:

"Section 2. KRS 304.9-295 is amended to read as follows:

(1) This section shall apply to resident natural persons licensed as agents or solicitors for the following kinds of insurance:

life, health, property, or casualty.

(2) This section shall not apply to:

(a) Persons holding licenses for which no examination is required by KRS 304.9-170 except that persons exempted from examination by KRS 304.9-170(1) and (2) shall be subject to this section;

(b) Persons holding limited or restricted licenses, as exempted by the commissioner; or

(c) Persons not licensed for one (1) full year prior to the end of a continuing education biennium as described in subsection (3) of this section.

(3) The licensees specified in subsection (1) of this section and not exempt under subsection (2) of this section who hold licenses issued on or after July 1, 1988, shall satisfactorily complete a minimum of twenty-four (24) classroom hours of continuing education courses during each continuing education biennium. A continuing education biennium shall begin on July 1 and end on June 30 two (2) years later.

(4) Only continuing education courses approved by the commissioner ***and attendance at legislative meetings as permitted in paragraph (e) of this subsection*** may be used to satisfy the continuing education requirement of subsection (3) of this section.

(a) The continuing education courses which meet the commissioner's standards for continuing education requirements are:

1. Any part of the Life Underwriter Training Council life course curriculum;
2. Any part of the Life Underwriter Training Council health course curriculum;
3. Any part of the American College Chartered Life Underwriter diploma curriculum;
4. Any part of the American Institute for Property and Liability Underwriters' chartered property and casualty underwriter profession designation program;
5. Any part of the Insurance Institute of America's programs;
6. Any part of the certified insurance counselor program;
7. Any insurance related course taught at an accredited college or university, if such course is approved by the commissioner;
8. Any course of instruction or seminar developed or sponsored by any authorized insurer, recognized agent association, recognized insurance trade association, or any independent program of instruction, if approved by the commissioner;
9. Any correspondence course approved by the commissioner.

(b) The commissioner shall prescribe the number of hours of continuing education credit for each continuing education course approved pursuant to this subsection.

(c) If a continuing education course requires successful completion of a written examination, no continuing education credit shall be given to persons who do not successfully complete such written examination.

(d) The fee for filing continuing education courses for approval by the commissioner shall be as specified in Subtitle 4 of KRS Chapter 304.

(e) Attendance at a regular or an interim meeting of the Kentucky General Assembly Banking and Insurance Committees by a licensed agent either as an observor or as a member of the committee, shall be awarded one hour's credit for each meeting attended upon the appropriate reporting by the licensed agent.

(5) A person teaching any approved continuing eduation course shall qualify for the same number of hours of continuing education credit as would be granted to a person taking and satisfactorily completing such course.

(6) Excess credit hours accumulated during any continuing education biennium may be carried forward. The commissioner may, by regulation, limit the number of hours carried forward.

(7) For good cause shown, the commissioner may grant an extension of time during which the continuing education requirement of subsection (3) of this section may be completed, but such extension of time shall not exceed two (2) years. What constitutes good cause for such extension of time rests within the discretion of the commissioner.

(8) Every person subject to this section shall furnish to the commissioner written certification as to the continuing education courses satisfactorily completed by such person. Such certification shall be signed by or on behalf of the organization sponsoring the continuing education course. Such certification shall be on a form prescribed by the commissioner.

(9) The license of any person failing to comply with the continuing education requirement of subsection (3) of this section and who has not been granted an extension of time to comply pursuant to subsection (7) of this section shall be canceled and promptly surrendered to the commissioner without demand.

(10) The license of any person subject to the continuing education requirement shall be suspended or revoked, a civil penalty imposed in lieu thereof, or both, pursuant to KRS 304.9-440 if such person submits to the commissioner a false or fraudulent certificate of compliance with the continuing education requirement.".

HB 562, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.20-040 is amended to read as follows:

(1) As used in this section:

(a) "Policy" means an automobile liability insurance policy, delivered or issued for delivery in this state, insuring a single individual or husband and wife resident of the same household, as named insured, and under which the insured vehicles therein designated are of the following types only:

1. A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others;

2. Any other four-wheel motor vehicle with a load capacity of fifteen hundred (1500) pounds or less which is not used in the occupation, profession, or business of the insured; provided, however, that this section shall not apply:

a. To any policy issued under an automobile assigned risk plan;

b. To any policy insuring more than four (4) automobiles; or

c. To any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards;

(b) "Automobile liability insurance policy" includes only coverage for bodily injury and property damage liability, basic reparations benefits and the provisions therein, if any, relating to medical payments, uninsured motorists coverage, and automobile physical damage coverage;

(c) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than three (3) months shall for the purpose of this section be considered as if written for a policy period or term of three (3) months. Provided, further, that any policy written for a term longer than one (1) year or any policy with no fixed expiration date, shall for the purpose of this section, be considered as if written for successive policy periods or terms of one (1) year, and such policy may be terminated at the expiration of any annual period upon giving seventy-five (75) days' notice of cancellation prior to such anniversary date, and such cancellation shall not be subject to any other provisions of this section; and

(d) "Nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premiums on a policy, or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

(2) (a) A notice of cancellation of a policy shall be effective only if it is based on one (1) or more of the following reasons:

1. Nonpayment of premium; or

2. The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty (180) days immediately preceding its effective date;

(b) This subsection shall not apply to any policy or coverage which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy;

(c) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars ($100) shall not be deemed a cancellation of the coverage or of the policy; and

(d) This subsection shall not apply to nonrenewal.

(3) No notice of cancellation of a policy to which subsection (2) of this section applies shall be effective unless mailed or delivered by the insurer to the named insured at least twenty (20) days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium at least fourteen (14) days' notice of cancellation accompanied by the reason therefor shall be given. This subsection shall not apply to renewals.

(4) No insurer shall refuse to renew a policy of automobile insurance solely because of the age of the insured.

(5) No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least seventy-five (75) days' advance notice of its intention not to renew.

(6) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(7) ***(a)*** If the insurer has manifested its willingness to renew by mailing or delivering a renewal notice, bill, certificate, or policy to the first-named insured at his last known address at least thirty (30) days before the end of the current policy period with the amount of the renewal premium charge and its due date clearly set forth therein, then the policy shall expire and terminate without further notice to the insured on the due date, unless the renewal

premium is received by the insurer or its authorized agent on or before that date. When any policy terminates pursuant to this subsection because the renewal premium was not received on or before the due date, the insurer shall, within fifteen (15) days, deliver or mail to the first-named insured at his last known address a notice that the policy was not renewed and the date on which the coverage under it ceased to exist.

(b) The policy shall provide that there is a fifteen (15) day grace period from the annual renewal date for the purpose of allowing the reinstatement of the policy that was not renewed. The insurer may charge a reinstatement fee of fifteen dollars ($15).

(8) (a) Proof of mailing of renewal premium to the insurer or its agent, when authorized, on or before the due date, shall constitute a presumption of receipt pursuant to subsection (7) of this section.

(b) Proof of mailing of notice of cancellation or of intention not to renew or of reasons for cancellation or nonrenewal to the named insured at the address shown in the policy, shall be sufficient proof of notice.

(9) No insurer shall impose or request an additional premium higher than its standard premium for automobile insurance, cancel or refuse to issue a policy, or refuse to renew a policy solely because the insured or the applicant is handicapped or a physically disabled person, so long as the handicap or physical disability does not substantially impair the person's mechanically assisted driving ability.

(10) When an automobile liability insurance policy is canceled other than for nonpayment of premium, or in the event of failure to renew a policy of automobile liability insurance to which subsection (5) of this section applies, the insurer shall notify the named insured of his possible eligibility for automobile liability insurance coverage through the Kentucky automobile assigned risk plan. Such notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew. Such notice shall also inform the insured that he may, within four (4) days, request the commissioner in writing to determine whether there is sufficient reason to cancel or not to renew the policy. Within fourteen (14) days of receiving such a written request, the commissioner shall send his findings to the insurer and to the insured. When he sends his findings, the commissioner shall notify both parties of their right to request a hearing under KRS 304.2-310(2)(b).

(11) The reason for nonrenewal or cancellation shall accompany or be included in the notice of nonrenewal or cancellation.

(12) Except where the maximum limits of coverage have been purchased, every notice of first renewal shall include a provision or be accompanied by a notice stating in substance that added uninsured motorists, underinsured motorists, and personal injury protection coverages may be purchased by the insured.

(13) There shall be no liability on the part of and no cause of action of any nature shall arise against the commissioner or against any insurer, its authorized representative, its agents, its employees, or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or in any other communication, oral or written specifying the reasons for cancellation or nonrenewal, or the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.

Section 2. KRS 304.20-320 is amended to read as follows:

(1) Declinations. An applicant may request in writing an explanation of a declination. The insurer shall provide a prompt written response to such inquiries.

(2) Cancellations.

(a) A notice of cancellation of insurance subject to KRS 304.20-300 to 304.20-350 by an insurer shall be in writing, shall be delivered to the named insured or mailed to the named insured at the last known address of the named insured, shall state the effective date of the cancellation, and shall be accompanied by a written explanation of the specific reason or reasons for the cancellation; and

(b) The notice of cancellation referred to in paragraph (a) of this subsection shall be mailed or delivered by the insurer to the named insured at least fourteen (14) days prior to the effective date of the cancellation if the cancellation is for nonpayment of premium or occurs within sixty (60) days of the date of issuance of the policy. Such notice of cancellation shall be mailed or delivered by the insurer to the named insured at least seventy-five (75) days prior to the effective date of the cancellation if the policy has been in effect more than sixty (60) days.

(3) Nonrenewals.

(a) No insurer shall refuse to renew a property or casualty insurance policy subject to KRS 304.20-300 to 304.20-350 unless at least seventy-five (75) days before the end of the policy period as described in KRS 304.20-310(1), the insurer shall mail or deliver to the named insured, at the last known address of the named insured, written notice of the insurer's intention not to renew the policy upon expiration of the current policy period with a written explanation of the specific reason or reasons for the nonrenewal;

(b) If notice is not provided pursuant to paragraphs (a) and (b) of this subsection, coverage shall be deemed to be renewed for the ensuing policy period upon payment of the appropriate premium under the same terms and conditions, and subject to the provisions of KRS 304.20-330, until the named insured has accepted replacement coverage with another insurer, or until the named insured has agreed to the nonrenewal;

(c) If the insurer has manifested its willingness to renew by mailing or delivering of a renewal notice, bill, certificate, or policy to the first named insured at his last known address at least thirty (30) days before the end of the current policy period with the amount of the renewal premium charge and its due date clearly set forth therein, then the policy shall expire and terminate without further notice to the insured on the due date unless the renewal premium is received by the insurer or its authorized agent on or before that date. When any policy terminates pursuant to this subsection because the renewal premium was not received on or before the due date, the insurer shall, within fifteen (15) days, deliver or mail to the first named insured at his last known address a notice that the policy was not renewed and the date on which the coverage under it ceased to exist; ~~{and}~~

(d) Proof of mailing of renewal premium to the insurer or its agent, when authorized, on or before the due date shall constitute a presumption of receipt pursuant to paragraph (c) of this subsection***; and***

(e) The policy shall provide that there is a fifteen (15) day grace period from the annual renewal date for the purpose of allowing the reinstatement of the policy that was not renewed. The insurer may charge a reinstatement fee of fifteen dollars ($15).

(4) No insurer shall increase the premium for a property or casualty insurance policy subject to KRS 304.20-300 to 304.20-350 more than twenty-five percent (25%) of the premium for the preceding policy term for like coverage and like risks unless at least seventy-five (75) days before the end of the policy period as described in KRS 304.20-310(1), the insurer shall mail or deliver to the named insured, at the last known address of the named insured, a notice for the renewal premium amount and the insurer shall mail or deliver to its agent, if any, a duplicate notice of the premium amount. In order to comply with this requirement, the insurer may extend the period of coverage of the current policy at the expiring premium.

The Committee Substitute to **HB 562** is as follows:

HB 562, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBTITLE 20 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

If an insurer has indicated its willingness to renew a policy providing coverage for loss or damage under a property or casualty policy by mailing or delivering to the named insured, at his last known address, a notice of the renewal premium amount and the amount was not paid on or before the anniversary due date, the insurer may, in the absence of an increase in the risk insured, reinstate the expired policy upon the written request of the insured if the insured has not purchased replacement coverage and the request for the reinstatement is made within thirty (30) days following expiration. The insurer shall not require, as a condition for reinstatement, an increase in coverage amount or the premium charge above that which was stated in its renewal offer.

The Committee on Counties and Special Districts reported **HB 398,** with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 398, AN ACT relating to fire protection.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

(1) A fire protection subdistrict may be formed according to the provisions of this section. A fire protection subdistrict shall:

(a) Be located within the territorial limits of a fire protection district or volunteer fire department district;

(b) Have a continuous boundary; and

(c) Be managed by the board of trustees of the district, which shall:

1. Impose an ad valorem tax on property in the subdistrict in addition to the ad valorem tax the board imposes on property in the district as a whole; and

2. Expend the revenue from that additional tax on improved fire protection facilities and services for the subdistrict.

(2) Persons desiring to form a fire protection subdistrict shall present a petition to the fiscal court clerk and to each member of the fiscal court. The petition shall be accompanied by a map and a metes and bounds description of the proposed subdistrict. The petition shall be signed by more than fifty percent (50%) of the persons who both:

(a) Live within the proposed subdistrict; and

(b) Own property that is located within the proposed subdistrict and is subject to taxation by the district under KRS 75.040.

(3) The petition shall contain the name and address of each petitioner and the address of each petitioner's property that is located within the proposed subdistrict. It shall be in substantially the following form: "The following owners of property located within (insert the name of the fire protection district or volunteer fire department district) hereby

petition the fiscal court to form a fire protection subdistrict located at (insert a brief description of the location of the proposed subdistrict). The board of trustees of (insert the name of the fire protection district or volunteer fire department district) shall have the authority to impose a special ad valorem tax of (insert amount, not to exceed the maximum allowed under subsection (6) of this section) on each one hundred dollars ($100) worth of property assessed for local taxation in the subdistrict, in order to provide enhanced fire protection for the subdistrict. This tax shall be in addition to the ad valorem tax imposed by the trustees on the district as a whole."

(4) Upon receipt of the petition, the fiscal court shall hold a hearing and provide notification in the manner required for creation of a taxing district under KRS 65.182(2) to (5). Following the hearing, the fiscal court shall set forth its written findings of fact and shall approve or disapprove the formation of the subdistrict. The creation of the subdistrict shall be of legal effect only upon the adoption of an ordinance in accordance with the provisions of KRS 67.075 to 67.077. A certified copy of the ordinance creating the subdistrict shall be filed with the county clerk.

(5) Upon the creation of a fire protection subdistrict, the trustees shall levy a tax, not to exceed the amount stated in the petition, on the property in the subdistrict, for the purpose of improving fire protection facilities and services in the subdistrict.

(6) The tax levied under this section, combined with the tax for fire and emergency services levied on the entire district under KRS 75.040, shall not exceed ten cents ($0.10) per one hundred dollars ($100) of valuation as assessed for county taxes. At no time shall the trustees increase either of these taxes so that the combined total exceeds this limit.

(7) The county clerk shall add the levy to the tax bills of the affected property owners. For taxing purposes, the effective date of the tax levy shall be January 1 of the year following the certification and creation of the subdistrict. The tax shall be administered in the same manner as the tax on the entire district under KRS 75.040(2) and (3).

(8) The board of trustees shall not reduce the tax rate imposed on property in the district as a whole as a result of receiving extra revenue from the additional tax on property in the subdistrict. The trustees shall expend the extra revenue solely on improving fire protection facilities and services in the subdistrict and shall not expend the extra revenue on facilities or services that are shared by the entire district.

The Committee Amendment No. 1 to **HB 398** is as follows:

On page 1, line 17, by deleting "*fifty percent (50%)*", and by substituting therefor "*sixty percent (60%)*".

The Committee on Health and Welfare reported **HB 87**, with Committee Amendment attached thereto, **HB 408**, with Committee Amendment attached thereto, **HB 445**, with Committee Substitute attached thereto, and **HCR 30** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 87, AN ACT relating to disease control.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 214 IS CREATED TO READ AS FOLLOWS:

As used in this chapter, unless the context requires otherwise:

(1) "Cabinet" means the Cabinet for Human Resources;

(2) "Child" means a person under eighteen (18) years of age;

(3) "Clinical preventive service" means an episode of care rendered to a person by a health facility, health service, or provider for the purpose of preventing rather than treating a medical disease or condition. "Clinical preventive service" includes, but is not limited to, screening, immunization, and tuberculosis testing;

(4) "Health facility" means any facility so defined in KRS Chapter 216B;

(5) "Health service" means any service so defined in KRS Chapter 216B;

(6) "Provider" means any person licensed or certified under KRS Chapters 311, 312, 313, 314, 315, 320, 327, 333, or 335, and emergency medical technicians licensed under KRS Chapter 211;

(7) "Quarantine" means the isolation or restriction of activities of a person for the protection of the health of that person or the health of others; and

(8) "Screening" means a laboratory or x-ray test, including mammography, conducted on an asymptomatic person to discover an abnormal finding which might indicate the presence of a disease or medical condition. "Screening" does not include any testing or medical examination conducted as a followup to existing symptoms, signs, or medical findings.

SECTION 2. A NEW SECTION OF KRS CHAPTER 214 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall establish and execute policies, plans, and programs for the prevention of disease and promotion of health for the people of the Commonwealth. These policies, plans, and programs shall:

(a) Address, but shall not be limited to, each of the state health objectives published by the cabinet for the current decade;

(b) Be prioritized, taking into account in the Commonwealth the impact of each public health problem on morbidity and mortality and the efficacy of available interventions to prevent the morbidity and mortality; and

(c) Be responsive to current scientific data regarding prevention.

(2) The cabinet shall have the duty to assure appropriate clinical services for persons with infectious tuberculosis or other infection for which failure to provide services will lead to further spread of disease in the Commonwealth.

(3) The cabinet may promulgate administrative regulations, subject to the provisions of KRS Chapter 13A, to carry out the directives of subsection (1) of this section. These administrative regulations shall be binding on any health facility or health service or provider or on any other entity which receives funding from the cabinet. The cabinet may:

(a) Collect data, from any available source, which is necessary to measure progress toward the prevention of morbidity and mortality and toward the promotion of health;

(b) Require reporting, by any health service, health facility, or provider, of notifiable diseases specified by administrative regulation promulgated under KRS Chapter 13A;

(c) Collect clinical information, from mental health and substance abuse treatment facilities, to the greatest extent permissible under federal law; and

(d) Conduct special studies and research about any matter related to morbidity or mortality prevention or health promotion, subject to the approval of an institutional review board for the protection of human subjects if required by federal or state law.

(4) Any data collection projects or research studies conducted pursuant to subsection (2) of this section and which have a financial impact on those agencies from which information is requested, except routine reporting of notifiable diseases, activities of the Kentucky Cancer Registry, Cancer Patient Data Management System, Birth Defects Registry, Kentucky Health Care Data Commission, and other projects ongoing as of the effective date of this Act, shall be voluntary on the part of those agencies.

Section 3. KRS 214.020 is amended to read as follows:

(1) When an epidemic, environmental hazard, or other situation arises in which a person or persons are at risk of disease or injury, the cabinet may impose a quarantine, arrange or contract for inpatient or outpatient services at any rate deemed necessary, and assure whatever measures are necessary to prevent occurrence of disease or protect the health of the population, but only if no less restrictive measures are available which would reasonably accomplish that purpose with equal or greater efficacy.

(2) The cabinet may regulate, by the promulgation of administrative regulations under KRS Chapter 13A, the handling, treatment, and disposal of any waste defined as infectious by the United States Centers for Disease Control, regardless of the entity or source that generates the waste.

~~[When the cabinet for human resources believes that there is a probability that any infectious or contagious disease will invade this state, it shall take such action and adopt and enforce such rules and regulations as it deems efficient in preventing the introduction or spread of such infectious or contagious disease or diseases within this state, and to accomplish these objects shall establish and strictly maintain quarantine and isolation at such places as it deems proper.]~~

Section 4. KRS 214.034 is amended to read as follows:

Except as otherwise provided in KRS 214.036:

Except as otherwise provided in KRS 214.036:

(1) All parents~~[, guardians,]~~ and *legally authorized representatives for* ~~[other persons having care, custody or control of]~~ any child shall have the *following preventive services rendered to the* child *as set forth in administrative regulation promulgated by the cabinet inder KRS Chapter 13A:*

(a) Immunization ~~[tested for tuberculosis and immunized]~~ against diphtheria, tetanus, *measles, mumps, pertussis, polio, Hemophilus influenzae disease, and rubella; and*

(b) Tuberculosis testing and preventive treatment for tuberculosis if the test is positive.

(2) The administrator or other person in charge of all health facilities in which infants are delivered, or in which care for infants twenty-eight (28) days or less of age is provided, and the infant's attending physician shall provide or arrange for the provision of the following services to each infant:

(a) Newborn screening for inborn errors of metabolism and other hereditary disorders; and

(b) Instillation of opthalmic medication for the prevention of congenital opthalmic gonorrhea or chlamydial infection.

These services shall be administered and positive screening test results reported, in accordance with administrative

regulations of the cabinet promulgated under KRS Chapter 13A. The cabinet shall, by administrative regulation promulgated under KRS Chapter 13A, establish and collect fees to cover the costs of the newborn screening program which the cabinet provides.

(3) If an infant is not born in a health facility, the person required by KRS Chapter 213 to register the birth of the infant shall ensure the provision of the services specified in subsection (2) of this section.

(4) All colleges, universities, public or private primary or secondary schools, preschool programs, day care centers, and other licensed facilities which care for children shall require a current immunization certificate for any person enrolled as a regular attender, as specified by administrative regulation of the cabinet promulgated under KRS Chapter 13A, to be on file prior to the person's attendance [~~poliomyelitis, pertussis, rubeola, and rubella in accordance with testing and immunization schedules established by regulations of the Cabinet for Human Resources and shall have any child found to be infected with tuberculosis tested, examined and treated according to regulations of the Cabinet for Human Resources. Such persons shall also have booster immunizations administered to the child in accordance with the regulations of the Cabinet for Human Resources.~~

~~(2) Each child entering the public schools shall have proof of having been tested for tuberculosis prior to enrollment. Following the first year of school, upon an epidemiological determination made by the state or regional health officer in accordance with regulations established by the Cabinet for Human Resources, all parents, guardians, and other persons having care, custody or control of any child shall have the child tested for tuberculosis, and shall have any child found to be infected with tuberculosis tested, examined and treated according to regulations of the Cabinet for Human Resources~~].

SECTION 5. A NEW SECTION OF KRS CHAPTER 214 IS CREATED TO READ AS FOLLOWS:

(1) Any person with infectious tuberculosis or other infection which can be communicated from person to person either directly or via food, water, air, or other objects or vectors shall have a legal responsibility to take reasonable precautions to prevent the transmission of the infection to others.

(2) No person diagnosed as having an infection for which further examination to determine communicability is indicated or for which a treatment exists to render the person noninfectious shall, when informed of the need for examination or treatment, refuse to submit to the examination or treatment upon the reasonable request of the cabinet or a local health department.

(3) Any person diagnosed with a communicable infection shall take all precautions, as prescribed by the cabinet or a local health department, for the prevention of transmission of that infection. The precautions shall be the least restrictive to the person which are possible without sacrificing efficacy of protection.

(4) Whenever any person has reasonable cause to suspect that an individual with a communicable condition has not complied with subsection (2) or (3) of this section, the person may file an affidavit with the local health department serving the jurisdiction where the individual resides or where the alleged violation occurred. The affiant shall state the details of the violation as completely and accurately as possible. The local health department shall, with the assistance of the cabinet if necessary, conduct an appropriate investigation and, if indicated, shall order the violator in writing to submit to the needed precautions, examination, or treatment. The local health department may, however, issue such an order regardless of the presence of an affidavit.

(5) If any person refuses to comply with an order of a local health department pursuant to subsection (4) of this section, the health department shall, if the public health need for intervention still exists, file a verified petition for relief with the District Court in the county of its principal office. The health department shall include all pertinent details in its petition. The defendant shall have the right to be represented by counsel and the case shall be handled in the same manner as a civil case. If the court finds from a preponderance of the evidence or upon admission by the defendant that the defendant is in violation of subsection (2) or (3) of this section, the court shall enter an order that the appropriate precautions, examination, or treatment be carried out.

(6) If the court, subsequent to an order as described in subsection (5) of this section, finds a person in violation of that order, the defendant shall be guilty of a misdemeanor and shall be subject to the penalties as set forth in Section 10 of this Act. If however, a course of treatment for the communicable condition in an inpatient facility is available and is recommended by the cabinet, the court may prescribe such a course in lieu of penalties, and place the defendant on probation. Failure to enter the facility as prescribed, or departure from the facility against medical advice, shall be grounds for immediate revocation of probation.

(7) The city, county, and Commonwealth's attorneys and the Attorney General, within their respective jurisdictions, shall represent the local health department in the enforcement of the provisions of subsections (5) and (6) of this section. However, a local health department may employ an attorney to represent it in these proceedings and pay the attorney reasonable compensation for the attorney's services.

Section 6. KRS 214.036 is amended to read as follows:

No clinical preventive service shall be required to be rendered to a [~~Nothing contained in KRS 158.035, 214.010, 214.020, 214.032 to 214.036 and 214.990 shall be construed to require the testing for tuberculosis or the immunization of any~~] child at a time when, in the written opinion of ***the child's*** [~~his~~] attending physician, ***the service*** [~~as testing or immunization~~] would be injurious to the child's health. Nor shall ***a clinical preventive service be required to be rendered to a*** [~~KRS 158.035, 214.010, 214.020, 214.032 to 214.036 and 214.990 be construed to require the immunization of any~~] child whose parents are ***specifically*** opposed to ***that service on religious grounds and who so attest in a written sworn statement. However, if*** [~~medical immunization against disease, and who object by a written sworn statement to the immunization of such child on religious grounds. Provided, however, that in the event of~~] an epidemic ***occurs*** [~~in a given area~~], the Cabinet for Human Resources may ***immunize any child who resides***[~~, by emergency regulation, require the immunization of all persons~~] within the area ***affected by the*** [~~of~~] epidemic, against the ***specific*** disease responsible for such epidemic***, or require that the child be removed from the area***.

Section 7. KRS 214.160 is amended to read as follows:

(1) ***Except as specified in subsection (4) of this section,*** every physician ***or other provider responsible for prenatal care of*** [~~and every other person legally permitted to engage in attendance upon~~] a pregnant woman in this state shall take or cause to be taken from the woman a specimen of blood for ***a*** serological test for syphilis ***within fourteen (14) days of the time a diagnosis of*** [~~as soon as he is engaged to attend the woman and has reasonable grounds for suspecting that~~] pregnancy ***is made*** [~~exists~~]. If the woman is in labor at the time ***of*** the diagnosis of pregnancy [~~is made, which may make it inadvisable to obtain a blood specimen at that time~~], the specimen shall be obtained within ***twenty-four (24) hours*** [~~ten (10) days~~] after delivery. ***The newborn infant shall also be tested in this case.*** The specimen [~~of blood~~] shall ***then be tested for syphilis in accordance with administrative regulation*** [~~be submitted to the laboratory~~] of the cabinet ***promulgated under KRS Chapter 13A. If the test is positive, the woman shall receive appropriate treatment*** [~~for Human Resources or a laboratory approved by the cabinet, for the purpose of having made a serological test for syphilis. The test shall be of a type approved by the Cabinet for Human Resources~~].

(2) ***Except as provided in subsection (4) of this section, every provider as specified in subsection (1) of this section shall, within the first thirty (30) days of attendance for a pregnancy, cause the pregnant woman to be tested for immunity to rubella. If a pregnant woman lacks immunity to rubella, the provider shall counsel the woman regarding the need to avoid exposure to rubella during the pregnancy and of the need to be immunized after delivery. Pregnant women found to be lacking immunity to rubella shall be offered vaccination against rubella after delivery.***

(3) Except as provided in subsection (4) of this section, every provider as specified in subsection (1) of this section shall, within the first thirty (30) days of attendance for a pregnancy, cause the pregnant woman to be tested for infection with hepatitis B virus. If the pregnant woman's test is positive, her infant shall be vaccinated against hepatitis B in accordance with administrative regulations promulgated by the cabinet under KRS Chapter 13A.

(4) No clinical preventive service shall be required to be rendered to a pregnant woman or to her infant when, in the written opinion of her attending physician, that service would be injurious to the woman's health or that of her infant or unborn infant. No clinical preventive service shall be required to be rendered to any woman or to her infant if she is specifically opposed to that service on religious grounds and so attests by a written sworn statement.

(5) The Cabinet for Human Resources shall, as often as necessary, publish a list of the five (5) most frequently abused substances, including alcohol, by pregnant women in the Commonwealth. Any physician and any other ***provider responsible for the prenatal care of*** [~~person legally permitted to engage in attendance upon~~] a pregnant woman in this state may perform a screening for alcohol or substance dependency or abuse, including a comprehensive history of such behavior. Any physician may administer a toxicology test to a pregnant woman under the physician's care within eight (8) hours after delivery to determine whether there is evidence that she has ingested alcohol, a controlled substance, or a substance identified on the list provided by the cabinet, or if the woman has obstetrical complications that are a medical indication of possible use of any such substance for a nonmedical purpose.

(6)[~~(3)~~] Any physician or ***any other person responsible for the prenatal care of*** [~~person legally permitted to engage in attendance upon~~] a pregnant woman may administer to each newborn infant born under that person's care a toxicology test to determine whether there is evidence of prenatal exposure to alcohol, a controlled substance, or a substance identified on the list provided by the Cabinet for Human Resources, if the attending person has reason to believe based on a medical assessment of the mother or the infant, that the mother used any such substance for a nonmedical purpose during the pregnancy.

(7)[~~(4)~~] The circumstances surrounding any positive toxicology finding shall be evaluated by the attending person to determine if abuse or neglect of the infant, as defined under KRS 600.020(1), has occurred and whether investigation by the Cabinet for Human Resources is necessary.

(8)[~~(5)~~] No prenatal screening for alcohol or other substance abuse or positive toxicology finding shall be used as prosecutorial evidence.

(9)[~~(6)~~] No person shall conduct or cause to be conducted any toxicological test pursuant to ***subsections (5) to (8) of*** this section on any pregnant woman without first informing the pregnant woman of the purpose of the test.

Section 8. KRS 214.175 is amended to read as follows:

(1) The Cabinet for Human Resources may conduct periodic anonymous surveys to determine the prevalence within the Commonwealth of drug and alcohol use during pregnancy. These periodic surveys may include, but are not limited to, toxicology tests to determine the presence of alcohol, controlled substances, or other drugs which have not been

prescribed due to medical necessity.

(2) All hospitals and any other health facilities licensed pursuant to KRS Chapter 216B which provide for obstetrical services, including delivery of newborn infants, shall, as a condition of licensure, participate in any periodic surveys conducted by the Cabinet for Human Resources for the purposes of determining the prevalence of alcohol or other substance abuse among pregnant women and newborn infants.

(3) Any surveys conducted pursuant to this section shall be conducted according to guidelines established by the Cabinet for Human Resources. The toxicology test may be performed without a physician's order and without patient or parental consent. For the purpose of this section any toxicology test performed shall be considered medically necessary.

(4) The results of any individual toxicology tests performed pursuant to this section shall remain confidential and shall only be released to the Cabinet for Human Resources. Any results shall be collected and compiled in aggregate form without the name of the hospital, patient, or other means of identifying the individual subject of the test.

(5) No test result obtained pursuant to this section shall be admissible in any court or other hearing as evidence in any proceeding, criminal or civil, against the individual subject of the test.

(6) No hospital shall incur any liability, except for negligence, for performing any test required or authorized under KRS [~~214.160 and~~] 214.175 or for reporting the result of the test pursuant to any administrative regulation promulgated by the Cabinet for Human Resources under KRS Chapter 13A in accordance with this section.

(7) The cabinet may use any state appropriation and any gifts, grants, or federal funds that become available for the purposes of implementing the provisions of this section.

Section 9. KRS 211.180 is amended to read as follows:

(1) The cabinet shall enforce the ***administrative*** [~~rules and~~] regulations ***promulgated*** [~~adopted~~] by the secretary of the Cabinet for Human Resources for the regulation and control of the matters set out below and shall formulate, promote, establish, and execute policies, plans, and programs relating to all matters of public health, including, but not limited to, the following matters:

(a) [~~Detection, prevention, and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases which are transmissible to man, and such other diseases and health hazards as may be controlled;~~

~~(b)~~] The ***promulgation*** [~~adoption~~] of ***administrative*** regulations specifying the information required in and a minimum time period for reporting a sexually transmitted disease. In ***promulgating*** [~~adopting~~] the ***administrative*** regulations, the cabinet shall consider the need for information, protection for the privacy and confidentiality of the patient, and the practical ability of persons and laboratories to report in a reasonable fashion. The cabinet shall require reporting of physician-diagnosed cases of acquired immunodeficiency syndrome based upon diagnostic criteria from the Centers for Disease Control of the United States Public Health Service. The cabinet shall require reporting of cases of human immunodeficiency virus infection [~~by July 1, 1990~~], but shall be prohibited from requiring the reporting of or collection of names and addresses. However, a code may be used, so long as in and of itself, it would not identify the patient. Nothing in this section shall be construed to prohibit the cabinet from identifying infected patients when and if an effective cure for human immunodeficiency virus infection or any immunosuppression caused by human immunodeficiency virus is found or a treatment which would render a person noninfectious is found, for the purposes of offering or making the cure or treatment known to the patient.

(b)[~~(c)~~]The control of insects, rodents, and other vectors of disease; the safe handling of food and food products; the safety of cosmetics; the control of narcotics, barbiturates, and other drugs as provided by law; the sanitation of schools, industrial establishments, and other public and semipublic buildings; the sanitation of state and county fairs and other similar public gatherings; the sanitation of public and semipublic recreational areas; the sanitation of public rest rooms, trailer courts, hotels, tourist courts, and other establishments furnishing public sleeping accommodations; the review, approval, or disapproval of plans for construction, modification, or extension of equipment related to food-handling in food-handling establishments; the licensure of hospitals; and the control of such other factors, not assigned by law to another agency, as may be necessary to insure a safe and sanitary environment;

(c)[~~(d)~~]The construction, installation, and alteration of any on-site sewage disposal system, except for a system with a surface discharge;

(d)[~~(e)~~]Protection and improvement of the health of expectant mothers, infants, preschool, and school age children;

(e)[~~(f)~~] The practice of midwifery, including the issuance of permits to and supervision of women who practice midwifery;

(f)[~~(g)~~] Protection and improvement of the health of the people through better nutrition.

(2) The secretary shall have authority to establish by regulation a schedule of reasonable fees, not to exceed twenty dollars ($20) per inspector hour plus travel costs pursuant to state regulations for travel reimbursement, to cover the costs of

inspections of manufacturers, retailers, and distributors of consumer products as defined in the Federal Consumer Product Safety Act, Title 15 U.S.C. Sec. 2051 et seq.; 86 Stat. 1207 et seq. or amendments thereto, and of youth camps for the purpose of determining compliance with the provisions of this section and the regulations adopted by the secretary pursuant thereto. Fees collected by the secretary shall be deposited in the State Treasury and credited to a revolving fund account for the purpose of carrying out the provisions of this section. The balance of the account shall lapse to the general fund at the end of each biennium.

Section 10. KRS 214.990 is amended to read as follows:

(1) ***Any person who is required to report and who fails to report a notifiable condition pursuant to subsection (3) of Section 2 of this Act and under any applicable administration regulations issued subject to KRS Chapter 13A*** ~~[Every head of a family who willfully fails or refuses and every physician who fails or refuses to comply with KRS 214.010]~~ shall be ***fined not less than ten dollars ($10) nor more than one hundred dollars ($100)*** ~~[guilty of a violation]~~ for each day ***the person*** ~~[he]~~ neglects or refuses to report. Repeated failure to report is sufficient cause for the revocation of a physician's certificate to practice medicine in this state.

(2) ~~[Any owner or person having charge of any public or private conveyance, including watercraft, who refuses to obey the rules and regulations made by the Cabinet for Human Resources under KRS 214.020 shall be guilty of a Class B misdemeanor.~~

~~(3)]~~ Any physician or other ***provider who is responsible for the prenatal care of a*** ~~[person legally permitted to engage in attendance upon a pregnant]~~ woman during pregnancy or at delivery who fails to exercise due diligence in complying with KRS 214.160 ~~[and 214.170]~~ shall be guilty of a violation.

(3)(4) Any person who violates any of the provisions of KRS 214.280 to 214.310 shall be guilty of a Class A misdemeanor.

(4)~~[(5)]~~ Any person who violates any provision of KRS 214.034 ~~[or KRS 158.035]~~ shall be guilty of a Class B misdemeanor.

(5)(6) Any person who violates any provision of KRS 214.420 shall be guilty of a violation. Each violation shall constitute a separate offense.

(6)(7) Any person who knowingly violates any provision of KRS 214.452 to 214.466 shall be guilty of a Class D felony. Each violation shall constitute a separate offense.

(7) Each person who is found to be in violation of an order issued under subsection (6) of Section 5 of this Act shall be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) or shall be imprisoned for no more than six (6) months.

(8) Any parent or legally authorized representative for a child who fails to present the child for a clinical preventive service as required in Section 6 of this Act shall be subject to a fine of not less than fifty dollars ($50) nor more than one hundred dollars ($100). Each violation shall constitute a separate offense.

(9) Any criminal penalty pursuant to subsections (1) to (8) of this section shall be in addition to any civil liability which may result from any violation of Sections 2 to 7 of this Act.

Section 11. KRS 214.400 is amended to read as follows:

KRS 214.410, 214.420***,*** and 214.990***(4)***(6) may be cited as the "Kentucky Sexually Transmitted Disease Control Confidentiality Act of 1986."

Section 12. The following KRS sections are repealed:

158.035	Certificate of immunization.
214.010	Physicians and heads of families to report diseases to local board of health.
214.032	Definition for KRS 158.035, 214.010, and 214.020, 214.032 to 214.036.
214.155	Infants to be tested for inborn errors of metabolism.
214.170	Person taking to identify blood specimen -- Reports of tests.
214.181	Legislative findings -- General consent to testing for HIV -- Emergency procedures -- Disclosures of test results -- Voluntary testing programs in each county.
215.014	Treatment of pulmonary fungus diseases in state hospitals.
215.520	Duties relating to tuberculosis control.
215.540	Recalcitrant tuberculosis patient control.
215.550	Examination to determine communicability -- Reasonable precautions to be taken by communicable patient.
215.560	Affidavit of failure to comply -- Court directive -- Examination -- Report.
215.570	Court order for examination -- Communicable patient guilty of misdemeanor -- Probation.
215.580	Legal representation of affiant in enforcement.
215.590	Responsibility to report tuberculosis case.
215.600	Title of law.

The Committee Amendment No. 1 to **HB 87** is as follows:

On page 3, line 2, by deleting the word "***agencies***" and inserting in lieu thereof the word "***entities***";

And on page 3, line 7, by deleting the word "***agencies***" and inserting in lieu thereof the word "***entities***";

And on page 3, between lines 7 and 8, by inserting the following new subsection:

"***(5) To the greatest extent possible, data shall be collected from uniform forms. Data collection activities shall be coordinated with those of other governmental entities to avoid duplication of efforts and requirements.***";

And on page 4, line 16, by inserting after the word "***disorders***" but before the underlined semicolon the phrase "***as defined in administrative regulations of the cabinet promulgated under KRS Chapter 13A***";

And on page 5, line 1, by inserting after the words "***day care centers,***" the words "***certified family child care homes,***";

And on page 5, line 21, by inserting after the word "***person***" the word "***diagnosed***";

And on page 8, line 17, by deleting the words "***woman shall receive***" and inserting in lieu thereof the words "***provider shall arrange for***";

And on page 8, line 17, by inserting after the word "***treatment***" the words "***for the woman. The treatment shall be considered a clinical prevention service***";

And on page 12, line 21, by inserting before the word "cosmetics" the words "***consumer products including***";

And on page 12, line 21, by inserting after the word "cosmetics;" the phrase "***the prevention of hazards and injuries in the home;***"

And on page 13, line 25, by inserting after the words "***and who***" the word "***willfully***";

And on page 13, line 25, by inserting after the word "***fails***" the word "***or refuses***".

HB 408, AN ACT relating to early intervention services for infants and toddlers with disabilities and their families.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

The General Assembly hereby finds and declares that there is an urgent and substantial need:

(1) To enhance the development of all infants and toddlers with disabilities in the Commonwealth of Kentucky in order to minimize developmental delay, and to maximize individual potential for adult independence;

(2) To enhance the capacity of families to meet the needs of their infants and toddlers with disabilities;

(3) To reduce the educational costs by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

(4) To reduce future social services costs and to minimize the likelihood of institutionalization of individuals with disabilities;

(5) To prevent secondary impairments and disabilities by improving the health of infants and toddlers, thereby reducing health costs for the families and the state; and

(6) To comply with federal law as it pertains to services for infants and toddlers with disabilities and their families.

SECTION 2. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

It is the intent of the General Assembly that the policy of the Commonwealth of Kentucky shall be:

(1) To reaffirm the importance of the family in all areas of the child's development and to reinforce the role of the family in the decision making processes regarding their children;

(2) To provide assistance and support to the family of an infant or toddler with a disability that addresses the individual needs of that family;

(3) To develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for all infants and toddlers with disabilities and their families;

(4) To enhance the capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities;

(5) To facilitate the coordination of payment for early intervention services from federal, state, local, and private insurance coverage, and the use of sliding fee scales; and

(6) To guarantee financial assistance for coordinating and providing individualized early intervention services to infants and toddlers with disabilities and their families.

SECTION 3. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 14 of this Act unless the context requires otherwise:

(1) "Awards and contracts" means the state and federal funds designated by the cabinet for projects relating to planning, resource development, or provision of direct early intervention services, as defined in this section, to infants and toddlers with disabilities and their families;

(2) "Cabinet" means the Cabinet for Human Resources;

(3) "Child find" means a system to identify, locate, and evaluate all infants and toddlers with disabilities who are eligible for early intervention services, determine which children are receiving services, and coordinate the effort with other state agencies and departments;

(4) "Council" means the Kentucky Early Intervention System Interagency Coordinating Council;

(5) "District" means one (1) of the fifteen (15) area development districts;

(6) "District early intervention committee" means an interagency coordinating committee established within each of the fifteen (15) area development districts to facilitate interagency coordination at the district level;

(7) "Early intervention services" means services for infants and toddlers with disabilities and their families delivered according to an individualized family service plan developed by the child multidisciplinary team to meet the developmental needs of eligible children, as defined in this section, and provided by entities receiving public funds using qualified personnel. The individualized family services plan is developed and the services are provided in collaboration with the families and, to the maximum extent appropriate, in natural environments, including home and community settings in which infants and toddlers without disabilities would participate. These services are necessary to enable the child to reach maximum potential. Services to be made available shall include, but not be limited to, the following:

- *(a) Screening services;*
- *(b) Evaluation services;*
- *(c) Assessment services;*
- *(d) Service coordination;*
- *(e) Transportation and related costs for accessing early intervention services;*
- *(f) Family services including counseling, psychological, and social work services;*
- *(g) Health services including medical services for diagnostic and evaluation purposes only;*
- *(h) Nutrition services;*
- *(i) Occupational therapy services;*
- *(j) Physical therapy services;*
- *(k) Communication development services;*
- *(l) Sensory development services;*
- *(m) Developmental intervention services;*
- *(n) Assistive technology services; and*
- *(o) Respite services;*

(8) "Early intervention system" means the management structure established in Sections 3 to 11 of this Act and which is comprised of the interdependent array of services and activities for the provision of a statewide, comprehensive, coordinated, multidisciplinary, interagency program for infants and toddlers with disabilities and their families;

(9) "Individual family service plan" means the singular comprehensive written service plan developed by the child's multidisciplinary team, with the child's parents serving as fully participating members of the team, to be followed by all agencies and other entities involved in providing early intervention services to an infant or toddler with disabilities and the child's family;

(10) "Infants and toddlers with disabilities" and "eligible children" mean children from birth to thirty-six (36) months of age in need of early intervention services as a result of one (1) of the following circumstances:

- *(a) The child is experiencing developmental delays, as measured by diagnostic instruments and procedures in one (1) or more of the following skill areas: physical; cognitive; communication; social or emotional; or adaptive development; or*
- *(b) The child has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay;*

(11) "Multidisciplinary team" means the child-specific group responsible for determining the services needed by the infant or toddler with disabilities and the child's family, and development of the individualized family services plan. The team for each child shall include the parent or guardian of the child and individuals representing at least two (2) applicable disciplines which may include but need not be limited to the following: physical therapy; speech

therapy; social work; nursing; or education;

(12) "Point of entry" means an easily identifiable, highly accessible nonstigmatized entry into services; and

(13) "Qualified service provider" means an entity, including but not limited to an individual, program, department or agency, responsible for the delivery of early intervention services to eligible infants and toddlers with disabilities and their families who has met the highest minimum standards of state approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the entity is providing early intervention services.

SECTION 4. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

There is hereby created in state government the Kentucky Early Intervention System for infants and toddlers with a disability and their families. For administrative purposes, the Kentucky Early Intervention System shall be attached to the Cabinet for Human Resources.

SECTION 5. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created the Kentucky Early Intervention System Interagency Coordinating Council to be comprised of twenty-five (25) members to be appointed by the Governor to serve a term of three (3) years. The members of the council shall be geographically and culturally representative of the population of the Commonwealth and conform to the requirements of federal law and regulations. For administrative purposes the council shall be attached to the Cabinet for Human Resources. Pursuant to federal law and regulations, the membership shall be as follows:

(a) At least five (5) members shall be the parents, including minority parents, of a child with a disability who is twelve (12) years of age or less, with at least one (1) being the parent of a child six (6) years of age or less. Each parent shall have knowledge of or experience with programs for infants and toddlers with disabilities;

(b) At least five (5) members shall be public or private providers of early intervention services to infants and toddlers with disabilities;

(c) At least one (1) member shall be a member of the Kentucky General Assembly;

(d) At least one (1) member shall be representative of an entity responsible for personnel preparation and may include personnel from an institution of higher education or preservice training organization;

(e) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Health Services;

(f) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Medicaid Services;

(g) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Mental Health and Mental Retardation Services;

(h) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Social Services;

(i) At least one (1) member shall be the commissioner or designee of the Department of Education; and

(j) At least one (1) member shall be the commissioner or designee of the Department of Insurance.

(2) In matters concerning the Kentucky Early Intervention System, the council shall advise and assist the cabinet in areas including but not limited to the following:

(a) Development and implementation of the statewide system and the administrative regulations promulgated pursuant to Sections 1 to 14 of this Act;

(b) Achieving the full participation, coordination, and cooperation of all appropriate entities in the state, including, but not limited to, individuals, departments, and agencies, through the promotion of interagency agreements;

(c) Establishing a process to seek information from service providers, service coordinators, parents, and others concerning the identification of service delivery problems and the resolution of those problems;

(d) Resolution of disputes, to the extent deemed appropriate by the cabinet;

(e) Provision of appropriate services for children from birth to five (5) years of age;

(f) Identify sources of fiscal and other support services for early intervention programs;

(g) Preparing applications to Part H of the federal Individuals with Disabilities Education Act (IDEA) and any amendments to the applications; and

(h) Transitioning of infants and toddlers with disabilities and their families from the early intervention system to appropriate services provided under Part B of the federal Individuals with Disabilities Education Act (IDEA) operated by the state Department of Education.

(3) The council shall prepare no later than December 30 of each year an annual report on the progress toward and any

barriers to full implementation of the Kentucky Early Intervention System for infants and toddlers with disabilities and their families. The report shall include recommendations concerning the Kentucky Early Intervention System and shall be submitted to the Governor, Legislative Research Commission, and the Secretary of the United States Department of Education.

(4) No member of the council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of the existence of a conflict of interest.

SECTION 6. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

The cabinet shall:

(1) Administer all funds appropriated to implement the provisions of Sections 1 to 14 of this Act;

(2) Identify and coordinate all available financial resources for early intervention within the commonwealth from federal, state, local, and private sources including, but not limited to:

(a) Title V of the federal Social Security Act relating to maternal and child health;

(b) Title XIX of the federal Social Security Act relating to medicaid and the Early Periodic Screening Diagnostic and Treatment (EPSDT) program;

(c) The federal Head Start Act;

(d) The federal Individuals with Disabilities Education Act, Parts B and H;

(e) The federal Elementary and Secondary Education Act of 1964 Title I, Chapter I, Part B, Subpart 2 as amended;

(f) The federal Developmentally Disabled Assistance and Bill of Rights Act, P.L. 100-146;

(g) Other federal programs; and

(h) Private insurance.

(3) Develop a sliding fee scale of the cost of early intervention services to families, including those circumstances where no fee shall be required;

(4) Enter into contracts with service providers within a local community aided by the district committee in identifying providers;

(5) Develop procedures to monitor and evaluate services that are provided to infants and toddlers with disabilities and their families;

(6) Develop procedures to ensure that early intervention services identified on the individualized family service plan are provided to eligible infants and toddlers with disabilities and their families in a timely manner pending resolution of any disputes among public agencies or service providers; and

(7) In conjunction with the council and district early intervention committees, promulgate administrative regulations, pursuant to KRS Chapter 13A, necessary to implement the provisions of Sections 1 to 14 of this Act.

SECTION 7. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

The cabinet shall establish one (1) district early intervention committee in each of the fifteen (15) area development districts. Each committee shall have from fifteen (15) to twenty-five (25) members of whom at least five (5) shall be parents, at least five (5) shall be early intervention service providers, and at least one (1) shall be a representative from each of the following: the local health department, the local office of the Department for Social Services, the local community mental health and mental retardation center, and the local Commission for Handicapped Children. Each committee may include representatives from one (1) or more of the following: a child day-care facility, a public school, a provider of medical services, a provider of therapy services, a home health agency if operated separately from the local health department, a university or college, a family resource center, a local business, a local charity, or others deemed appropriate. Each committee shall:

(1) Advise and assist the cabinet and the council in the development, implementation, and monitoring of the Kentucky Early Intervention System;

(2) Identify local resources available to infants and toddlers with disabilities and their families;

(3) Assist in identifying the unmet needs of infants and toddlers with disabilities and their families;

(4) Assist in establishing and maintaining a point of entry to the early intervention system; and

(5) Assist in the establishment of local interagency agreements for early intervention services and provide a forum for coordinating district early intervention services.

SECTION 8. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

(1) Upon identification of an eligible infant or toddler with disabilities, representatives of the entity serving as point of entry shall cause a multidisciplinary team, as defined in Section 3 of this Act, to be created for the child and family.

(2) The multidisciplinary team shall develop an individualized family service plan, as defined in Section 3 of this Act,

for the child and family.

(3) The individualized family services plan shall include:

(a) A comprehensive multidisciplinary evaluation of the present level of development of and services needed by the child and an assessment of and plan to address the resources, priorities, and concerns of the family;

(b) An explanation of the multidisciplinary evaluation and all service options to be made available in the family's cultural language, in their primary mode of communication, or through a speech or language interpreter, whichever is necessary to facilitate comprehension.

(4) The plan shall be developed within forty-five (45) days of the referral date of the child and family to the point of entry. If the completion of the initial evaluation and assessment is delayed and will not be completed within the forty-five (45) day time period due to the request of the child's parent, illness of the child, or other reasonable circumstances beyond the control of the multidisciplinary team, the point of entry shall document the reason for the delay and shall develop and implement an interim individualized family service plan.

(5) The informed written consent of the parent or guardian is required prior to the implementation of the plan. The parent may reject some services contained in the plan, however, no services to which the parent consents shall be withheld if the parent does not consent to all services in the plan.

(6) The plan shall be reviewed by members of the child's current multidisciplinary team or other appropriate entities at no more than six (6) months intervals or more frequently if deemed appropriate based on the needs of the infant or toddler and the family.

SECTION 9. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall monitor personnel standards for service providers to ensure the qualified service providers necessary to carry out the provisions of Sections 1 to 14 of this Act are appropriately and adequately prepared and trained in order to comply with the requirements of federal law and regulations.

(2) The cabinet shall provide the components of a comprehensive system of personnel development which shall include:

(a) Preservice and inservice training conducted on an interdisciplinary basis to the extent appropriate; and

(b) Training provided for a variety of entities, including but not limited to, public and private providers, primary referral sources, parents, paraprofessionals, and persons who serve as professional service coordinators or case managers.

(3) Training may include:

(a) Implementing innovative strategies and activities for the recruitment and retention of early intervention service providers;

(b) Promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention;

(c) Training personnel to work in rural areas; and

(d) Recruiting and training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program to a preschool program.

(4) The cabinet shall coordinate with other agencies in the provision of the comprehensive system of personnel development activities.

SECTION 10. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

The cabinet shall attempt to identify all infants and toddlers eligible for Kentucky Early Intervention System services through implementation of an aggressive child find effort to be coordinated with the child find efforts of the Department of Education as set forth in administrative regulations promulgated pursuant to KRS 156.070, 156.160, 157.220, 157.260, 167.015, and KRS Chapter 13A.

SECTION 11. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

In order to ensure access to early intervention services the cabinet shall establish an effective and continuous public awareness effort. The effort shall:

(1) Be directed at a number of primary referral sources, utilizing a means and language which is understandable, accessible, responsive, and cognizant of the referral sources' needs and their abilities to respond to those needs;

(2) Reinforce the coordinated and family-centered nature of all early intervention programs within the comprehensive statewide system of services; and

(3) Be relevant and meaningful to parents and to the general public.

SECTION 12. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

An infant or toddler with a disability and the parent or guardian of that child shall have the following rights:

(1) To a timely, multidisciplinary evaluation and assessment;

(2) To appropriate early intervention services for children and families;

(3) To refuse evaluation, assessment, or services;

(4) To written notice before a change is made in the identification, evaluation, or placement of the child, or in the provision of services to the child or family;

(5) To written notice before a refusal of services is made in the identification, evaluation, or placement of the child, or in the provision of services to the child or family;

(6) To confidentiality of personally identifiable information, including the right of the parent or guardian to be provided written notice of, and written consent to, the exchange of information among agencies, consistent with federal and state laws;

(7) To determine if any family member will accept or decline an early intervention service under Sections 1 to 14 of this Act, in accordance with state law, without jeopardizing other early intervention services under Sections 1 to 14 of this Act;

(8) To review all records and, if appropriate, to amend records;

(9) To bring an advocate or attorney into any and all dealings with the early intervention system; and

(10) To administrative and judicial process to resolve complaints.

SECTION 13. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

The use of early intervention funds provided under Sections 1 to 14 of this Act shall not be used to supplant existing funds from other sources. All local and state programs for infants and toddlers with disabilities and their families shall maintain the funding which supported programs for infant and toddler and their families at levels as of July 1, 1993.

SECTION 14. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

Nothing in Sections 1 to 14 of this Act shall be construed to permit the following:

(1) The reduction of local, state, or federal medical or other assistance available for infants and toddlers with disabilities and their families;

(2) The alteration of eligibility under Title V of the federal Social Security Act relating to maternal and child health;

(3) The alteration of eligibility under Title XIX of the federal Social Security Act relating to medicaid for infants and toddlers with disabilities; or

(4) The reduction of early intervention services provided by any state department or agency.

The Committee Amendment No. 1 to **HB 408** is as follows:

On page 7, line 3, by deleting "*and*";

On page 7, on line 5 after "*Insurance*" and before the period by inserting the following: "*; and*

(k) At least one (1) member shall be a representative of the Commission for Handicapped Children".

HB 445, AN ACT relating to licensure fees for the board of physical therapy.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 327.050 is amended to read as follows:

(1) Before applying for licensure by the board as a physical therapist, a person shall have successfully completed an accredited program in physical therapy and be a graduate of an accredited school of physical therapy approved by the board and shall have fulfilled the requirements of KRS 214.615(1). No school shall be approved by the board unless it has been approved for the educational preparation of physical therapists by the recognized national accrediting agency for physical therapy educational programs.

(2) Any person who possesses the ~~[aforementioned]~~ qualifications ***required by this chapter*** and who desires to apply for licensure as a physical therapist in Kentucky shall make written application ~~[therefor]~~ to the board, on forms to be provided by the board*. The application*~~[, which]~~ shall be accompanied by ***a nonrefundable*** ~~[an]~~ application fee ***in an amount to be*** determined by the board*,* but not to exceed two hundred fifty dollars ($250)*. Upon acceptance by the board of the application, the*~~[, no part of which shall be returned. A licensure]~~ applicant shall ***pay an examination fee in an amount sufficient to cover the cost of the examination, not to exceed one hundred dollars ($100), and shall*** successfully complete ***the*** ~~[a]~~ board*,*~~[-]~~ approved examination.

(3) If it appears from ***the*** ~~[said]~~ application that the applicant possesses the qualifications required by this chapter and has not yet successfully completed the board*,*~~[-]~~ approved examination, the applicant shall be admitted to the next scheduled examination and tested in the subjects the board may determine to be necessary.

(4) Examinations shall be held within the state at least once a year at ***the*** ~~[such]~~ time and place as the board shall determine.

(5) An applicant who is admitted to the examination or an applicant who has submitted satisfactory evidence that he has been accepted as a candidate for licensure by examination in a state which offers an examination approved by the board may be granted a temporary permit which shall be valid until his examination is graded and he is notified by the board of his score.

(6) An applicant who receives a passing score as determined by the board and who meets the other qualifications required by this chapter shall be licensed as a physical therapist.

(7) An applicant who fails to receive a passing score on his examination shall not be licensed; but the board may, by ***administrative*** regulation, permit applicants to take the examination more than once.

(8) [~~Beginning January 31, 1985,~~] All licenses shall be renewed biennially , upon payment on or before March 31 of each uneven numbered year of a renewal fee to be fixed by the board in an amount not to exceed one hundred dollars ($100). Any licensed person seeking renewal shall include proof of the completion of the course described in KRS 214.610(1) on the form provided by the cabinet.

(9) Licenses which are not renewed by March 31 of each uneven numbered year shall lapse.

(10) This chapter shall not be construed to affect or prevent:

(a) A student of physical therapy from engaging in clinical practice under the supervision of a licensed physical therapist, as part of the student's educational program;

(b) A physical therapist who is licensed to practice in another state or country from conducting or participating in a clinical residency under the supervision of a physical therapist licensed in Kentucky and for a period of not more than ninety (90) days;

(c) A physical therapist who is licensed to practice in another state or country from conducting or participating in the teaching of physical therapy in connection with an educational program and for a period of not more than ninety (90) days; or

(d) The practice of chiropractic as defined in KRS 312.015(3).

The Committee Substitute to **HB 445** is as follows:

HB 445, AN ACT relating to licensure fees for the board of physical therapy.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 327.050 is amended to read as follows:

(1) Before applying for licensure by the board as a physical therapist, a person shall have successfully completed an accredited program in physical therapy and be a graduate of an accredited school of physical therapy approved by the board and shall have fulfilled the requirements of KRS 214.615(1). No school shall be approved by the board unless it has been approved for the educational preparation of physical therapists by the recognized national accrediting agency for physical therapy educational programs.

(2) Any person who possesses the [~~aforementioned~~] qualifications ***required by this chapter*** and who desires to apply for licensure as a physical therapist in Kentucky shall make written application [~~therefor~~] to the board, on forms to be provided by the board***. The application***[~~, which~~] shall be accompanied by ***a nonrefundable*** [~~an~~] application fee ***in an amount to be*** determined by the board***,*** but not to exceed two hundred fifty dollars ($250)***. Upon acceptance by the board of the application, the***[~~, no part of which shall be returned. A licensure~~] applicant shall ***pay an examination fee in an amount sufficient to cover the actual cost of the examination and shall*** successfully complete ***the*** [~~a~~] board***,***[~~-~~] approved examination.

(3) If it appears from ***the*** [~~said~~] application that the applicant possesses the qualifications required by this chapter and has not yet successfully completed the board***,***[~~-~~] approved examination, the applicant shall be admitted to the next scheduled examination and tested in the subjects the board may determine to be necessary.

(4) Examinations shall be held within the state at least once a year at ***the*** [~~such~~] time and place as the board shall determine.

(5) An applicant who is admitted to the examination or an applicant who has submitted satisfactory evidence that he has been accepted as a candidate for licensure by examination in a state which offers an examination approved by the board may be granted a temporary permit which shall be valid until his examination is graded and he is notified by the board of his score.

(6) An applicant who receives a passing score as determined by the board and who meets the other qualifications required by this chapter shall be licensed as a physical therapist.

(7) An applicant who fails to receive a passing score on his examination shall not be licensed; but the board may, by ***administrative*** regulation, permit applicants to take the examination more than once.

(8) [~~Beginning January 31, 1985,~~] All licenses shall be renewed biennially , upon payment on or before March 31 of each uneven numbered year of a renewal fee to be fixed by the board in an amount not to exceed one hundred dollars ($100). Any licensed person seeking renewal shall include proof of the completion of the course described in KRS 214.610(1) on the form provided by the cabinet.

(9) Licenses which are not renewed by March 31 of each uneven numbered year shall lapse.

(10) This chapter shall not be construed to affect or prevent:

(a) A student of physical therapy from engaging in clinical practice under the supervision of a licensed physical therapist, as part of the student's educational program;

(b) A physical therapist who is licensed to practice in another state or country from conducting or participating in a clinical residency under the supervision of a physical therapist licensed in Kentucky and for a period of not more than ninety (90) days;

(c) A physical therapist who is licensed to practice in another state or country from conducting or participating in the teaching of physical therapy in connection with an educational program and for a period of not more than ninety (90) days; or

(d) The practice of chiropractic as defined in KRS 312.015(3).

HCR 30, A CONCURRENT RESOLUTION to create a Task Force on family caregivers in Kentucky.

WHEREAS, most of the children and adults who need long-term care in Kentucky are cared for at home by family caregivers; and

WHEREAS, these Kentucky families experience unusually high levels of family stress and financial expense; and

WHEREAS, these Kentucky families save the Commonwealth millions of dollars by providing in-home care for citizens whose care would otherwise be the sole responsibility of the state; and

WHEREAS, many families would prefer to be able to care for their loved ones at home or in the nearby community;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the Legislative Research Commission is directed to appoint a Task Force on Family Caregivers to study for the Commonwealth:

(1) The extent of the need experienced by family caregivers in Kentucky;

(2) The current resources available within the programs of the Cabinet for Human Resources to support family caregivers; and

(3) The resources needed to more adequately support families who are experiencing these extra family stresses, including but not limited to, respite, financial assistance, and waiver programs.

Section 2. That the Task Force shall consist of twenty-five (25) members as follows: Two (2) members of the General Assembly, one (1) of whom shall serve as the chairman of the task force; four (4) individuals representing family caregivers; and one (1) representative from each of the following:

(1) Department for Medicaid Services, Cabinet for Human Resources;

(2) Department for Social Services, Cabinet for Human Resources;

(3) Division of Mental Health, Department for Mental Health and Mental Retardation Services , Cabinet for Human Resources;

(4) Division of Mental Retardation, Department for Mental Health and Mental Retardation Services, Cabinet for Human Resources;

(5) Division for Aging Services, Department for Social Services, Cabinet for Human Resources;

(6) Division of Maternal and Child Health, Department for Health Services, Cabinet for Human Resources;

(7) Division of Special Child Services, Department of Education;

(8) Kentucky Developmental Disabilities Planning Council;

(9) Kentucky Disabilities Coalition;

(10) Family Connections, a project of the Kentucky Developmental Disabilities Council;

(11) Kentucky Special Parent Involvement Network;

(12) Kentucky Family-Based Services Association;

(13) Association of Retarded Citizens of Kentucky;

(14) Supported Living Council;

(15) Kentucky Alliance for the Mentally Ill;

(16) Kentucky Home Health Association;

(17) Division of Protection and Advocacy, Department of Public Protection, Cabinet for Public Protection and Regulation;

(18) Alzheimer's Association; and

(19) A person who receives care at home.

Section 3. That the purpose of the task force shall be to study and make recommendations for the 1996 Kentucky General Assembly regarding a plan of action and any needed legislation to assist family caregivers.

Section 4. The findings and recommendations of the task force shall be submitted to the Legislative Research Commission by September 1, 1995.

Section 5. Staff services to be utilized in completing this study are estimated to cost $30,000. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

The Committee on Business Organizations and Professions reported **HB 386,** with Committee Substitute attached thereto, **HB 546,** with Committee Substitute attached thereto, and **HB 569** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 386, AN ACT relating to funding of the equine industry program at the University of Louisville.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 138.510 is amended to read as follows:

(1) An excise tax is imposed on all tracks conducting pari-mutuel racing under the jurisdiction of the Kentucky Racing Commission. For each track with a daily average handle of one million two hundred thousand dollars ($1,200,000) or above, the tax shall be in the amount of three and one-half percent (3.5%) of all money wagered during the fiscal year. A fiscal year as used in this subsection and subsection (2) shall begin at 12:01 a.m. July 1 and end at 12 midnight June 30. For each track with a daily average handle under one million two hundred thousand dollars ($1,200,000) the tax shall be an amount equal to one and one-half percent (1.5%) of all money wagered during the fiscal year. For the purposes of this subsection, the daily average handle shall be computed from the amount wagered only at the host track and shall not include money wagered at a receiving track, at a simulcast facility, or on telephone account wagering. Money shall be deducted from the tax paid by host tracks and deposited to the respective development funds in the amount of three quarters of one percent (0.75%) of the live racing handle for thoroughbred racing and one percent (1%) of the live handle for harness racing.

(2) An excise tax is imposed on all licensed tracks conducting telephone account wagering or participating as receiving tracks in intertrack wagering under the jurisdiction of the Kentucky Racing Commission. The tax shall be in the amount of three percent (3%) of all money wagered by these methods during the fiscal year. An amount equal to two percent (2%) of the amount wagered shall be deducted from the tax imposed in this subsection and deposited in the thoroughbred development fund if the host track is conducting a thoroughbred race meeting or the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund, if the host track is conducting a harness race meeting.

(3) Two-tenths of one percent (0.2%) of the total amount wagered in Kentucky shall be deducted from the pari-mutuel tax levied in ***subsections*** ~~[subsection]~~ (1) ***and (2)*** of this section and allocated to the equine industry program trust and revolving fund to be used for funding the equine industry program at the University of Louisville.

(4) One tenth of one percent (0.1%) of the total amount wagered in Kentucky shall be deducted from the pari-mutuel tax levied in subsections (1) and (2) of this section and deposited to a trust and revolving fund to be used for the construction, expansion, or renovation of facilities or the purchase of equipment for equine programs at state universities. These funds shall not be used for salaries or for operating funds for teaching, research, or administration. In no event shall funds allocated under this subsection replace other funds for capital purposes or operation of equine programs at state universities. The Kentucky Council on Higher Education shall serve as the administrative agent and shall establish an advisory committee of interested parties, including all universities with established equine programs, to evaluate proposals and make recommendations for the awarding of funds. The Kentucky Council on Higher Education may by administrative regulation establish procedures for administering the program and criteria for evaluating and awarding grants.

The Committee Substitute to **HB 386** is as follows:

HB 386, AN ACT relating to funding of the equine industry program at the University of Louisville.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 138.510 is amended to read as follows:

(1) An excise tax is imposed on all tracks conducting pari-mutuel racing under the jurisdiction of the Kentucky Racing Commission. For each track with a daily average handle of one million two hundred thousand dollars ($1,200,000) or above, the tax shall be in the amount of three and one-half percent (3.5%) of all money wagered during the fiscal year. A fiscal year as used in this subsection and subsection (2) shall begin at 12:01 a.m. July 1 and end at 12 midnight June 30. For each track with a daily average handle under one million two hundred thousand dollars ($1,200,000) the tax shall be an amount equal to one and one-half percent (1.5%) of all money wagered during the fiscal year. For the purposes of this subsection, the daily average handle shall be computed from the amount wagered only at the host track and shall not include money wagered at a receiving track, at a simulcast facility, or on telephone account wagering. Money shall be

deducted from the tax paid by host tracks and deposited to the respective development funds in the amount of three quarters of one percent (0.75%) of the live racing handle for thoroughbred racing and one percent (1%) of the live handle for harness racing.

(2) An excise tax is imposed on all licensed tracks conducting telephone account wagering or participating as receiving tracks in intertrack wagering under the jurisdiction of the Kentucky Racing Commission. The tax shall be in the amount of three percent (3%) of all money wagered by these methods during the fiscal year. An amount equal to two percent (2%) of the amount wagered shall be deducted from the tax imposed in this subsection and deposited in the thoroughbred development fund if the host track is conducting a thoroughbred race meeting or the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund, if the host track is conducting a harness race meeting.

(3) Two-tenths of one percent (0.2%) of the total amount wagered ***on live racing*** in Kentucky shall be deducted from the pari-mutuel tax levied in subsection (1) of this section***, and one twentieth of one percent (0.05%) of the total amount wagered on intertrack wagering shall be deducted for the pari-mutuel tax levied in subsection (2) of this section,*** and allocated to the equine industry program trust and revolving fund to be used for funding the equine industry program at the University of Louisville.

(4) One tenth of one percent (0.1%) of the total amount wagered in Kentucky shall be deducted from the pari-mutuel tax levied in subsections (1) and (2) of this section and deposited to a trust and revolving fund to be used for the construction, expansion, or renovation of facilities or the purchase of equipment for equine programs at state universities. These funds shall not be used for salaries or for operating funds for teaching, research, or administration. In no event shall funds allocated under this subsection replace other funds for capital purposes or operation of equine programs at state universities. The Kentucky Council on Higher Education shall serve as the administrative agent and shall establish an advisory committee of interested parties, including all universities with established equine programs, to evaluate proposals and make recommendations for the awarding of funds. The Kentucky Council on Higher Education may by administrative regulation establish procedures for administering the program and criteria for evaluating and awarding grants.

HB 546, AN ACT relating to certified public accountants.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 325 IS CREATED TO READ AS FOLLOWS:

(1) All firms engaged in the practice of public accountancy in this Commonwealth shall meet the following requirements:

(a) The sole purpose and business of the firm shall be to practice public accountancy;

(b) The name of the firm shall include the name of at least one (1) current or former certified public accountant who holds or has held an ownership interest in the firm. The firm may use the words "certified public accountants" or the abbreviation "CPA's" in connection with its name;

(c) All partners, shareholders, or other persons holding an ownership interest in the firm and all certified public accountant employees of the firm who regularly practice in this Commonwealth shall be certified public accountants with current permits to practice issued by the board;

(d) At least one (1) partner, shareholder, or other person holding an ownership interest in the firm shall be a certified public accountant with a current permit to practice issued by the board; and

(e) The firm shall comply with the provisions of this chapter, the administrative regulations promulgated by the board, and all other laws of this Commonwealth applicable to the firm's particular form of business organization.

(2) Before a firm may practice in this Commonwealth, it shall:

(a) Submit an initial application to the board for a firm permit to practice in this Commonwealth. This application shall be made upon forms approved by the board and signed by the firm manager, who shall also be the certified public accountant in charge of the administrative matters of the firm. The application for a firm permit to practice shall include the name of the firm manager, the name of each certified public accountant with an ownership interest in the firm, the name of each certified public accountant employee of the firm, the location of each office, and any other information as the board, by duly promulgated administrative regulation, may require; and

(b) With the exception of a sole proprietorship, pay a fee not to exceed two hundred dollars ($200) set by an administrative regulation promulgated by the board.

(3) The firm permit to practice shall be renewed every two (2) years by the firm. The application for renewal shall be submitted by the manager of the firm on forms promulgated by the board by administrative regulation.

(4) The firm permit to practice shall be effective for a two (2) year period following the date of its issuance and shall expire on the first day of July in the year of expiration.

(5) The manager of the firm shall notify the board, on a form promulgated by the board by administrative regulation, of any change in its registration information within thirty (30) days. Any change in the ownership of a firm that results in a change in the name of the firm shall require the filing of an initial application.

(6) All firms that perform audits, reviews, or compilations shall undergo a quality enhancement review as determined by administrative regulations promulgated by the board.

(7) Firms that perform audits shall complete an approved quality review program with standards that are equivalent to or better than the quality review program administered by the American Institute of Certified Public Accountants as determined by administrative regulations promulgated by the board.

(8) Nothing contained in this chapter shall require a certified public accountant or firm of certified public accountants licensed by another state or foreign country to obtain a permit to practice in this Commonwealth if the certified public accountant or firm of certified public accountants enter this Commonwealth solely to:

(a) Conduct a quality review of a firm; or

(b) Perform attestation work, incidental to an engagement which was initiated with a client located outside of the Commonwealth and has extended into the Commonwealth due to common ownership or existence of a subsidiary, assets, or other operations located within the Commonwealth.

Section 2. KRS 325.220 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the State Board of Accountancy;

(2) "State" includes and means any state, territory, or insular possession of the United States, or the District of Columbia;

(3) "Public accountant" means a public accountant issued a permit to practice by the Commonwealth of Kentucky under the Public Accounting Act of 1946 as amended;

(4) "Attest," "attesting," or "attestation," when used with reference to financial information or the practice of public accountancy, means to issue, or the issuance of, opinions, reports, or other forms of language which state or imply assurance as to the reliability of any:

(a) Financial information; or

(b) Facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, administrative regulations, grants, loans, and appropriations, together with any wording accompanying or contained in the opinion or certificate, when such opinions, reports, or other forms of language are accompanied by or include any name, title, or wording that indicates that the person or firm issuing them is:

1. An accountant or auditor;

2. Has expert knowledge in accounting or auditing; or

3. That his or the firm's work has been performed in accordance with the applicable professional standards for accounting or auditing services as established by the American Institute of Certified Public Accountants or other authorities, as recognized by the board by administrative regulation. The terms include forms of language which disclaim an opinion when the forms of language are conventionally understood to imply any assurance as to the reliability of the financial information referred to and expertise on the part of the person uttering the language; and any other form of language which is conventionally understood to imply such assurance and expertise; or which indicates certain procedures have been performed in accordance with applicable professional standards for accounting or auditing services as established by the American Institute of Certified Public Accountants or other authorities, as recognized by the board by administrative regulation;

(5) "Practice of or practicing public accountancy" means the offering to perform or the performance ***of*** [~~by a licensee under this chapter, for a client or potential client, or~~] one (1) or more types of services involving the use of accounting or auditing skills, ***including the issuance of reports on financial statements,*** or one (1) or more types of management, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters ***for a client or potential client by a person or firm holding himself or itself out to the public as a licensee***. This definition shall not prohibit anyone who is not a certified public accountant from performing accounting services, such as the preparation of tax returns or financial statements, for which attestation by the preparer is not required;

(6) "Firm" means a sole proprietorship, partnership, professional service corporation, or ***any other form of business organization*** [~~association~~] engaged ***solely*** in the practice of public accountancy ***that is not otherwise prohibited from operating by the laws of this Commonwealth and which complies with the provisions of this chapter;***

(7) "Certificate" means a certificate as a "certified public accountant" issued pursuant to this chapter or corresponding provisions of prior law;

(8) "Licensee" means a certified public accountant, firm, or public accountant, holding a permit to practice public accounting issued under this chapter;

(9) "Quality enhancement review" means a study, appraisal, or review by the board of one (1) or more aspects of the professional work of a person or firm in the practice of public accountancy;

(10) "Quality review" means a study, appraisal, or review of one (1) or more aspects of the professional work of a person or firm in the practice of public accountancy and may include a quality assurance or peer review, or any internal review or inspection that is required by professional standards relating to quality control policies and procedures. The term shall not include a positive enforcement program of a state accountancy board; and

(11) "Review committee" means any person or persons carrying out, administering, or overseeing a quality review program.

Section 3. KRS 325.230 is amended to read as follows:

(1) There is hereby created a State Board of Accountancy***.***~~[,]~~ The board shall consist of seven (7) members, appointed by the Governor. ***Six (6) of the members shall be certified public accountants. One (1) of the members shall be a citizen-at-large who is not a certified public accountant. Members serving on the board as of the effective date of this Act shall retain their appointments until their terms expire.*** Whenever an appointment is to be made the Kentucky Society of Certified Public Accountants shall submit to the Governor the names of three (3) persons for each vacancy to be filled. All persons recommended shall be qualified for membership on the board, and the Governor shall appoint one (1) of the three (3) recommended. Members of the board shall be citizens of the United States and residents of this state ***and the certified public accountant members shall*** ~~[who]~~ hold permits to practice issued under the provisions of this chapter. Of the new members appointed to the board, as provided by this section, one (1) member shall be appointed for a term of one (1) year and one (1) member shall be appointed for a term of four (4) years from June 19, 1976. Succeeding appointments to the board shall be for a term of four (4) years. Vacancies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of his term of office***,*** a member shall continue to serve until his successor shall have been appointed and shall have qualified. The Governor shall remove from the board any member whose permit to practice is not renewed or which has become void, revoked or suspended, and may, after hearing, remove any member of the board for neglect of duty or other just cause.

(2) Each member of the board shall be paid one hundred dollars ($100) for each day spent in the discharge of his official duties and shall be reimbursed for his actual and necessary expenses therein incurred.

Section 4. KRS 325.261 is amended to read as follows:

(1) The certificate of "certified public accountant" shall be granted by the board to any person who satisfies the following requirements:

  (a) Is no less than eighteen (18) years of age;

  (b) Is of good moral character;

  (c) Meets the following educational credentials prior to applying for the examination:

    1. Has a baccalaureate degree or master's degree conferred by a college or university recognized by the board with a major or concentration program in accounting or its equivalent, as defined by the board by administrative regulation; or

    2. Beginning in the year 2000 with a new examination applicant approved to sit for the first examination of the year or subsequent examination, has completed one hundred and fifty (150) college semester hours which include a baccalaureate degree conferred by a college or university recognized by the board with a major or concentration program in accounting or its equivalent, as defined by the board by administrative regulation;

  (d) Has ***one (1) year*** ~~[two (2) years]~~ of public accounting experience ***obtained while employed by a public accounting firm and under the supervision of a certified public accountant who held a certificate, license, or permit to practice public accountancy from any state as determined by administrative regulations promulgated by the board*** ~~[of a quality satisfactory to the board, as defined by administrative regulation, which includes having participated in the examination of financial statements for third party reliance in the employ of a certified public accountant of any state or other comparable experience or employment which the board deems equivalent. This requirement shall be reduced to one (1) year for a person who holds a master's degree in accounting or business administration or a master's degree of their equivalent as approved by the board]~~;

  (e) Passes a board-approved written examination in accounting, auditing, and other related subjects as the board deems appropriate. To be eligible to apply for the examination, a person shall first satisfy requirements of subsection (1)(a), (b), and (c) of this section; ***and***

  (f) Submits an application for a certificate as a certified public accountant on a form prescribed by the board and accompanied by a fee not to exceed one hundred dollars ($100).

(2) The experience requirement of subsection (1)(d) of this section may alternatively be satisfied ***by having obtained two (2) years of experience while under the supervision of a certified public accountant who held a certificate, license, or permit to practice public accountancy from any state in one (1) of the following manners as determined by administrative regulations promulgated by the board*** ~~[in the following matter]~~:

  (a) ***Private enterprise, a governmental agency, or an institution of higher education in accounting or auditing***

position which required the performance of the services as prescribed in subsection (5) of Section 2 of this Act; or [~~Four (4) years' experience as a field audit agent in the Internal Revenue Service, of which two (2) years is at the journeyman level, presently GS 11 or its future equivalent, in auditing financial statements and supporting materials of three (3) or more distinct lines of commercial or industrial businesses to determine the reliability and fairness of the financial reporting and compliance with generally accepted accounting principles and applicable laws and administrative regulations. The board shall determine the qualification of experience under this section~~].

(b) ***Teaching of accounting in an institution of higher education that grants a degree which qualifies a person to sit for the Uniform Certified Public Accountants Examination under this chapter*** [~~Two (2) years' experience in the employment of any agency of state government as an auditor or accountant, if the experience was obtained under the supervision of a certified public accountant and includes application of the attest function through participation in the examination of financial statements for third party reliance using standards adopted by the American Institute of Certified Public Accountants or other authorities recognized by the board by administrative regulation. This requirement shall be reduced to one (1) year for individuals holding a master's degree in accounting or business administration referred to in subsection (1)(c) of this section. The board shall determine the qualifications under this section~~].

Section 5. KRS 325.280 is amended to read as follows:

(1) The board may issue a certificate and permit ***to practice by reciprocity*** [~~as a "certified public accountant," without examination~~], if the applicant ***submits an application for a certificate and permit to practice public accountancy, upon forms approved by the board, that includes all required fees, in the amounts as determined by administrative regulation promulgated by the board, and meets the requirements of any one (1) of the following paragraphs***:

(a) ***The applicant received a grade on the Uniform Certified Public Accountants Examination in another state that was equivalent to a passing grade at the time in this Commonwealth;***

(b) 1. The applicant holds a valid certificate, active permit, and is in good standing as a certified public accountant, issued under the laws of any other state [~~or holds a certificate, license, or degree in good standing from a foreign country constituting a recognized qualification for the practice of public accounting in that country, comparable to that of a certified public accountant of this Commonwealth~~]; and

2.[~~(b)~~] ***The applicant*** meets all current ***experience*** requirements in this Commonwealth at the time application is made***;***[~~, or is currently licensed by another jurisdiction for the five (5) years immediately preceding the application and meets the current experience requirement in this Commonwealth,~~] or

(c) 1. At the time of issuance of the applicant's certificate and permit to practice in the other state, the applicant met all experience requirements then in effect in this Commonwealth; or

(2.) Within the ten (10) years immediately preceding the application had four (4) years of [~~acceptable~~] experience in the practice of public accountancy [~~after passing the examination~~] acceptable to the board upon which the certificate was based.

(2) The board may issue a certificate and permit to practice public accountancy without examination to an applicant who holds a valid certificate to engage in the practice of public accountancy in good standings from a foreign country if:

(a) The applicant's foreign country makes similar provisions to allow a person who holds a valid certificate to practice public accountancy issued by this Commonwealth to obtain that foreign country's comparable designation;

(b) The authority of the foreign country that issued the designation regulates the practice of public accountancy including the issuance of reports upon financial statements;

(c) The foreign designation was granted upon education and examination requirements which were established by the foreign authority or law and were substantially equivalent to those in effect in this Commonwealth at the time the foreign designation was granted;

(d) The applicant satisfies the applicable experience requirement contained in paragraph (b) or (c) of subsection (1) of this section;

(e) The applicant has successfully passed a uniform qualifying examination on United States national standards and an examination on the law and administrative regulations of the board; and

(f) The applicant submits an application for a certificate and permit to practice public accountancy, upon forms approved by the board, that includes all required fees, in the amounts as determined by administrative regulation promulgated by the board.

Section 6. KRS 325.290 is amended to read as follows:

(1) Only an individual who has received a certificate and a current permit to practice shall be styled and known as a "certified public accountant". A certified public accountant may also use the abbreviation "CPA" or "public accountant."

(2) The achievement of the requirements necessary to be awarded a certificate shall not allow the use of the titles "certified public accountant" or "CPA," unless a permit to practice has been issued and is current. Permit holders granted a waiver from continuing professional education ***based on retirement*** may use "certified public accountant," "public accountant," or "CPA," but shall not practice public accounting.

Section 7. KRS 325.340 is amended to read as follows:

(1) After notice and hearing as provided in this chapter, the board may revoke or suspend any certificate of a certified public accountant issued under this chapter or any registration of a public accountant granted under this chapter, or may revoke, suspend, or refuse to issue or renew any permit issued under this chapter, or may censure the holder of any such permit, place any licensee on probation, all with or without terms, for any one (1) or any combination of the following causes:

(a) Fraud or deceit in obtaining a certificate as certified public accountant, or in obtaining registration under this chapter, or in obtaining a permit to practice public accounting under this chapter;

(b) Dishonesty, fraud, or negligence in the practice of public accounting, including fiscal dishonesty or an intentional breach of fiduciary responsibility of any kind, and also including but not limited to, the following:

1. Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information; and

2. Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses;

(c) Violation of any of the provisions of this chapter or administrative regulations promulgated by the board under this chapter or violation of any order of the board;

(d) Violation of a rule of professional conduct promulgated by the board;

(e) ***Pleading no contest, entering an Alford plea, suspending the imposition of a criminal penalty, or the*** Conviction of a felony or [~~of~~] any crime an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(f) Cancellation, revocation, suspension, or refusal to renew the authority to practice as a certified public accountant or a public accountant in any state;

(g) Suspension or revocation of the right to practice before any state or federal agency; [~~or~~]

(h) Conduct discreditable to the accounting profession***; or***

(i) Failure to respond to a board inquiry regarding any licensing or complaint matter.

(2) ***The board may issue an order to a certificate holder to show cause why his certificate shall not be revoked for failure to renew his permit to practice. The order shall be sent to the certificate holder by certified mail, return receipt requested, to the mailing address given to the board by the certificate holder. If he fails to request a hearing on the order within twenty (20) days from the date of the order being mailed, the board may without a hearing, revoke the certificate. If a hearing is timely requested, it shall be conducted pursuant to Section 9 of this Act.***

(3) In any proceeding in which a remedy provided by subsection (1) of this section is imposed, the board may also require the respondent licensee to pay the costs of the proceeding.

Section 8. KRS 325.350 is amended to read as follows:

(1) After notice and hearing as provided in KRS 325.360 the board shall revoke the registration and permit to practice of a firm if at any time it does not have all the qualifications prescribed by this chapter under which it qualified for registration.

(2) After notice and hearing as provided in KRS 325.360 the board may revoke or suspend the registration or may revoke, suspend, or refuse to renew the permit to practice of a firm or may censure the holder of any such permit for any of the causes enumerated in KRS 325.340, and for the following additional causes:

(a) The revocation or suspension of the certificate or registration or the revocation or suspension or refusal to renew the permit to practice of any partner or shareholder***, or any other person with an ownership interest***; or

(b) The cancellation, revocation, suspension or refusal to renew the authority of the firm or any partner or shareholder***, or any other person with an ownership interest*** thereof to practice public accounting in any other state.

Section 9. KRS 325.360 is amended to read as follows:

(1) The board may conduct investigations of suspected violations of this chapter or the administrative regulations promulgated by the board to determine whether there is probable cause to institute proceedings against any person or firm for ***any*** [~~such~~] violation under this chapter; but an investigation under this section shall not be a prerequisite to [~~such~~] proceedings. In aid of such investigations, the board or its designee may issue subpoenas to compel witnesses to testify and to produce evidence. ***Subpoenas may be served in person or by certified mail, return receipt requested.***

(2) The board may designate a member, or any other person of appropriate competence, to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer shall [~~file a~~] report ***to*** [~~with~~] the

board. The board shall ***then*** find probable cause or lack of probable cause [~~upon the basis of the report~~], or ***it*** shall ***request that*** [~~return the report to~~] the investigating officer ***investigate*** [~~for~~] further [~~investigation~~]. Until there has been a determination of probable cause, the ***findings*** [~~report~~] of the investigating officer, the testimony and documents gathered in the investigation, and the fact of pendency of the investigation shall be treated as confidential information and shall not be disclosed to any person except law enforcement authorities and, to the extent deemed necessary in order to conduct the investigation, the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned in the course of the investigation.

(3) Upon ***a*** finding of probable cause, if the subject of the investigation is a licensee, the board shall direct that a complaint be issued pursuant to this section; and if the subject of the investigation is not a licensee, the board shall take appropriate action pursuant to this chapter. Upon a finding of ***a lack of*** [~~no~~] probable cause, the board shall close the matter.

(4) In any case where probable cause has been determined pursuant to this section with respect to a violation by a licensee, or where the board has received a written complaint by any person furnishing grounds for a determination of [~~such~~] probable cause ***about a violation*** or where the board has received notice of a decision by the board of accountancy of another state furnishing ***that*** [~~such~~] grounds, the board shall issue a complaint setting forth appropriate charges and set a date for ***a*** hearing [~~before the board on such charges~~]. The board shall, not less than thirty (30) days prior to the date of the hearing, serve a copy of the complaint and notice of the time and place of the hearing upon the licensee, at the mailing address indicated to the board by the licensee, either by personal delivery or mailing a copy by certified mail, return receipt requested, to the licensee.

(5) A licensee against whom a complaint has been issued under this section shall have the right, reasonably in advance of the hearing, to examine and copy the report of investigation, if any, and any documentary or testimonial evidence and summaries of anticipated evidence, in the board's possession relating to the subject matter of the complaint.

(6) ***A licensee*** [~~If~~], after having been served with the notice of hearing ***and complaint*** as provided for ***in subsection (4) of this section*** [~~herein~~], ***shall file a written response within twenty (20) days from the date he was served. If*** the respondent ***licensee*** fails to ***file a timely response or fails to*** appear at ***the*** [~~said~~] hearing, the board may hear evidence against him and may enter ***an*** [~~such~~] order as shall be justified by the evidence. ***The*** [~~, which~~] order shall be final [~~unless he petitions for a review. Within thirty (30) days from the date of any order, upon a showing of good cause for failing to appear, the board may reopen said proceedings and may permit the respondent to submit evidence in his behalf~~].

(7) In a hearing under this section, the respondent licensee may appear in person or, in the case of a firm, through a partner, [~~officer, director,~~] or shareholder ***or other person with an ownership interest*** and by counsel, examine witnesses and evidence presented in support of the complaint, and present evidence and witnesses on his own behalf. The licensee shall be entitled, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses and the production of documentary evidence.

(8) The evidence supporting the complaint shall be presented by the investigating officer, by a board member designated for that purpose, or by counsel. A board member who presents the evidence, or who has conducted the investigation of the matter under this section, shall not participate in the board's decision of the matter.

(9) The board, or its designee, may issue subpoenas to compel the attendance of witnesses and the production of documents, and may administer oaths, take testimony, hear proof, and receive exhibits in evidence in connection with or at the hearing under this chapter. ***Subpoenas may be served in person or by certified mail, return receipt requested.*** In case of disobedience to a subpoena, the board may invoke the aid of the Franklin Circuit Court. Any order or subpoena of ***that*** [~~such~~] court requiring the attendance and testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in this state.

(10) The board shall not be bound by technical rules of evidence.

(11) A [~~stenographic~~] record of the hearing shall be kept [~~and a transcript thereof filed with the board~~].

(12) ***Hearings shall be conducted by the full board, by an independent hearing officer named by the board, or by a single board member acting as hearing officer. The proceedings that govern these hearings shall be determined by administrative regulations promulgated by the board*** [~~At all hearings the Attorney General of this Commonwealth, or one (1) of his assistants designated by him, or such other legal counsel as may be employed shall appear and represent the board. Said counsel shall not be the same counsel who presents or assists in presenting the evidence supporting the complaint pursuant to subsection (8) of this section~~].

(13) In a hearing under this section ***before the full board or in acting upon the recommendations of a hearing officer,*** a vote of a majority of all members of the board then in office, other than a member disqualified by reason of subsection (8) of this section, shall be required to sustain any charge and to impose any penalty with respect thereto.

(14) Any person adversely affected by any order of the board may obtain a review thereof by filing a written petition for review with the Franklin Circuit Court within thirty (30) days after the entry of ***the*** [~~said~~] order. The petition shall state the grounds upon which the review is asked and shall pray that the order of the board be modified or set aside in whole or in part. A copy of ***the*** [~~such~~] petition shall be served upon the executive director of the board, and the petitioner shall be responsible for certifying and filing in the court a transcript of the record upon which the order complained of was

entered. No new or additional evidence shall be introduced in the Franklin Circuit Court except as to fraud or misconduct affecting the outcome of the case, but the court shall otherwise hear the case upon the record as attested by the executive director of the accountancy board, and shall in all respects dispose of the appeal in a summary manner. Its review shall be limited to determining whether or not:

(a) The board acted without or in excess of its power;

(b) The order appealed from was procured by fraud or misconduct;

(c) Substantial evidence supports the order appealed from; ***and***

(d) The board's decision is supported by the law.

The court may affirm, modify, or set aside the board's order in whole or in part, or may remand the case to the board for further evidence, and may in its discretion, stay the effect of the board's order pending its determination of the case.

(15) On rendering a decision to revoke, suspend, refuse to renew, or censure the holder of a certificate or a permit to practice issued under this chapter, the board shall examine its records to determine whether the respondent holds a certificate, a registration, or a permit to practice in any other state. If the board determines that the respondent holds a certificate, a registration, or a permit to practice in any other state, the board shall notify the board of accountancy of ***the*** [~~such~~] other state of its decision by mail within thirty (30) days of rendering ***the*** [~~such~~] decision.

(16) The board may exchange information relating to proceedings resulting in disciplinary action against licensees with the boards of accountancy of other states and with other public authorities or private organizations having an interest in such information.

Section 10. KRS 325.380 is amended to read as follows:

(1) No person shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that ***the*** [~~such~~] person is a certified public accountant, unless ***the*** [~~such~~] person has received a certificate as a certified public accountant under this chapter and holds a permit issued under this chapter which has not been revoked or suspended, and all offices of ***the*** [~~such~~] person in this Commonwealth for the practice of public accounting are maintained and registered as required under this chapter.

(2) No firm shall assume or use the title or designation "certified public accountants" or the abbreviation "CPA's" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that ***the*** [~~such~~] firm is composed of certified public accountants, unless ***the*** [~~such~~] firm is registered as a firm of certified public accountants under this chapter, holds a permit issued under this chapter which has not been revoked or suspended, and all offices of ***the*** [~~such~~] firm in this state for the practice of public accounting are maintained and registered as required under this chapter.

(3) No individual shall assume or use the title or designation "public accountant" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that ***the individual*** [~~such person~~] is a public accountant, unless ***the individual*** [~~such person~~] is registered as a public accountant under this chapter and holds a permit issued under this chapter which has not been revoked or suspended, and all offices of ***the individual*** [~~such person~~] in this state for the practice of public accounting are maintained and registered as required under this chapter, or unless ***the individual*** [~~such person~~] has received a certificate as a certified public accountant under this chapter and holds a permit issued under this chapter which has not been revoked or suspended, and all offices of ***the individual*** [~~such person~~] in this state for the practice of public accounting are maintained and registered as required under this chapter.

(4) No firm shall assume or use the title or designation "public accountants" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that ***the*** [~~such~~] firm is composed of public accountants, unless ***the*** [~~such~~] firm is registered as a firm of public accountants under this chapter or as a firm of certified public accountants under this chapter and holds a permit issued under this chapter which has not been revoked or suspended, and all offices of ***the*** [~~such~~] firm in this state for the practice of public accounting are maintained and registered as required under this chapter.

(5) No individuals or firm shall assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," "accredited auditor," "accounting practitioner," "accredited accountant," "expert accountant," "expert auditor," "certified auditor," or any other title or designation likely to be confused with "certified public accountant" and "public accountant" or any of the abbreviations "CA," "AP," "PA," [~~"EA,"~~] "RA," "LA," or "AA" or similar abbreviations likely to be confused with "CPA."

(6) No person or firm shall sign or affix his name or a firm name to any document or prepare or issue any document which indicates the person or firm performed the attest function in the preparation of the documents or that includes any language which indicates that he or the firm has expert knowledge in the use of the attest function, unless the person or firm holds a permit to practice under this chapter. This prohibition shall be applicable to issuance by a person or firm not holding a valid permit of a report using any form of language conventionally used by licensees with respect to a compilation of financial statements. The provisions of this subsection shall not prohibit any officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of the organization with any wording designating the position, title, or office which he holds in the organization, nor shall

the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties.

(7) No person shall assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a firm, or in conjunction with the designation "and Company" or "and Associates" or a similar designation if[~~, in any such case,~~] there is in fact no bona fide firm registered under this chapter.

(8) No ***firm*** [~~corporation~~] performing functions permitted by this chapter shall use designations [~~such as~~] "and Company" or "and Associates" or a similar designation, if [~~in any such case,~~] there is in fact only one (1) ***licensee with an ownership interest*** [~~shareholder~~].

(9) No person or firm holding a permit under this chapter shall engage in the practice of public accountancy using a professional or firm name or designation which is misleading as to the legal form of the firm, or as to the persons who are partners, officers, [~~or~~] shareholders***, or any other owners*** of the firm, or as to any other matters ***but*** [~~, provided, that~~] names of one (1) or more deceased***,*** [~~or~~] retired***, or withdrawn*** partners***,*** [~~or~~] shareholders***, or any other owners*** may be included in the name of a firm or its successor.

Section 11. The following KRS sections are repealed:

325.300 Partnership or corporation of certified public accountants -- Registration.
325.321 Sole proprietorship -- Registration -- Firm permit -- Application.
325.390 Employment by registered accountants -- Temporary permits.
325.420 Ownership of accountant's working papers.

The Committee Substitute to **HB 546** is as follows:

HB 546, AN ACT relating to certified public accountants.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 325 IS CREATED TO READ AS FOLLOWS:

(1) All firms engaged in the practice of public accountancy in this Commonwealth shall meet the following requirements:

(a) The sole purpose and business of the firm shall be to practice public accountancy;

(b) The name of the firm shall include the name of at least one (1) current or former certified public accountant who holds or has held an ownership interest in the firm. The firm may use the words "certified public accountants" or the abbreviation "CPA's" in connection with its name;

(c) All partners, shareholders, or other persons holding an ownership interest in the firm and all certified public accountant employees of the firm who regularly practice in this Commonwealth shall be certified public accountants with current permits to practice issued by the board;

(d) At least one (1) partner, shareholder, or other person holding an ownership interest in the firm shall be a certified public accountant with a current permit to practice issued by the board; and

(e) The firm shall comply with the provisions of this chapter, the administrative regulations promulgated by the board, and all other laws of this Commonwealth applicable to the firm's particular form of business organization.

(2) Before a firm may practice in this Commonwealth, it shall:

(a) Submit an initial application to the board for a firm permit to practice in this Commonwealth. This application shall be made upon forms approved by the board and signed by the firm manager, who shall also be the certified public accountant in charge of the administrative matters of the firm. The application for a firm permit to practice shall include the name of the firm manager, the name of each certified public accountant with an ownership interest in the firm, the name of each certified public accountant employee of the firm, the location of each office, and any other information as the board, by duly promulgated administrative regulation, may require; and

(b) With the exception of a sole proprietorship, pay a fee not to exceed two hundred dollars ($200) set by an administrative regulation promulgated by the board.

(3) The firm permit to practice shall be renewed every two (2) years by the firm. The application for renewal shall be submitted by the manager of the firm on forms promulgated by the board by administrative regulation. The renewal fee, not to exceed two hundred dollars ($200), shall be established by administrative regulation promulgated by the board.

(4) The firm permit to practice shall be effective for a two (2) year period following the date of its issuance and shall expire on the first day of July in the year of expiration.

(5) The manager of the firm shall notify the board, on a form promulgated by the board by administrative regulation, of

any change in its registration information within thirty (30) days. Any change in the ownership of a firm that results in a change in the name of the firm shall require the filing of an initial application.

(6) All firms that perform audits, reviews, or compilations shall undergo a quality enhancement review as determined by administrative regulations promulgated by the board.

(7) Firms that perform audits shall complete an approved quality review program with standards that are equivalent to or better than the quality review program administered by the American Institute of Certified Public Accountants as determined by administrative regulations promulgated by the board.

(8) Nothing contained in this chapter shall require a certified public accountant or firm of certified public accountants licensed by another state or foreign country to obtain a permit to practice in this Commonwealth if the certified public accountant or firm of certified public accountants enter this Commonwealth solely to:

  (a) Conduct a quality review of a firm; or

  (b) Perform attestation work, incidental to an engagement which was initiated with a client located outside of the Commonwealth and has extended into the Commonwealth due to common ownership or existence of a subsidiary, assets, or other operations located within the Commonwealth.

Section 2. KRS 325.220 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the State Board of Accountancy;

(2) "State" includes and means any state, territory, or insular possession of the United States, or the District of Columbia;

(3) "Public accountant" means a public accountant issued a permit to practice by the Commonwealth of Kentucky under the Public Accounting Act of 1946 as amended;

(4) "Attest," "attesting," or "attestation," when used with reference to financial information or the practice of public accountancy, means to issue, or the issuance of, opinions, reports, or other forms of language which state or imply assurance as to the reliability of any:

  (a) Financial information; or

  (b) Facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, administrative regulations, grants, loans, and appropriations, together with any wording accompanying or contained in the opinion or certificate, when such opinions, reports, or other forms of language are accompanied by or include any name, title, or wording that indicates that the person or firm issuing them is:

    1. An accountant or auditor;

    2. Has expert knowledge in accounting or auditing; or

    3. That his or the firm's work has been performed in accordance with the applicable professional standards for accounting or auditing services as established by the American Institute of Certified Public Accountants or other authorities, as recognized by the board by administrative regulation. The terms include forms of language which disclaim an opinion when the forms of language are conventionally understood to imply any assurance as to the reliability of the financial information referred to and expertise on the part of the person uttering the language; and any other form of language which is conventionally understood to imply such assurance and expertise; or which indicates certain procedures have been performed in accordance with applicable professional standards for accounting or auditing services as established by the American Institute of Certified Public Accountants or other authorities, as recognized by the board by administrative regulation;

(5) "Practice of or practicing public accountancy" means the offering to perform or the performance ***for a client or potential client by a person or firm holding himself or itself out to the public as a licensee of*** [~~by a licensee under this chapter, for a client or potential client, or~~] one (1) or more types of services involving the use of accounting or auditing skills, ***including the issuance of reports on financial statements,*** or one (1) or more types of management ***advisory***, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. This definition shall not prohibit anyone who is not a certified public accountant from performing accounting services, such as the preparation of tax returns or financial statements, for which attestation by the preparer is not required;

(6) "Firm" means a sole proprietorship, partnership, professional service corporation, or ***any other form of business organization*** [~~association~~] engaged ***solely*** in the practice of public accountancy ***that is not otherwise prohibited from operating by the laws of this Commonwealth and which complies with the provisions of this chapter***;

(7) "Certificate" means a certificate as a "certified public accountant" issued pursuant to this chapter or corresponding provisions of prior law;

(8) "Licensee" means a certified public accountant, firm, or public accountant, holding a permit to practice public accounting issued under this chapter;

(9) "Quality enhancement review" means a study, appraisal, or review by the board of one (1) or more aspects of the professional work of a person or firm in the practice of public accountancy;

(10) "Quality review" means a study, appraisal, or review of one (1) or more aspects of the professional work of a person or firm in the practice of public accountancy and may include a quality assurance or peer review, or any internal review or inspection that is required by professional standards relating to quality control policies and procedures. The term shall not include a positive enforcement program of a state accountancy board; and

(11) "Review committee" means any person or persons carrying out, administering, or overseeing a quality review program.

Section 3. KRS 325.230 is amended to read as follows:

(1) There is hereby created a State Board of Accountancy.~~[,]~~ The board shall consist of seven (7) members, appointed by the Governor. ***Six (6) of the members shall be certified public accountants. One (1) of the members shall be a citizen-at-large who is not a certified public accountant. Members serving on the board as of the effective date of this Act shall retain their appointments until their terms expire.*** Whenever an appointment is to be made the Kentucky Society of Certified Public Accountants shall submit to the Governor the names of three (3) persons for each vacancy to be filled. All persons recommended shall be qualified for membership on the board, and the Governor shall appoint one (1) of the three (3) recommended. Members of the board shall be citizens of the United States and residents of this state ***and the certified public accountant members shall*** ~~[who]~~ hold permits to practice issued under the provisions of this chapter. Of the new members appointed to the board, as provided by this section, one (1) member shall be appointed for a term of one (1) year and one (1) member shall be appointed for a term of four (4) years from June 19, 1976. Succeeding appointments to the board shall be for a term of four (4) years. Vacancies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of his term of office***,*** a member shall continue to serve until his successor shall have been appointed and shall have qualified. The Governor shall remove from the board any member whose permit to practice is not renewed or which has become void, revoked or suspended, and may, after hearing, remove any member of the board for neglect of duty or other just cause.

(2) Each member of the board shall be paid one hundred dollars ($100) for each day spent in the discharge of his official duties and shall be reimbursed for his actual and necessary expenses therein incurred.

Section 4. KRS 325.261 is amended to read as follows:

(1) The certificate of "certified public accountant" shall be granted by the board to any person who satisfies the following requirements:

  (a) Is no less than eighteen (18) years of age;

  (b) Is of good moral character;

  (c) Meets the following educational credentials prior to applying for the examination:

    1. Has a baccalaureate degree or master's degree conferred by a college or university recognized by the board with a major or concentration program in accounting or its equivalent, as defined by the board by administrative regulation; or

    2. Beginning in the year 2000 with a new examination applicant approved to sit for the first examination of the year or subsequent examination, has completed one hundred and fifty (150) college semester hours which include a baccalaureate degree conferred by a college or university recognized by the board with a major or concentration program in accounting or its equivalent, as defined by the board by administrative regulation;

  (d) Has ***one (1) year*** ~~[two (2) years]~~ of public accounting experience ***obtained while employed by a public accounting firm and under the supervision of a certified public accountant who held a certificate, license, or permit to practice public accountancy from any state as determined by administrative regulations promulgated by the board*** ~~[of a quality satisfactory to the board, as defined by administrative regulation, which includes having participated in the examination of financial statements for third-party reliance in the employ of a certified public accountant of any state or other comparable experience or employment which the board deems equivalent. This requirement shall be reduced to one (1) year for a person who holds a master's degree in accounting or business administration or a master's degree of their equivalent as approved by the board]~~;

  (e) Passes a board-approved written examination in accounting, auditing, and other related subjects as the board deems appropriate. To be eligible to apply for the examination, a person shall first satisfy requirements of subsection (1)(a), (b), and (c) of this section; ***and***

  (f) Submits an application for a certificate as a certified public accountant on a form prescribed by the board and accompanied by a fee not to exceed one hundred dollars ($100).

(2) The experience requirement of subsection (1)(d) of this section may alternatively be satisfied ***by having obtained two (2) years of experience while under the supervision of a certified public accountant who held a certificate, license, or permit to practice public accountancy from any state in any of the following ways as determined by administrative regulations promulgated by the board*** ~~[in the following matter]~~:

  (a) ***Private enterprise, a governmental agency, or an institution of higher education in an accounting or auditing position which required the performance of any auditing, accounting, or tax services; or*** ~~[Four (4) years' experience as a field audit agent in the Internal Revenue Service, of which two (2) years is at the journeyman~~

~~level, presently GS 11 or its future equivalent, in auditing financial statements and supporting materials of three (3) or more distinct lines of commercial or industrial businesses to determine the reliability and fairness of the financial reporting and compliance with generally accepted accounting principles and applicable laws and administrative regulations. The board shall determine the qualification of experience under this section~~].

(b) ***Teaching of accounting in an institution of higher education that grants a degree which qualifies a person to sit for the Uniform Certified Public Accountants Examination under this chapter*** [~~Two (2) years' experience in the employment of any agency of state government as an auditor or accountant, if the experience was obtained under the supervision of a certified public accountant and includes application of the attest function through participation in the examination of financial statements for third party reliance using standards adopted by the American Institute of Certified Public Accountants or other authorities recognized by the board by administrative regulation. This requirement shall be reduced to one (1) year for individuals holding a master's degree in accounting or business administration referred to in subsection (1)(c) of this section. The board shall determine the qualifications under this section~~].

Section 5. KRS 325.280 is amended to read as follows:

(1) The board may issue a certificate and permit ***to practice by reciprocity*** [~~as a "certified public accountant," without examination~~], if the applicant ***submits an application for a certificate and permit to practice public accountancy, upon forms approved by the board, that includes all required fees, in the amounts as determined by administrative regulation promulgated by the board, and meets the following requirements***:

(a) ***The applicant received a grade on the Uniform Certified Public Accountants Examination in another state that was equivalent to a passing grade at the time in this Commonwealth;***

(b) The applicant holds a valid certificate, active permit, and is in good standing as a certified public accountant, issued under the laws of any other state [~~or holds a certificate, license, or degree in good standing from a foreign country constituting a recognized qualification for the practice of public accounting in that country, comparable to that of a certified public accountant of this Commonwealth~~]; and

(c) 1.[~~(b)~~] ***The applicant*** meets all current ***experience*** requirements in this Commonwealth at the time application is made***;***[~~, or is currently licensed by another jurisdiction for the five (5) years immediately preceding the application and meets the current experience requirement in this Commonwealth,~~] or

2. At the time of issuance of the applicant's certificate and permit to practice in the other state, the applicant met all experience requirements then in effect in this Commonwealth; or

3. Within the ten (10) years immediately preceding the application had four (4) years of [~~acceptable~~] experience in the practice of public accountancy [~~after passing the examination~~] acceptable to the board upon which the certificate was based.

(2) The board may issue a certificate and permit to practice public accountancy without examination to an applicant who holds a valid certificate to engage in the practice of public accountancy in good standings from a foreign country if:

(a) The applicant's foreign country makes similar provisions to allow a person who holds a valid certificate to practice public accountancy issued by this Commonwealth to obtain that foreign country's comparable designation;

(b) The authority of the foreign country that issued the designation regulates the practice of public accountancy including the issuance of reports upon financial statements;

(c) The foreign designation was granted upon education and examination requirements which were established by the foreign authority or law and were substantially equivalent to those in effect in this Commonwealth at the time the foreign designation was granted;

(d) The applicant satisfies the applicable experience requirement contained in paragraph (c) of subsection (1) of this section;

(e) The applicant has successfully passed a uniform qualifying examination on United States national standards and an examination on the law and administrative regulations of the board; and

(f) The applicant submits an application for a certificate and permit to practice public accountancy, upon forms approved by the board, that includes all required fees, in the amounts as determined by administrative regulation promulgated by the board.

Section 6. KRS 325.290 is amended to read as follows:

(1) Only an individual who has received a certificate and a current permit to practice shall be styled and known as a "certified public accountant". A certified public accountant may also use the abbreviation "CPA" or "public accountant."

(2) The achievement of the requirements necessary to be awarded a certificate shall not allow the use of the titles "certified public accountant" or "CPA," unless a permit to practice has been issued and is current. Permit holders granted a waiver from continuing professional education ***based on retirement*** may use "certified public accountant," "public accountant,"

or "CPA," but shall not practice public accounting.

Section 7. KRS 325.340 is amended to read as follows:

(1) After notice and hearing as provided in this chapter, the board may revoke or suspend any certificate of a certified public accountant issued under this chapter or any registration of a public accountant granted under this chapter, or may revoke, suspend, or refuse to issue or renew any permit issued under this chapter, or may censure the holder of any such permit, place any licensee on probation, all with or without terms, for any one (1) or any combination of the following causes:

(a) Fraud or deceit in obtaining a certificate as certified public accountant, or in obtaining registration under this chapter, or in obtaining a permit to practice public accounting under this chapter;

(b) Dishonesty, fraud, or negligence in the practice of public accounting, including fiscal dishonesty or an intentional breach of fiduciary responsibility of any kind, and also including but not limited to, the following:

1. Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information; and

2. Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses;

(c) Violation of any of the provisions of this chapter or administrative regulations promulgated by the board under this chapter or violation of any order of the board;

(d) Violation of a rule of professional conduct promulgated by the board;

(e) ***Pleading no contest, entering an Alford plea, suspending the imposition of a criminal penalty, or the*** conviction of a felony or [~~of~~] any crime an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(f) Cancellation, revocation, suspension, or refusal to renew the authority to practice as a certified public accountant or a public accountant in any state;

(g) Suspension or revocation of the right to practice before any state or federal agency; [~~or~~]

(h) Conduct discreditable to the accounting profession***; or***

(i) Failure to respond to a board inquiry regarding any licensing or complaint matter.

(2) ***The board may issue an order to a certificate holder to show cause why his certificate shall not be revoked for failure to renew his permit to practice. The order shall be sent to the certificate holder by certified mail, return receipt requested, to the mailing address given to the board by the certificate holder. If he fails to request a hearing on the order within twenty (20) days from the date of the order being mailed, the board may without a hearing, revoke the certificate. If a hearing is timely requested, it shall be conducted pursuant to Section 9 of this Act.***

(3) In any proceeding in which a remedy provided by subsection (1) of this section is imposed, the board may also require the respondent licensee to pay the costs of the proceeding.

Section 8. KRS 325.350 is amended to read as follows:

(1) After notice and hearing as provided in KRS 325.360 the board shall revoke the registration and permit to practice of a firm if at any time it does not have all the qualifications prescribed by this chapter under which it qualified for registration.

(2) After notice and hearing as provided in KRS 325.360 the board may revoke or suspend the registration or may revoke, suspend, or refuse to renew the permit to practice of a firm or may censure the holder of any such permit for any of the causes enumerated in KRS 325.340, and for the following additional causes:

(a) The revocation or suspension of the certificate or registration or the revocation or suspension or refusal to renew the permit to practice of any partner or shareholder***, or any other person with an ownership interest***; or

(b) The cancellation, revocation, suspension or refusal to renew the authority of the firm or any partner or shareholder***, or any other person with an ownership interest*** thereof to practice public accounting in any other state.

Section 9. KRS 325.360 is amended to read as follows:

(1) The board may conduct investigations of suspected violations of this chapter or the administrative regulations promulgated by the board to determine whether there is probable cause to institute proceedings against any person or firm for ***any*** [~~such~~] violation under this chapter; but an investigation under this section shall not be a prerequisite to [~~such~~] proceedings. In aid of such investigations, the board or its designee may issue subpoenas to compel witnesses to testify and to produce evidence. ***Subpoenas may be served in person or by certified mail, return receipt requested.***

(2) The board may designate a member, or any other person of appropriate competence, to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer shall [~~file a~~] report ***to*** [~~with~~] the board. The board shall ***then*** find probable cause or lack of probable cause [~~upon the basis of the report~~], or ***it*** shall ***request that*** [~~return the report to~~] the investigating officer ***investigate*** [~~for~~] further [~~investigation~~]. Until there has been a determination of probable cause, the ***findings*** [~~report~~] of the investigating officer, the testimony and documents gathered

in the investigation, and the fact of pendency of the investigation shall be treated as confidential information and shall not be disclosed to any person except law enforcement authorities and, to the extent deemed necessary in order to conduct the investigation, the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned in the course of the investigation.

(3) Upon ***a*** finding of probable cause, if the subject of the investigation is a licensee, the board shall direct that a complaint be issued pursuant to this section; and if the subject of the investigation is not a licensee, the board shall take appropriate action pursuant to this chapter. Upon a finding of ***a lack of*** [~~no~~] probable cause, the board shall close the matter.

(4) In any case where probable cause has been determined pursuant to this section with respect to a violation by a licensee, or where the board has received a written complaint by any person furnishing grounds for a determination of [~~such~~] probable cause ***about a violation*** or where the board has received notice of a decision by the board of accountancy of another state furnishing [~~such~~] grounds, the board shall issue a complaint setting forth appropriate charges and set a date for ***a*** hearing [~~before the board on such charges~~]. The board shall, not less than thirty (30) days prior to the date of the hearing, serve a copy of the complaint and notice of the time and place of the hearing upon the licensee, at the mailing address indicated to the board by the licensee, either by personal delivery or mailing a copy by certified mail, return receipt requested, to the licensee.

(5) A licensee against whom a complaint has been issued under this section shall have the right, reasonably in advance of the hearing, to examine and copy the report of investigation, if any, and any documentary or testimonial evidence and summaries of anticipated evidence, in the board's possession relating to the subject matter of the complaint.

(6) ***A licensee*** [~~If~~], after having been served with the notice of hearing ***and complaint*** as provided for ***in subsection (4) of this section*** [~~herein~~], ***shall file a written response within twenty (20) days from the date he was served. If*** the respondent ***licensee*** fails to ***file a timely response or fails to*** appear at ***the*** [~~said~~] hearing, the board may hear evidence against him and may enter ***an*** [~~such~~] order as shall be justified by the evidence***. The*** [~~, which~~] order shall be final [~~unless he petitions for a review. Within thirty (30) days from the date of any order, upon a showing of good cause for failing to appear, the board may reopen said proceedings and may permit the respondent to submit evidence in his behalf~~].

(7) In a hearing under this section, the respondent licensee may appear in person or, in the case of a firm, through a partner, [~~officer, director,~~] or shareholder ***or other person with an ownership interest*** and by counsel, examine witnesses and evidence presented in support of the complaint, and present evidence and witnesses on his own behalf. The licensee shall be entitled, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses and the production of documentary evidence.

(8) The evidence supporting the complaint shall be presented by the investigating officer, by a board member designated for that purpose, or by counsel. A board member who presents the evidence, or who has conducted the investigation of the matter under this section, shall not participate in the board's decision of the matter.

(9) The board, or its designee, may issue subpoenas to compel the attendance of witnesses and the production of documents, and may administer oaths, take testimony, hear proof, and receive exhibits in evidence in connection with or at the hearing under this chapter. ***Subpoenas may be served in person or by certified mail, return receipt requested.*** In case of disobedience to a subpoena, the board may invoke the aid of the Franklin Circuit Court. Any order or subpoena of ***that*** [~~such~~] court requiring the attendance and testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in this state.

(10) The board shall not be bound by technical rules of evidence.

(11) A [~~stenographic~~] record of the hearing shall be kept [~~and a transcript thereof filed with the board~~].

(12) ***Hearings may be conducted in accordance with the administrative regulations promulgated by the board. Hearings may also be conducted by the board with the assistance of an independent hearing officer appointed by the board. The proceedings that govern these hearings shall be determined by administrative regulations promulgated by the board*** [~~At all hearings the Attorney General of this Commonwealth, or one (1) of his assistants designated by him, or such other legal counsel as may be employed shall appear and represent the board. Said counsel shall not be the same counsel who presents or assists in presenting the evidence supporting the complaint pursuant to subsection (8) of this section~~].

(13) In a hearing under this section ***before the board or in acting upon the recommendations of a hearing officer,*** a vote of a majority of all members of the board then in office, other than a member disqualified by reason of subsection (8) of this section, shall be required to sustain any charge and to impose any penalty with respect thereto.

(14) Any person adversely affected by any order of the board may obtain a review thereof by filing a written petition for review with the Franklin Circuit Court within thirty (30) days after the entry of ***the*** [~~said~~] order. The petition shall state the grounds upon which the review is asked and shall pray that the order of the board be modified or set aside in whole or in part. A copy of ***the*** [~~such~~] petition shall be served upon the executive director of the board, and the petitioner shall be responsible for certifying and filing in the court a transcript of the record upon which the order complained of was entered. No new or additional evidence shall be introduced in the Franklin Circuit Court except as to fraud or misconduct affecting the outcome of the case, but the court shall otherwise hear the case upon the record as attested by the executive director of the accountancy board, and shall in all respects dispose of the appeal in a summary manner. Its review shall

be limited to determining whether or not:

(a) The board acted without or in excess of its power;

(b) The order appealed from was procured by fraud or misconduct;

(c) Substantial evidence supports the order appealed from; ***and***

(d) The board's decision is supported by the law.

The court may affirm, modify, or set aside the board's order in whole or in part, or may remand the case to the board for further evidence, and may in its discretion, stay the effect of the board's order pending its determination of the case.

(15) On rendering a decision to revoke, suspend, refuse to renew, or censure the holder of a certificate or a permit to practice issued under this chapter, the board shall examine its records to determine whether the respondent holds a certificate, a registration, or a permit to practice in any other state. If the board determines that the respondent holds a certificate, a registration, or a permit to practice in any other state, the board shall notify the board of accountancy of ***the*** [~~such~~] other state of its decision by mail within thirty (30) days of rendering ***the*** [~~such~~] decision.

(16) The board may exchange information relating to proceedings resulting in disciplinary action against licensees with the boards of accountancy of other states and with other public authorities or private organizations having an interest in such information.

Section 10. KRS 325.380 is amended to read as follows:

(1) No person shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that ***the*** [~~such~~] person is a certified public accountant, unless ***the*** [~~such~~] person has received a certificate as a certified public accountant under this chapter and holds a permit issued under this chapter which has not been revoked or suspended, and all offices of ***the*** [~~such~~] person in this Commonwealth for the practice of public accounting are maintained and registered as required under this chapter.

(2) No firm shall assume or use the title or designation "certified public accountants" or the abbreviation "CPA's" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that ***the*** [~~such~~] firm is composed of certified public accountants, unless ***the*** [~~such~~] firm is registered as a firm of certified public accountants under this chapter, holds a permit issued under this chapter which has not been revoked or suspended, and all offices of ***the*** [~~such~~] firm in this state for the practice of public accounting are maintained and registered as required under this chapter.

(3) No individual shall assume or use the title or designation "public accountant" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that ***the individual*** [~~such person~~] is a public accountant, unless ***the individual*** [~~such person~~] is registered as a public accountant under this chapter and holds a permit issued under this chapter which has not been revoked or suspended, and all offices of ***the individual*** [~~such person~~] in this state for the practice of public accounting are maintained and registered as required under this chapter, or unless ***the individual*** [~~such person~~] has received a certificate as a certified public accountant under this chapter and holds a permit issued under this chapter which has not been revoked or suspended, and all offices of ***the individual*** [~~such person~~] in this state for the practice of public accounting are maintained and registered as required under this chapter.

(4) No firm shall assume or use the title or designation "public accountants" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that ***the*** [~~such~~] firm is composed of public accountants, unless ***the*** [~~such~~] firm is registered as a firm of public accountants under this chapter or as a firm of certified public accountants under this chapter and holds a permit issued under this chapter which has not been revoked or suspended, and all offices of ***the*** [~~such~~] firm in this state for the practice of public accounting are maintained and registered as required under this chapter.

(5) No individuals or firm shall assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," "accredited auditor," "accounting practitioner," "accredited accountant," "expert accountant," "expert auditor," "certified auditor," or any other title or designation likely to be confused with "certified public accountant" and "public accountant" or any of the abbreviations "CA," "AP," "PA," [~~"EA,"~~] "RA," "LA," or "AA" or similar abbreviations likely to be confused with "CPA."

(6) No person or firm shall sign or affix his name or a firm name to any document or prepare or issue any document which indicates the person or firm performed the attest function in the preparation of the documents or that includes any language which indicates that he or the firm has expert knowledge in the use of the attest function, unless the person or firm holds a permit to practice under this chapter. This prohibition shall be applicable to issuance by a person or firm not holding a valid permit of a report using any form of language conventionally used by licensees with respect to a compilation of financial statements. The provisions of this subsection shall not prohibit any officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of the organization with any wording designating the position, title, or office which he holds in the organization, nor shall the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties.

(7) No person shall assume or use the title or designation "certified public accountant" or "public accountant" in conjunction

with names indicating or implying that there is a firm, or in conjunction with the designation "and Company" or "and Associates" or a similar designation if[~~, in any such case,~~] there is in fact no bona fide firm registered under this chapter.

(8) No ***firm*** [~~corporation~~] performing functions permitted by this chapter shall use designations [~~such as~~] "and Company" or "and Associates" or a similar designation, if [~~in any such case,~~] there is in fact only one (1) ***licensee with an ownership interest*** [~~shareholder~~].

(9) No person or firm holding a permit under this chapter shall engage in the practice of public accountancy using a professional or firm name or designation which is misleading as to the legal form of the firm, or as to the persons who are partners, officers, [~~or~~] shareholders***, or any other owners*** of the firm, or as to any other matters ***but*** [~~; provided, that~~] names of one (1) or more deceased***,*** [~~or~~] retired***, or withdrawn*** partners***,*** [~~or~~] shareholders***, or any other owners*** may be included in the name of a firm or its successor.

Section 11. KRS 325.420 is amended to read as follows:

(1) Upon request and reasonable notice, the licensee shall furnish to his client or former client any accounting or other records belonging to the client that were provided to the licensee by or on behalf of the client.

(2) Upon request, reasonable notice, and payment for services previously provided, a licensee shall furnish to his client or former client a copy of a tax return, report, or other document, any of which was previously issued to or for the client or a copy of the licensee's working papers if the working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client. These working papers shall include, but are not limited to, adjusting, closing, combining, or consolidating journal entries and information normally contained in books of original entry and general ledgers.

(3) Except as provided in subsection (1) of this section or pursuant to an agreement entered into between a licensee and his client, all statements, records, schedules, working papers, and memoranda prepared by a licensee to or in the course of providing services to a client shall be the property of the licensee [~~All statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of professional service to clients by such certified public accountant or public accountant, except reports submitted by a certified public accountant or public accountant to a client, shall be and remain the property of such certified public accountant or public accountant, in the absence of an express agreement between the certified public accountant or public accountant and the client to the contrary~~].

Section 12. The following KRS sections are repealed:

325.300 Partnership or corporation of certified public accountants -- Registration.

325.321 Sole proprietorship -- Registration -- Firm permit -- Application.

325.390 Employment by registered accountants -- Temporary permits.

HB 569, AN ACT relating to small and farm wineries.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 243.155 is amended to read as follows:

(1) A small winery license shall authorize the licensee to perform the following functions, without having to obtain separate licenses, except that each off-premises retail site shall be separately licensed:

(a) Manufacture wines and bottle wines produced by that small winery in an amount not to exceed fifty thousand (50,000) gallons in one (1) year;

(b) Serve on the premises or at off-premise retail sites complimentary samples of wine produced by it in amounts not to exceed six (6) ounces per patron per day, if the small winery or off-premise retail site is located in wet territory;

(c) Sell by the package on premises or at off-premise retail sites, wine produced on the premises of the small winery at retail to consumers if all sales sites are located in wet territory; [~~and~~]

(d) Sell wine produced on the premises of the small winery to wholesale license holders and to retail package or retail drink license holders, if the wine has been offered for sale to wholesale license holders and the wine is sold at the wholesale price to the retail package or retail drink license holders***; and***

(e) Consume on the premises wine produced by the small winery and purchased by the package at the licensed premises.

(2) In accordance with regulations developed by the board the holder of a small winery license, upon affidavit filed with the board that grapes, grape juice, other fruits, other fruit juices, or honey produced in Kentucky are not obtainable, may apply for a permit to import such products. The burden of proof shall be upon the applicant to show that the grapes, grape juice, other fruits, other fruit juices, or honey are not available from any other source within the Commonwealth of Kentucky.

(3) If a licensed small winery is located in a dry territory KRS 242.230 to 242.430 shall apply.

(4) This section shall not exempt the holder of a small winery license from the provisions of KRS Chapters 241, 242, 243,

and 244, nor from the rules of the board as established by administrative regulations, nor from regulation by the board at all premises licensed by the small winery, except as expressly stated in this section.

Section 2. KRS 243.156 is amended to read as follows:

(1) A farm winery license shall authorize the licensee to perform the following functions, without having to obtain separate licenses:

(a) Manufacture wines and bottle wines at a winery located on a Kentucky farm with a producing vineyard, orchard, or similar growing area, in an amount not to exceed twenty-five thousand (25,000) gallons in one (1) year;

(b) Serve on the premises complimentary samples of wine produced by it in amounts not to exceed four (4) ounces per patron per day, if the farm winery is located in wet territory;

(c) Sell wine produced on the premises of the farm winery by the package at retail to consumers, if the farm winery is located in wet territory;

(d) Sell wine produced on the premises of the farm winery to wholesale liquor license holders ***and to retail package or retail drink license holders, if the wine has been offered for sale to wholesale license holders and the wine is sold at the wholesale price to the retail package or retail drink license holders***; ~~[and]~~

(e) Serve complimentary samples or sell wine produced on the premises of the farm winery at another farm winery or small winery sales site, if the other farm winery or small winery sales site is located in wet territory***; and***

(f) Consume on the premises wine produced by the farm winery and purchased by the package at the licensed premises.

(2) If a licensed farm winery is located in a dry territory, it may establish one (1) sales outlet in wet territory.

(3) All of the fresh fruits, fruit juices, or honey used to manufacture wine at a farm winery shall be grown or produced in the Commonwealth of Kentucky.

(4) If a licensed farm winery is located in a dry territory, KRS 242.230 to 242.430 shall apply.

(5) This section shall not exempt the holder of a farm winery license from the provisions of KRS Chapters 241, 242, 243, and 244, nor from the rules of the board as established by administrative regulations, except as expressly stated in this section.

Section 3. KRS 243.882 is amended to read as follows:

For the purposes of KRS 243.884 to 243.892:

(1) "Wholesale sale" or "sale at wholesale" means a sale made for the purpose of resale in the regular course of business of beer, wine, or distilled spirits, ***except as provided in subsection (2) of Section 4 of this Act***~~[but shall exclude sales between wholesalers, and between distributors]~~.

(2) A "wholesaler" is a person required to be or who is a licensee authorized to do business pursuant to KRS 243.160 and 243.170.

(3) A "distributor" is a person required to be or who is a licensee authorized to do business pursuant to KRS 243.180.

Section 4. KRS 243.884 is amended to read as follows:

(1) For the privilege of making "wholesale sales" or "sales at wholesale" of beer, wine, or distilled spirits, a tax is hereby imposed upon all wholesalers of wine and distilled spirits at the rate of nine percent (9%) and upon all distributors of beer at the rate of nine percent (9%) of the gross receipts of any such wholesaler or distributor derived from "sales at wholesale" or "wholesale sales" made within the Commonwealth ***except as provided in subsection (2) of this section***. ~~[Sales made between wholesalers or between distributors shall not be taxed under the provisions of KRS 243.884 to 243.892.]~~ Wholesalers of distilled spirits and wine and distributors of malt beverages shall pay and report the tax levied by this section on or before the 20th day of the calendar month next succeeding the month in which possession or title of the distilled spirits, wine or malt beverages is transferred from the wholesaler or distributor to retailers or consumers in this state, in accordance with rules and regulations of the Revenue Cabinet designed reasonably to protect the revenues of the Commonwealth.

(2) Gross receipts from sales at wholesale or wholesale sales shall not include the following sales:

(a) Sales made between wholesalers or between distributors;

(b) Sales made by a small winery or farm winery or wholesaler of wine produced by a small winery or farm winery, if the grapes, grape juice, other fruits, other fruit juices, or honey from which the wine is made are produced in Kentucky;

(c) Until June 30, 1999, sales from a small winery or wholesaler of wine produced by a small winery, if the grapes, grape juice, other fruits, other fruit juices, or honey from which the wine is made are not produced in Kentucky.

Calendar

HB 250, HB 330, HB 331, HB 377, HB 385, HB 399, and **HB 439** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Floor Amendments

Floor Amendment No. 5 to the Committee Substitute to **HB 187**, by Representative Maricle:

On page 1, by deleting lines 24 and 25 in their entirety and inserting in lieu thereof "***establish an alternative primary program. An alternative program shall include developmentally appropriate educational practices and continuous student progress as critical attributes. The school council shall notify its superintendent of the decision to implement an alternative program and shall revise the action plan for program implementation to reflect the program's design. Students attending an alternative primary program shall meet the State Board for Elementary and Secondary Education's criteria for successful completion of the primary school program for promotion to the fourth grade as required in KRS 158.030.***"; and

On page 2, by deleting lines 1 through 3 in their entirety.

Orders of the Day

Representative Stumbo moved that the rules be suspended to introduce guests. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 177**, by Representative Sanders:

On page 1, by deleting lines 8 to 11 in their entirety and inserting in lieu thereof:

"***(2) In the event a policy insuring against a property loss is issued on any basis other than for a fixed stated amount payable for a total loss covered under the policy, the declaration page on the policy shall indicate that the insurer's limit of liability shall be:***

(a) The actual replacement cost of the structure at the time of loss; or

(b) The market value at the time of loss.".

Orders of the Day (Continued)

HB 115, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Damron moved the adoption of the Committee Substitute to **HB 115**. Agreed.

Representative Damron moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 115**. Agreed.

Representative Damron moved the adoption of Floor Amendment No. 5 to the Committee Substitute to **HB 115**. Agreed.

Representative Damron moved that **HB 115**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 91, Nays 1. (See February 22, 1994 roll call on **HB 115** - Appendix)

HB 115, by way of Committee Substitute as amended, was passed and the title agreed to.

Representative Damron moved that the vote by which **HB 115**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 2 to **HB 355**, by Representative Morris:

One page 1, line 22, by deleting "***one***" and by removing the brackets and strike-throughs from "[~~three~~]" and by deleting "***fifty***" and by deleting "***($150,000)***" and by removing the brackets and strike-throughs from "[~~($300,000)~~]"; and

On page 1, line 23, after "and" by inserting "***the threshold qualifying amount shall be increased by increments of one hundred thousand dollars ($100,000) until***"; and

On page 1, line 24, after "election" by inserting "***of***" and by placing brackets around and striking through "shall be"; and

On page 2, line 1, after "election" by inserting "***is met***"; and

On page 4, line 10, after "***election,***" by inserting "***no qualifying slate of candidates shall be eligible to receive additional transfers from the fund in that election unless at least one (1) additional opposing slate of candidates has received and deposited funds in its campaign account equal to at least the amount for which the qualifying slate of candidates seeks to receive matching funds at a two (2) for one (1) matching ratio from the fund***" and by deleting "***qualifying slates may independently qualify***"; and

On page 4, by deleting all language on lines 11 and 12; and

On page 4, line 13, by deleting "***election***"; and

On page 4, line 23, by deleting "***one***" and by removing the brackets and strike-throughs from "[~~three~~]" and by deleting "***fifty***" and by deleting "***($150,000)***" and by removing the brackets and strike-throughs from "[~~($300,000)~~]" and after "[~~($300,000)~~]" by inserting "***, and amounts beyond the minimum threshold qualifying amount in increments of one hundred thousand dollars ($100,000),***".

Orders of the Day (Continued)

HB 293 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Collins moved that **HB 293** be passed.

On the roll call the vote was: Yeas 86, Nays 1. (See February 22 , 1994 roll call on **HB 293** - Appendix)

HB 293 was passed and the title agreed to.

Representative Collins moved that the vote by which **HB 293** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 452, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Farrow moved the adoption of Committee Amendment No. 1 to **HB 452**. Agreed.

Representative Farrow moved that **HB 452**, as amended, be passed.

On the roll call the vote was: Yeas 78, Nays 7. (See February 22, 1994 roll call on **HB 452** - Appendix)

HB 452, as amended, was passed and the title agreed to.

Representative Farrow moved that the vote by which **HB 452**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to the Committee Substitute to **HB 355**, by Representative Morris:

On page 1, line 22, after "and" by inserting "***the threshold qualifying amount shall be increased by increments of one hundred thousand dollars ($100,000) until***"; and

On page 1, line 23, after "election" by inserting "***of***" and by inserting an opening bracket "[" before "shall" and by striking through "shall"; and

On page 1, line 24, by striking through "be" and by placing a closing bracket "]" after "be"; and

On page 2, line 1, after "election" by inserting "***is met***"; and

On page 4, line 10, after "***election,***" by inserting "***no qualifying slate of candidates shall be eligible to receive additional transfers from the fund in that election unless at least one (1) additional opposing slate of candidates has received and deposited funds in its campaign account equal to at least the amount for which the qualifying slate of candidates seeks to receive matching funds at a two (2) for one (1) matching ratio from the fund***" and by deleting "***qualifying slates may independently qualify***"; and

On page 4, by deleting all language on lines 11 and 12; and

On page 4, line 13, by deleting "***election***"; and

On page 4, line 23, after "($300,000)" by inserting "***, and amounts beyond the minimum threshold qualifying amount in increments of one hundred thousand dollars ($100,000),***".

Orders of the Day (Continued)

HB 512 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Callahan moved that **HB 512** be passed.

On the roll call the vote was: Yeas 92, Nays 0. (See February 22 , 1994 roll call on **HB 512** - Appendix)

HB 512 was passed and the title agreed to.

Representative Callahan moved that the vote by which **HB 512** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 201 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bryant moved that **HB 201** be passed.

On the roll call the vote was: Yeas 89, Nays 0. (See February 22 , 1994 roll call on **HB 201** - Appendix)

HB 201 was passed and the title agreed to.

Representative Bryant moved that the vote by which **HB 201** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 401, with Committee Substitute and Committee Title Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative LeMaster moved the adoption of the Committee Substitute to **HB 401**. Agreed.

Representative LeMaster moved that **HB 401**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 90, Nays 1. (See February 22, 1994 roll call on **HB 401** - Appendix)

HB 401, by way of Committee Substitute, was passed.

Representative LeMaster moved the adoption of the Committee Title Amendment to the Committee Substitute to **HB 401**. Agreed; and the title was agreed to.

Representative LeMaster moved that the vote by which **HB 401**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 504 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bowling moved that **HB 504** be passed.

On the roll call the vote was: Yeas 92, Nays 0. (See February 22 , 1994 roll call on **HB 504** - Appendix)

HB 504 was passed and the title agreed to.

Representative Bowling moved that the vote by which **HB 504** was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 3 to **HB 256**, by Representative Riner:

On page 1, line 12, after the word "***educators.***" by adding the following

"***The evaluation shall also include an analysis of the reliability and validity of the changes in scores between baseline scores and scores from subsequent administrations of tests.***".

Floor Amendment No. 6 to the Committee Substitute to **HB 187**, by Representative Barrows:

On page 1, line 22 after "part-time" by inserting the following:

"***and will allow for grouping of students attending their first year of school when determined to be developmentally appropriate***".

Orders of the Day (Continued)

HCR 47 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bondurant moved that **HCR 47** be adopted.

On the roll call the vote was: Yeas 91, Nays 0. (See February 22 , 1994 roll call on **HCR 47** - Appendix)

HCR 47 was adopted.

Representative Bondurant moved that the vote by which **HCR 47** was adopted be reconsidered and said motion be placed on the table. Agreed.

HB 215, with Senate Committee Amendments attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Committee Amendment No. 1 to **HB 215** is as follows:

On page 1, line 5, by deleting "***or***" ;

And also on page 1, line 6, by inserting after "***cycles***" the following "***;or***";

And also on page 1, between lines 7 and 8, by adding the following paragraph

"***(c) Farm trucks registered for agricultural use only and having a gross weight of one (1) ton or more***"

The Senate Committee Amendment No. 2 to **HB 215** is as follows:

On page 7, line 5, after "***($25).***" by inserting "***Funds collected pursuant to this subsection shall be deposited in the spinal cord and health injury research trust fund, created pursuant to Section 6 of this Act, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in Section 5 of this Act.*** "

And on page 7, after line 18, by inserting the following new sections:

"Section 1. KRS 189.394 is amended to read as follows:

(1) The fines for speeding in violation of KRS 189.390 shall be:

Mph. Over Limit	Prima Facie or Maximum Speed 15	20	25	30	35	40	45	50	55	60	65	Fine
1	16	21	26	31	36	41	46	51	56	61	66	$1
2	17	22	27	32	37	42	47	52	57	62	67	2
3	18	23	28	33	38	43	48	53	58	63	68	3
4	19	24	29	34	39	44	49	54	59	64	69	4
5	20	25	30	35	40	45	50	55	60	65	70	5
6	21	26	31	36	41	46	51	56	61	66	71	16
7	22	27	32	37	42	47	52	57	62	67	72	17
8	23	28	33	38	43	48	53	58	63	68	73	18
9	24	29	34	39	44	49	54	59	64	69	74	19
10	25	30	35	40	45	50	55	60	65	70	75	20
11	26	31	36	41	46	51	56	61	66	71	76	22
12	27	32	37	42	47	52	57	62	67	72	77	24
13	28	33	38	43	48	53	58	63	68	73	78	26
14	29	34	39	44	49	54	59	64	69	74	79	28
15	30	35	40	45	50	55	60	65	70	75	80	30
16	31	36	41	46	51	56	61	66	71	76	81	32
17	32	37	42	47	52	57	62	67	72	77	82	34
18	33	38	43	48	53	58	63	68	73	78	83	36
19	34	39	44	49	54	59	64	69	74	79	84	38
20	35	40	45	50	55	60	65	70	75	80	85	40
21	36	41	46	51	56	61	66	71				43
22	37	42	47	52	57	62	67	72				46
23	38	43	48	53	58	63	68	73				49
24	39	44	49	54	59	64	69	74				52
25	40	45	50	55	60	65	70	75				55

(2) For speeding in excess of the speeds shown on the specific fine schedule, the fine shall be not less than sixty dollars ($60) nor more than one hundred dollars ($100).

(3) For any violation shown on the chart for which a specific fine is prescribed, the defendant may elect to pay the fine and court costs to the circuit clerk before the date of his trial or to be tried in the normal manner. Payment of the fine and

court costs to the clerk shall be considered as a plea of guilty for all purposes.

(4) If the offense charged shows a speed in excess of the speeds shown on the specific fine schedule the defendant shall appear for trial and may not pay the fine to the clerk before the trial date.

(5) Fifteen dollars ($15) shall be assessed for violations of KRS 189.390 involving ten (10) miles or more over the lawful speed limit, in addition to the penalties set forth in subsections (1) and (2) of this section. Funds collected pursuant to this subsection shall be deposited in the spinal cord and head injury research trust fund, created pursuant to Section 6 of this Act, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in Section 5 of this Act.

SECTION 2. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Spinal Cord and Head Injury Research Board is hereby created for the purpose of administering the spinal cord research trust fund created pursuant to Section 6 of this Act. The board shall be composed of seven (7) members appointed by the Governor as follows:

(a) Two (2) members representing the University of Kentucky College of Medicine;

(b) Two (2) members representing the University of Louisville School of Medicine;

(c) One (1) member who has a spinal cord or head injury or who has a family member with a spinal cord or head injury;

(d) One (1) member representing the Kentucky Medical Association; and

(e) One (1) at-large member.

(2) Board members shall be reimbursed for ordinary travel expenses, including meals and lodging, incurred in the performance of duties incident to the provisions of Sections 4 to 6 of this Act.

(3) The terms of board members shall be four (4) years, except that the terms of initial members shall be staggered to end as follows:

(a) Two (2) on June 30, 1995;

(b) Two (2) on June 30, 1996;

(c) Two (2) on June 30, 1997; and

(d) One (1) on June 30, 1998.

(4) At the end of a term, a member shall continue to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed and qualifies. A member who serves (2) consecutive full four (4) year terms shall not be reappointed for four (4) years after completion of those terms.

(5) A majority of the full authorized membership of the board shall constitute a quorum.

(6) The board shall elect, by a majority vote, a chairman who shall be the presiding officer of the board, preside at all meetings, and coordinate the functions and activities of the board. The chairman shall be elected or reelected for each calendar year. The board shall have such other organization as deemed necessary and approved by the board.

(7) Meetings of the board shall be held at least twice a year but may be held more frequently as deemed necessary, subject to call by the chairman or by request of a majority of the board members. Board meetings shall concern, among other things, policy matters relating to spinal cord and head injury research projects and programs, research progress reports, authorization of projects and financial plans, and other matters necessary to carry out the intent of Sections 4 to 6 of this Act.

(8) No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.

(9) The board shall be attached to the Cabinet for Human Resources for administrative purposes.

SECTION 3. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

The Kentucky Spinal Cord and Head Injury Research Board shall:

(1) Formulate policies and procedures necessary to carry out the provisions of Sections 4 to 6 of this Act;

(2) Promulgate administrative regulations necessary to carry out the provisions of Sections 4 to 6 of this Act and to ensure proper expenditure of state funds appropriated for the purposes of Sections 4 to 6 of this Act;

(3) Review and authorize spinal cord and head injury research projects and programs to be undertaken and financed under the provisions of Sections 4 to 6 of this Act;

(4) Review and approve all progress and final research reports on projects authorized under the provisions of Sections 4 to 6 of this Act;

(5) Ensure that state funds, appropriated for spinal cord and head injury research by Section 6 of this Act or any other act, are not diverted to any other use; and

(6) Provide the Governor, the General Assembly, and the Legislative Research Commission an annual report by January 30 of each year showing the status of funds appropriated under the provisions of Section 6 of this Act for spinal cord and head injury research and the progress of the board in terms of the results of its spinal cord and head injury research efforts.

SECTION 4. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) The revenues received from the additional penalties imposed by KRS 189.394(5) and the penalties imposed by KRS 189.990(25) shall be credited to the spinal cord and head injury research trust fund which is hereby created.

(2) Federal funds or other funds which may be made available to supplement or match state funds for spinal cord and head injury research programs provided for by Sections 4 to 6 of this Act shall be credited to the trust fund created in subsection (1) of this section.

(3) Funds deposited to the credit of the spinal cord and head injury research trust fund shall be used to finance the spinal cord and head injury research programs authorized under the provisions of Sections 4 to 6 of this Act and for the operation of the Kentucky Spinal Cord and Head Injury Research Board. Funds for research shall only be used for spinal cord and head injury research undertaken by the University of Kentucky or University of Louisville.

(4) Funds unexpended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year or biennium, but any surplus shall be included in the budget considered and approved by the board for the ensuing period."

The Senate Committee Amendment No. 3 to **HB 215** is as follows:

On page 7, after line 18, by inserting the following new section:

"SECTION 3. A NEW SECTION OF SUBTITLE 39 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Beginning one (1) year after the effective date of Section 1 of this Act and for one (1) year thereafter, the Commissioner of the Department of Insurance shall report to the Legislative Research Commission the total amount of payments made by insurers of motor vehicles for personal injuries incurred by their covered motorists as a result of an accident using a motor vehicle."

Representative Lewis moved that the House concur in Senate Committee Amendment No. 1 to **HB 215**. Agreed.

Representative Lewis moved that the House concur in Senate Committee Amendment No. 2 to **HB 215**.

On the roll call to concur in Senate Committee Amendment No. 2 to **HB 215** the vote was **Yeas 36**--Bowling, Burch, Butler, L. Clark, Clarke, Crenshaw, Curd, Donnermeyer, Fox, French, Geveden, Gray, Hampton, Harper, Hatcher, Heleringer, Lear, LeMaster, Lewis, Long, Lyne, Marzian, Mason, McElroy, Morris, Northup, Palumbo, Rapier, Richards, Riggs, Riner, Scorsone, Shacklette, Stumbo, Trapp, Wayne. **Nays 55**--Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Brown, Bryant, Buis, P. Clark, Collins, Cyrus, Damron, DeWeese, Farley, Farrow, Ford, Gedling, Gee, Graham, Hancock, Jensen, Johnson, Keith, Kerr, Lee, Lile, Lindsay, Little, Maggard, Maricle, Moberly, Mullinix, Napier, Nelson, Nesler, Noland, Nunn, Rasche, Ridley, Sanders, Scott, Simpson, B. Smith, Stacy, Stengel, Treesh, Turner, Walton, Worthington, Yates, Zimmerman.

The motion to concur in Senate Committee Amendment No. 2 to **HB 215** was rejected.

Representative Lewis moved that the House concur in Senate Committee Amendment No. 3 to **HB 215**. Agreed.

HB 51, with Senate Committee Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Committee Amendment No. 1 to **HB 51** is as follows:

On page 6, line 13 after "*regulation*", by inserting "*and who does not hold a valid and current credential as a speech-hearing specialist issued by the Department of Education*".

Representative Curd moved that the House concur in Senate Committee Amendment No. 1 to **HB 51**. Agreed.

Representative Curd moved that **HB 51**, as amended by the Senate, be passed.

On the roll call the vote was: Yeas 82, Nays 5. (See February 22, 1994 roll call on **HB 51** - Appendix)

HB 51, as amended by the Senate, was passed and the title agreed to.

HB 93, with Senate Committee Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Committee Amendment No. 1 to **HB 93** is as follows:

On page 1, following line 21, by inserting"
"SECTION 2. A NEW SECTION OF KRS 56.800 TO 56.823 IS CREATED TO READ AS FOLLOWS:
Section 1 of this Act shall expire July 13, 1998."

Representative Bowling moved that the House concur in Senate Committee Amendment No. 1 to **HB 93**. Agreed.

Representative Bowling moved that **HB 93**, as amended by the Senate, be passed.

On the roll call the vote was: Yeas 94, Nays 0. (See February 22, 1994 roll call on **HB 93** - Appendix)

HB 93, as amended by the Senate, was passed and the title agreed to.

HB 125, with Senate Committee Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Committee Amendment No. 1 to **HB 125** is as follows:

On page 1, line 17, after the "***KRS 159.051***" and before the period "." insert the following:
"***if the suspension has been lifted by the reinstatement of academic eligibility pursuant to KRS 159.051.***"

Representative Hancock moved that the House concur in Senate Committee Amendment No. 1 to **HB 125**. Agreed.

Representative Hancock moved that **HB 125**, as amended by the Senate, be passed.

On the roll call the vote was: Yeas 91, Nays 0. (See February 22, 1994 roll call on **HB 125** - Appendix)

HB 125, as amended by the Senate, was passed and the title agreed to.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Representative Stumbo moved that **HB 613** be reassigned to the Committee on Tourism Development and Energy. Agreed.

Representative Stumbo moved that the three day posting requirement be waived on **HB 613**. Agreed.

Representative Stumbo moved that the three day posting requirement be waived on **HB 250**. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 638, by Representative Scorsone: AN ACT relating to the Uniform Interstate Family Support Act.

HB 639, by Representative Curd: AN ACT relating to motor vehicle insurance.

HB 640, by Representative Kerr: AN ACT relating to the Legislative Research Commission.

HB 641, by Representative Treesh: AN ACT relating to carrying concealed deadly weapons.

HB 642, by Representative Geveden: AN ACT relating to motor vehicle repairs.

HB 643, by Representative Palumbo: AN ACT relating to medical child support enforcement.

HB 644, by Representative Maricle: AN ACT relating to campaign finance.

HB 645, by Representative McElroy: AN ACT relating to a penalty for violating the wild American ginseng program.

HB 646, by Representative Geveden: AN ACT relating to emergency medical services.

HB 647, by Representatives Long, Gedling, Lyne and Cyrus: AN ACT relating to county clerk fees.

HB 648, by Representatives Hancock and Little: AN ACT relating to highways.

HB 649, by Representatives Callahan and Simpson: AN ACT relating to electricians and electrical contractors.

HB 650, by Representative Moberly: AN ACT relating to chemical munitions facilities.

HB 651, by Representative Wayne: AN ACT relating to the closing of public ways.

HB 652, by Representative Hancock: AN ACT relating to rabies immunizations.

HB 653, by Representatives Marzian, Maggard, L. Clark, Shacklette, Bondurant and Stacy: AN ACT relating to the practice of nursing.

HB 654, by Representative Trapp: AN ACT relating to taxation.

HJR 50, by Representative Keith: A JOINT RESOLUTION directing the Transportation Cabinet to name the bridge over the South Fork of the Kentucky River at Oneida, Kentucky, the Melvin V. Arnett Bridge.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills and Resolutions have been posted for Committee consideration:

Labor and Industry: **HB 469, HB 425, HB 431, HB 536, HB 605**

Transportation: **HB 448, HB 558, SB 142, SB 146, SB 147**

State Government: **HCR 37, HR 45, HB 257, HB 258, HB 259, HB 260, HB 261, HB 262, HB 263, HB 274, HB 443, HB 489, HB 531, HB 573, SB 45, SB 70, SB 72, SB 73, SB 74, SB 75, SB 77**

Judiciary: **HB 601, HB 602, HB 607, HB 614, HB 537, HB 589, HB 480, HB 479, HB 236, HB 237, HB 412, HB 544**

Appropriations and Revenue: **HB 250, HB 145, HB 171, HB 340, HB 368, HB 458, HB 483**

Tourism Development and Energy: **HB 613, HB 523, HB 619**

The Clerk announced the following Bill has been withdrawn from Committee Consideration:

State Government: **HB 245**

Motions, Petitions and Communications (Continued)

Representative Stacy moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Stacy moved that his vote be changed from "nay" to "yea" on **HB 84**. Agreed.

Representative Stacy moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Stacy moved that he be recorded as voting "yea" on **HB 293**. Agreed.

Representative Collins moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Collins moved that his vote be changed from "yea" to "nay" on **HB 427**. Agreed.

Representative Gray moved that the rules be suspended to withdraw **HB 280**. Agreed.

The following members filed requests to have their names added as co-sponsors to Bills under rules previously suspended: **HB 115**, Representative Todd; **HB 187**, Representative Farrow; **HB 219**, Representative L. Clark; **HB 276**, Representative Lile; **HB 452, HB 586**, Representative Graham; **HB 513**, Representatives Gedling, Lyne, Mullinix; **HB 531**, Representative Mullinix; **HB 539**, Representatives Callahan, Scott; **HB 553**, Representative Simpson.

The following members filed requests to have their names withdrawn as co-sponsors of Bills: **HB 280**, Representatives Bowling, Scorsone.

Announcements

The Clerk announced the following meetings:

Cities, 9:00 a.m., February 23, 1994, Room 131

Committee on Rules, upon adjournment, Speaker's Office

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Wednesday, February 23, 1994.

On the roll call the vote was **Yeas 81**--Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bryant, Buis, Butler, Callahan, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Jensen, Johnson, Keith, Kerr, Lear, Lee, Lindsay, Lyne, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Richards, Riggs, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, Stacy, Stengel, Trapp, Treesh, Turner, Walton, Worthington, Yates, Zimmerman. **Nays 4**--Heleringer, LeMaster, Lile, Maggard.

The motion to adjourn was adopted.

WEDNESDAY, FEBRUARY 23, 1994

THIRTY-THIRD LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Dr. R. Gregory Brooks, Immanuel Baptist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representative Northup.

Representative McElroy moved that the absent member be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of February 22, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 43, SB 153, SB 186, SB 201** and **HB 359**.

Message received on **HB 347** and **HB 348**: The Senate has passed **HB 347** by way of Senate Committee Substitute and **HB 348** by way of Senate Committee Substitute and respectfully requests concurrence of this Honorable Body. (Time: 2:05 p.m.)

Introduction of Bills and Resolutions

HB 655, by Representative Collins: AN ACT relating to the defense of employees by state government.

HB 656, by Representative Johnson: AN ACT relating to detention facilities for juveniles.

HJR 51, by Representatives Bruce and Morris: A JOINT RESOLUTION directing the naming of the Edward T. Breathitt, Jr. Academic Building.

Floor Amendments

Floor Amendment No. 1 to **HB 360**, by Representative Ballard:

On page 3, line 9, by deleting "***; and***"; and

On page 3, lines 10 through 12, by deleting the underlined language, and inserting in lieu thereof the following:

"***(3) KRS 236.130 shall not apply to steam boilers on farm tractors or steam engines which are used only in parades or other public events and on which there shall be no passengers other than the operators.***"

Floor Amendment No. 2 to **SB 62**, by Representative Curd:

On page 80, line 2, by deleting the new language, and by moving the "[" before "~~for~~", to before "State" and striking through "State Board";

On page 80, line 3, after "Education", by adding "***Professional Standards Board***";

On page 80, line 9, by deleting the new language, and by moving the "[" before "~~for~~", to before "State" and striking through "State Board";

On page 80, line 10, after "Education", by adding "***Professional Standards Board***"

On page 80, line 20, by deleting new language, brackets, and strikethroughs.

On page 80, line 19, after "(b)", by adding "***The Education Professional Standards Board***" and by placing a "[" before "In" and a "]" after the word "officer", and striking through the intervening language.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Agriculture and Small Business: **HB 645**

Appropriations and Revenue: **HB 640, HB 647, HB 654**

Business Operations and Professions: **SB 174**

Cities: **HB 651**

Counties and Special Districts: **HB 649**

Economic Development: **HB 636**

Education: **SB 131**

Elections and Constitutional Amendments: **HB 644**

Health and Welfare: **HB 634, HB 643, HB 646, HB 652, HB 653**

Judiciary: **HB 637, HB 638, HB 641**

Labor and Industry: **HB 642**

Natural Resources and Environment: **HB 650**

State Government: **HB 635**

Transportation: **HB 639, HB 648**

Report of Committees

The Committee on Rules reported that **HB 225, HB 265, HB 266, SB 85, SB 106, HB 385** and **HB 399** have been posted for passage in the Orders of the Day for February 24, 1994.

The Committee on Rules reported that the following Bills have been recommitted:

Appropriations and Revenue: **HB 334, HB 492, HB 250, HB 330, HB 331, HB 377, HB 439**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bill has been posted for Committee consideration:

Elections and Constitutional Amendments: **HB 219**

Report of Committees (Continued)

The Committee on Cities reported **HB 478,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 478, AN ACT relating to elections for city officers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 83A.045 is amended to read as follows:

(1) Except as provided in KRS 83A.047, partisan elections of city officers shall be governed by the following provisions, regardless of the form of government or classification of the city:

(a) A candidate for party nomination to city office shall file his nomination papers with the county clerk of the county not less than one hundred nineteen (119) days before the day fixed by KRS Chapter 118 for holding a primary election. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which the papers are permitted to be filed.

(b) An independent candidate for nomination to city office shall not participate in a primary election, but shall file his nomination papers with the county clerk of the county not less than ninety-one (91) days before the day fixed by KRS Chapter 118 for holding a regular election. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which the papers are permitted to be filed.

(c) A candidate for city office who is defeated in a partisan primary election shall be ineligible as a candidate for the same office in the regular election. However, if a vacancy occurs in the party nomination for which he was an unsuccessful candidate in the primary election, his name may be placed on the voting machines for the regular election as a candidate of that party if he has been duly made the party nominee after the vacancy occurs, as provided in KRS 118.105.

(2) Except as provided in KRS 83A.047, nonpartisan elections of city officers shall be governed by KRS 83A.050, 83A.170, 83A.175, and the following provisions, regardless of the form of government or classification of the city:

(a) A candidate for city office shall file his nomination papers with the county clerk of the county not less than one hundred nineteen (119) days before the day fixed by KRS Chapter 118 for holding a primary election. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which the papers are permitted to be filed;

(b) Any city of the ***third*** ~~[fourth]~~ to sixth class may by ordinance provide that the nomination and election of candidates for city office in a nonpartisan election shall be conducted pursuant to the provisions of this subsection:

1. A city may forgo conducting a nonpartisan primary election for the nomination of candidates to city office, regardless of the number of candidates running for each office, and require all candidates to file their nomination papers with the county clerk of the county no less than ninety-one (91) days before the day fixed by KRS Chapter 118 for holding a regular election.

2. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which the papers are permitted to be filed.

3. If a city does not conduct a primary election pursuant to this subsection, the election of candidates to city office shall be governed by the provisions of this subsection, KRS 83A.175(2) to (6), and KRS Chapters 116 to 121.

4. In the absence of a primary pursuant to this subsection, the number of candidates equal to the number of city offices to be filled who receive the highest number of votes cast in the regular election for each city office shall be elected.

5. Candidates shall be subject to all other applicable election laws pursuant to this chapter and KRS Chapters 116 to 121.

6. If a vacancy occurs in a candidacy for city office in any city which has not held a primary pursuant to this subsection after the expiration of time for filing nomination papers due to the death, incapacity, or withdrawal of a candidate, or if there are fewer candidates than there are offices to be filled, the vacancy in candidacy shall be filled in the following manner:

a. If the vacancy in candidacy occurs less than ninety-one (91) days but more than thirty (30) days prior to the regular election, candidates shall file petitions of nomination to fill the vacancy with the county clerk not less than thirty (30) days prior to the regular election.

b. If the vacancy in candidacy occurs less than thirty (30) days prior to the regular election, candidates shall not file petitions of nomination to fill the vacancy with the county clerk, but shall seek election by write-in vote. If no person is elected to the office by write-in vote at the regular election, the vacancy in office shall be filled temporarily by appointment by the officer or body designated by law to fill the appointment.

(c) A candidate for city office who is defeated in a nonpartisan primary election shall be ineligible as a candidate for the same office in the regular election.

Section 2. KRS 83A.165 is amended to read as follows:

(1) A candidate running to fill the unexpired term of any city office shall file his nomination papers in accordance with the provisions of KRS 83A.045, 118.365, 118.375, and 83A.047.

(2) Vacancies in the office of mayor or city legislative body that are to be filled temporarily by appointment shall be governed by the provisions of KRS 83A.040 and Section 152 of the Kentucky Constitution.

(3) Vacancies in the office of mayor or city legislative body that are to be filled by partisan election shall be governed by the following provisions:

(a) Vacancies in candidacy shall be governed by KRS 118.105;

(b) Nominations for unexpired terms shall be governed by KRS 118.115 and Section 152 of the Kentucky Constitution; and

(c) Independent candidates filing to fill a vacancy shall be governed by KRS 118.375.

(4) Vacancies in the office of mayor or city legislative body that are to be filled by nonpartisan election shall be governed by the following provisions:

(a) If the vacancy occurs not less than one hundred thirty-four (134) days before a May primary, candidates to fill the vacancy shall be nominated at that primary in the manner prescribed in KRS 83A.170; and

(b) If the vacancy occurs on or after the one hundred thirty-fourth day before a May primary, the election to fill the unexpired term shall be held in the manner prescribed in Section 152 of the Kentucky Constitution; and

(c) Vacancies in candidacy in any city of the ***third*** ~~[fourth]~~ to sixth class, that has not conducted a nonpartisan primary election shall be governed by the provisions of KRS 83A.045(2)(b)6.

Section 3. KRS 83A.175 is amended to read as follows:

(1) The election to fill the regular term of a nonpartisan city office shall be conducted in the manner prescribed in KRS 83A.165 when, in a regular election for nonpartisan city office no candidates nominated to an office as provided in KRS 83A.170 are available due to death, incapacity, or withdrawal, or when city legislative body members are to be elected at large and there are fewer nominees than there are offices to be filled, or when a city of the ***third*** ~~[fourth]~~ to sixth class has not conducted a primary election pursuant to KRS 83A.045.

(2) Each candidate shall, by at least the last date prescribed by the election law generally for filing petitions of nomination with the county clerk or the Secretary of State, file with the county clerk or the Secretary of State a petition for candidacy. The petition shall be prescribed by the State Board of Elections and shall be signed by at least two (2) registered voters in the city. Each voter may sign individual petitions equal to the number of offices to be filled. If a voter signs petitions for more candidates than he is authorized, he shall be counted as a petitioner for the candidate whose petition is filed first.

(3) The county clerk or the Secretary of State shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the county clerk or the Secretary of State shall notify the candidate by certified mail within twenty-four (24) hours of filing.

(4) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.

(5) If, before the ballots are printed, any candidate whose petition has been filed in the office of the county clerk or the Secretary of State, dies or notifies the clerk or the Secretary of State in writing, signed and properly notarized, that he will not accept the election, the clerk shall not cause his name to be printed on the ballot.

(6) If, after the ballots are printed, any candidate whose name appears thereon shall withdraw pursuant to KRS 118.212 or die,

(a) Neither the precinct election officers nor the county board of elections shall tabulate or record the votes cast for the candidate.

(b) The county clerk shall provide notices to the precinct election officers who shall see that a notice is conspicuously displayed at the polling place advising voters of the change, and that votes for the candidate shall not be tabulated or recorded. If the county clerk learns of the death or withdrawal at least five (5) days prior to the election and provides the notices required by this subsection and the precinct officers fail to post the notices at the polling place, the officers shall be guilty of a violation.

The Committee Substitute to **HB 478** is as follows:

HB 478, AN ACT relating to elections for city officers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 83A.045 is amended to read as follows:

(1) Except as provided in KRS 83A.047, partisan elections of city officers shall be governed by the following provisions, regardless of the form of government or classification of the city:

(a) A candidate for party nomination to city office shall file his nomination papers with the county clerk of the county not less than one hundred nineteen (119) days before the day fixed by KRS Chapter 118 for holding a primary election. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which the papers are permitted to be filed.

(b) An independent candidate for nomination to city office shall not participate in a primary election, but shall file his nomination papers with the county clerk of the county not less than ninety-one (91) days before the day fixed by KRS Chapter 118 for holding a regular election. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which the papers are permitted to be filed.

(c) A candidate for city office who is defeated in a partisan primary election shall be ineligible as a candidate for the same office in the regular election. However, if a vacancy occurs in the party nomination for which he was an unsuccessful candidate in the primary election, his name may be placed on the voting machines for the regular election as a candidate of that party if he has been duly made the party nominee after the vacancy occurs, as provided in KRS 118.105.

(2) Except as provided in KRS 83A.047, nonpartisan elections of city officers shall be governed by KRS 83A.050, 83A.170, 83A.175, and the following provisions, regardless of the form of government or classification of the city:

(a) A candidate for city office shall file his nomination papers with the county clerk of the county not less than one hundred nineteen (119) days before the day fixed by KRS Chapter 118 for holding a primary election. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which the papers are permitted to be filed;

(b) Any city of the ***second*** ~~[fourth]~~ to sixth class may by ordinance provide that the nomination and election of candidates for city office in a nonpartisan election shall be conducted pursuant to the provisions of this subsection:

1. A city may forgo conducting a nonpartisan primary election for the nomination of candidates to city office, regardless of the number of candidates running for each office, and require all candidates to file their nomination papers with the county clerk of the county no less than ninety-one (91) days before the day fixed by KRS Chapter 118 for holding a regular election.

2. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which the papers are permitted to be filed.

3. If a city does not conduct a primary election pursuant to this subsection, the election of candidates to city office shall be governed by the provisions of this subsection, KRS 83A.175(2) to (6), and KRS Chapters 116 to 121.

4. In the absence of a primary pursuant to this subsection, the number of candidates equal to the number of city offices to be filled who receive the highest number of votes cast in the regular election for each city office shall be elected.

5. Candidates shall be subject to all other applicable election laws pursuant to this chapter and KRS Chapters 116 to 121.

6. If a vacancy occurs in a candidacy for city office in any city which has not held a primary pursuant to this subsection after the expiration of time for filing nomination papers due to the death, incapacity, or withdrawal of a candidate, or if there are fewer candidates than there are offices to be filled, the vacancy in candidacy shall be filled in the following manner:

a. If the vacancy in candidacy occurs less than ninety-one (91) days but more than thirty (30) days prior to the regular election, candidates shall file petitions of nomination to fill the vacancy with the county clerk not less than thirty (30) days prior to the regular election.

b. If the vacancy in candidacy occurs less than thirty (30) days prior to the regular election, candidates shall not file petitions of nomination to fill the vacancy with the county clerk, but shall seek election by write-in vote. If no person is elected to the office by write-in vote at the regular election, the vacancy in office shall be filled temporarily by appointment by the officer or body designated by law to fill the appointment.

(c) A candidate for city office who is defeated in a nonpartisan primary election shall be ineligible as a candidate for the same office in the regular election.

Section 2. KRS 83A.165 is amended to read as follows:

(1) A candidate running to fill the unexpired term of any city office shall file his nomination papers in accordance with the provisions of KRS 83A.045, 118.365, 118.375, and 83A.047.

(2) Vacancies in the office of mayor or city legislative body that are to be filled temporarily by appointment shall be governed by the provisions of KRS 83A.040 and Section 152 of the Kentucky Constitution.

(3) Vacancies in the office of mayor or city legislative body that are to be filled by partisan election shall be governed by the following provisions:

(a) Vacancies in candidacy shall be governed by KRS 118.105;

(b) Nominations for unexpired terms shall be governed by KRS 118.115 and Section 152 of the Kentucky Constitution; and

(c) Independent candidates filing to fill a vacancy shall be governed by KRS 118.375.

(4) Vacancies in the office of mayor or city legislative body that are to be filled by nonpartisan election shall be governed by the following provisions:

(a) If the vacancy occurs not less than one hundred thirty-four (134) days before a May primary, candidates to fill the vacancy shall be nominated at that primary in the manner prescribed in KRS 83A.170; and

(b) If the vacancy occurs on or after the one hundred thirty-fourth day before a May primary, the election to fill the unexpired term shall be held in the manner prescribed in Section 152 of the Kentucky Constitution; and

(c) Vacancies in candidacy in any city of the ***second*** ~~[fourth]~~ to sixth class, that has not conducted a nonpartisan primary election shall be governed by the provisions of KRS 83A.045(2)(b)6.

Section 3. KRS 83A.175 is amended to read as follows:

(1) The election to fill the regular term of a nonpartisan city office shall be conducted in the manner prescribed in KRS 83A.165 when, in a regular election for nonpartisan city office no candidates nominated to an office as provided in KRS

83A.170 are available due to death, incapacity, or withdrawal, or when city legislative body members are to be elected at large and there are fewer nominees than there are offices to be filled, or when a city of the ***second*** [~~fourth~~] to sixth class has not conducted a primary election pursuant to KRS 83A.045.

(2) Each candidate shall, by at least the last date prescribed by the election law generally for filing petitions of nomination with the county clerk or the Secretary of State, file with the county clerk or the Secretary of State a petition for candidacy. The petition shall be prescribed by the State Board of Elections and shall be signed by at least two (2) registered voters in the city. Each voter may sign individual petitions equal to the number of offices to be filled. If a voter signs petitions for more candidates than he is authorized, he shall be counted as a petitioner for the candidate whose petition is filed first.

(3) The county clerk or the Secretary of State shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the county clerk or the Secretary of State shall notify the candidate by certified mail within twenty-four (24) hours of filing.

(4) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.

(5) If, before the ballots are printed, any candidate whose petition has been filed in the office of the county clerk or the Secretary of State, dies or notifies the clerk or the Secretary of State in writing, signed and properly notarized, that he will not accept the election, the clerk shall not cause his name to be printed on the ballot.

(6) If, after the ballots are printed, any candidate whose name appears thereon shall withdraw pursuant to KRS 118.212 or die,

(a) Neither the precinct election officers nor the county board of elections shall tabulate or record the votes cast for the candidate.

(b) The county clerk shall provide notices to the precinct election officers who shall see that a notice is conspicuously displayed at the polling place advising voters of the change, and that votes for the candidate shall not be tabulated or recorded. If the county clerk learns of the death or withdrawal at least five (5) days prior to the election and provides the notices required by this subsection and the precinct officers fail to post the notices at the polling place, the officers shall be guilty of a violation.

The Committee on Elections and Constitutional Amendments reported **SB 1,** with Committee Substitute and Committee Title Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

SB 1, AN ACT relating to nomination of political party candidates.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 118.105 is amended to read as follows:

(1) Except as provided in subsections (3) and (4) of this section and in KRS 118.115, every political party shall nominate all of its candidates for elective offices to be voted for at any regular election at a primary election held as provided in this chapter, and the governing authority of any political party shall have no power to nominate any candidate for any elective office or to provide any method of nominating candidates for any elective office other than by primary elections as provided in this chapter.

(2) Any political organization not constituting a political party as defined in KRS 118.015 may make its nominations as provided in KRS 118.325.

(3) If a vacancy occurs in the nomination of an unopposed candidate or in a nomination made by the primary before the ballots are printed for the regular election, because of death, disqualification to hold the office sought, or severe disabling condition which arose after the nomination, the governing authority of the party may provide for filling the vacancy, but only following certification to the governing authority, by the Secretary of State, that a vacancy exists for a reason specified in this subsection. When such a nomination has been made, the certificate of nomination shall be signed by the chairman and secretary of the governing authority of the party making it, and shall be filed in the same manner as certificates of nomination at a primary election.

(4) If a vacancy occurs in the nomination of an unopposed candidate or in a nomination made by the primary before the ballots are printed for the regular election[~~for reasons other than those specified in subsection (3) of this section~~], and if that party's nominee was the only candidate for the office sought, the governing authority of ***each***[~~the~~] party may ***nominate a candidate for the regular election***[~~provide for filling the vacancy~~].

(5) This section does not apply to candidates for members of boards of education, or presidential electors, nor to candidates participating in nonpartisan elections.

The Committee Substitute to **SB 1** is as follows:

SB 1, AN ACT relating to nomination of political party candidates.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 118.105 is amended to read as follows:

(1) Except as provided in subsections (3) and (4) of this section and in KRS 118.115, every political party shall nominate all of its candidates for elective offices to be voted for at any regular election at a primary election held as provided in this chapter, and the governing authority of any political party shall have no power to nominate any candidate for any elective office or to provide any method of nominating candidates for any elective office other than by primary elections as provided in this chapter.

(2) Any political organization not constituting a political party as defined in KRS 118.015 may make its nominations as provided in KRS 118.325.

(3) If a vacancy occurs in the nomination of an unopposed candidate or in a nomination made by the primary before the ballots are printed for the regular election, because of death, disqualification to hold the office sought, or severe disabling condition which arose after the nomination, the governing authority of the party may provide for filling the vacancy, but only following certification to the governing authority, by the Secretary of State, that a vacancy exists for a reason specified in this subsection. When such a nomination has been made, the certificate of nomination shall be signed by the chairman and secretary of the governing authority of the party making it, and shall be filed in the same manner as certificates of nomination at a primary election.

(4) If a vacancy occurs in the nomination of an unopposed candidate or in a nomination made by the primary before the ballots are printed for the regular election~~[for reasons other than those specified in subsection (3) of this section]~~, and if that party's nominee was the only candidate for the office sought, the governing authority of ***each*** ~~[the]~~ party may ***nominate a candidate for the regular election, provided that no person has sought that party's nomination by filing a notification and declaration*** ~~[provide for filling the vacancy]~~.

(5) This section does not apply to candidates for members of boards of education, or presidential electors, nor to candidates participating in nonpartisan elections.

Section 2. Whereas it is necessary to permit both political parties to nominate candidates for the regular election as soon as possible after any vacancy which occurs in the nomination of a candidate who is unopposed in the regular election, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor.

The Committee Title Amendment to **SB 1** is as follows:

By amending the title to read "AN ACT relating to nomination of political party candidates and declaring an emergency.".

The Committee on Education reported **HB 333**, with Committee Amendment attached thereto, **HB 405, HB 442, HB 490,** with Committee Amendment attached thereto, **HB 549,** with Committee Substitute attached thereto, **HB 550, HCR 44** and **SB 40** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 333, AN ACT relating to school personnel.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 160.380 is amended to read as follows:

(1) As used in this section:

(a) "Relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.

(b) "Vacancy" shall mean any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.

(2) (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the State Board for Elementary and Secondary Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year.

(b) When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.

(c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.

(d) When a vacancy occurs in a local district, the superintendent shall conduct a search to locate minority teachers to be considered for the position.

(e) Effective July 1, 1991, no relative of a superintendent of schools shall be an employee of the school district. However, this shall not apply ***if:***

1. ~~[to]~~ A relative ~~[who]~~ is an employee of the school district prior to July 13, 1990, and ~~[who]~~ is certified for the position he holds, as long as the superintendent is holding office on July 1, 1991***;*** ~~[, and it shall not apply to]~~

2. A superintendent's spouse ~~[who]~~ has at least twenty (20) years of service in school systems***; or***

3. After the effective date of this Act, a newly hired superintendent's spouse has tenure in the district prior to the superintendent being hired.

A superintendent's spouse who is employed under this ***paragraph*** ~~[provision]~~ shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise teacher aides and student teachers. However, the superintendent shall not promote his relative who continues employment under an exception of this subsection.

(f) No superintendent shall employ a relative of a school board member of the district, unless on July 13, 1990, the board member's relative is an employee of the district, the board member is holding office, and the relative was not initially hired by the district during the tenure of the board member. A relative employed in 1989-90 and initially hired during the tenure of a board member serving on July 13, 1990, may continue to be employed during the remainder of the board member's term. However, the superintendent shall not promote any relative of a school board member who continues employment under the exception of this subsection.

(g) No principal's relative shall be employed in the principal's school, except a relative who is not the principal's spouse and who was employed in the principal's school during the 1989-90 school year. No spouse of a principal shall be employed in the principal's school, except a principal's spouse who was employed in the principal's school during the 1989-90 school year for whom there is no position for which the spouse is certified to fill in another school operated in the district. The provisions of KRS 161.760 shall not apply to any transfer made in order to comply with the provisions of this paragraph.

(3) No superintendent shall employ in a position which involves supervisory or disciplinary power over a minor, any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor. Each superintendent shall request all conviction information for any applicant for initial employment from the Justice Cabinet prior to employing the applicant.

(4) (a) If a school term has begun and a position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the required records. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.

(b) Employment shall be contingent on the receipt of records documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165.

(c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the district of a record documenting a criminal act as defined above and no further procedures shall be required.

(5) Each application or renewal form, provided by the employer to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(6) Any request for records under subsection (3) of this section shall be on a form approved by the Justice Cabinet, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.

(7) The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988. Initial employment shall include first time applicants and applicants who were former employees of the district but have not been employed by the district for six (6) months.

The Committee Amendment No. 1 to **HB 333** is as follows:

On page 2, line 21 by deleting "*spouse*" and inserting "*relative*" in lieu thereof; and

On page 2, line 23 after "superintendent's'" by inserting the word "*relative*"; and

On page 2, line 23 after "superintendent's'" by placing brackets around and striking through "[~~spouse~~]"; and

On page 2, line 24 after "the" by inserting the word "*relative*"; and

On page 2, line 24 by placing brackets around and striking through "[~~spouse~~]"; and

On page 2, line 25 by inserting after "superintendent's'" the word "*relative*"; and

On page 2, line 25 by placing brackets around and striking through "[~~spouse~~]".

HB 405, AN ACT relating to teachers' retirement at regional universities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 161.230 TO 161.716 IS CREATED TO READ AS FOLLOWS:

(1) An optional retirement plan is hereby authorized for designated employees of public institutions of higher education who are also eligible for membership in the Kentucky Teachers' Retirement System pursuant to KRS 161.220(4)(b) and 161.470(1). The purpose of the optional retirement plan shall be to provide suitable retirement and death benefits, while affording the maximum portability of these benefits to the eligible employees as an alternative to membership in the retirement system. Benefits shall be provided by the purchase of annuity contracts, fixed or variable in nature, or a combination thereof, at the option of the participant.

(2) The boards of regents of those institutions identified in KRS 161.220(4)(b) shall select no less than two (2) but no more than three (3) companies from which to purchase contracts under the optional retirement plan. As criteria for this selection, the boards of regents shall consider, among other things, the following:

- *(a) The portability of the contracts offered or to be offered by a company, based on the number of states in which the company provides contracts under similar plans;*
- *(b) The efficacy of the contracts in the recruitment and retention of employees for the various state public institutions of higher education;*
- *(c) The nature and extent of the rights and benefits to be provided by the contracts for participating employees and their beneficiaries;*
- *(d) The relation of the rights and benefits to the amount of contributions required;*
- *(e) The suitability of the rights and benefits to the needs and interests of eligible employees and the various state public institutions of higher education; and*
- *(f) The ability of the designated companies to provide the rights and benefits under those contracts.*

(3) The boards of regents of the institutions identified in KRS 161.220(4)(b) shall implement an optional retirement plan no later than July 15, 1994.

SECTION 2. A NEW SECTION OF KRS CHAPTER 161.230 TO 161.716 IS CREATED TO READ AS FOLLOWS:

(1) Eligibility to participate in the optional retirement plan shall be determined by the board of regents of each of the state public institutions of higher education identified in KRS 161.220(4)(b). The employees of these institutions of higher education who are initially employed on or after the implementation date of the optional retirement plan may make an irrevocable election to participate in the optional retirement plan within sixty (60) days after their employment date. These elections shall be made in writing and filed with the appropriate officer of the employer institution.

(2) Elections of eligible employees hired on or after the implementation date of the optional retirement plan at their employer institution shall be effective on the date of their employment. If an eligible employee hired subsequent to the implementation date at the employer institution fails to make the election provided for in this section, he shall become a member of the regular retirement plan of the Kentucky Teachers' Retirement System.

SECTION 3. A NEW SECTION OF KRS CHAPTER 161.230 TO 161.716 IS CREATED TO READ AS FOLLOWS:

(1) Any person electing to participate in the optional retirement plan shall be ineligible for membership in the regular retirement plan of the Kentucky Teachers' Retirement System for as long as he is employed in a position for which the optional retirement plan is available.

(2) Any person electing to participate in the optional retirement plan shall acknowledge in writing that the benefits payable to participants are not the obligation of the Commonwealth of Kentucky or the Kentucky Teachers' Retirement System, and that these benefits and other rights of the optional retirement plan are the liability and responsibility solely of the designated companies to which contributions have been made.

(3) Benefits shall be payable to optional retirement plan participants or their beneficiaries by the designated companies

in accordance with the contracts issued by each company and the retirement plan provisions adopted by each public institution.

(4) Annuity contracts issued under the optional retirement plan and all rights of a participant in the optional retirement plan shall be exempt from any state, local, or municipal tax; assessment for the insolvency of any life, health, or casualty insurance company; any levy or sale, garnishment, or attachment; or any process whatsoever, and shall be unassignable except as otherwise specifically provided by the contracts offered under the optional retirement plan adopted by the respective public institutions of higher education.

HB 442, AN ACT relating to the Education Professional Standards Board.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 161.030 is amended to read as follows:

(1) ***Notwithstanding the age of the pupil,*** the certification of all teachers and other school personnel is vested in the Education Professional Standards Board. When so certified, teachers and other school personnel shall not be required to have licensure, certification, or other forms of approval from any other state agency for the performance of their respective assignments within the common schools, except as provided for by law. All certificates authorized under KRS 161.010 to 161.126 shall be issued in accordance with the administrative regulations of the Education Professional Standards Board.

(2) Certificates shall be issued to persons who have completed, at colleges, universities, or local school district programs approved by the Education Professional Standards Board for the preparation of teachers and other school personnel, the curricula prescribed by the administrative regulations of the Education Professional Standards Board.

(3) Initial certification of all new teachers shall require the successful completion of appropriate written tests prior to certification. The tests shall be selected by the Education Professional Standards Board and shall measure communication skills, general knowledge, professional education concepts, and knowledge in the specific teaching field of the applicant. The Education Professional Standards Board shall determine the minimum acceptable level of achievement on each test. The tests shall measure those concepts, ideas, and facts which are being taught in teacher education programs in Kentucky. Upon successful completion of the tests and the approved teacher preparation program, a certificate valid for one (1) year shall be issued. If an out-of-state teacher with less than two (2) years experience comes to Kentucky after the deadline for taking the written tests, a temporary certificate may be issued for a period up to six (6) months provided the local board cannot fill the vacant position with a certified teacher. The teacher shall take the tests if they are administered during the period of the temporary certificate. The certificate shall be extended for the remainder of the year if the teacher successfully completes the tests. If the teacher fails the tests, the temporary certificate shall be valid only for the current semester.

(4) A reasonable fee to be paid by the teacher and directly related to the actual cost of the administration of the tests shall be established by the Education Professional Standards Board. Provisions shall be made for persons having less than minimum levels of performance on any test to repeat that test, and candidates shall be informed of their strengths and weaknesses in the specific performance areas. The Department of Education shall provide for confidentiality of the individual assessment scores. Scores shall be available only to the candidate and to the education officials who are responsible for determining whether established certification standards have been met. Scores shall be used only in the assessment for certification of new teachers and of out-of-state teachers with less than two (2) years of teaching experience who are seeking initial certification in Kentucky.

(5) All new teachers, and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. The teacher shall be a full-time employee or shall have an annual contract and serve on at least a half-time basis and shall have supervision, assistance, and assessment during the one (1) year internship. The internship may be served in a public school or a nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association. Successful completion shall be determined by a majority vote of the beginning teacher committee. The internship period shall be counted as experience for the purpose of continuing contract status, retirement eligibility, and benefits for single salary experience increments. Upon successful completion of the beginning teacher program, the one (1) year initial teaching certificate shall be extended for the remainder of the usual duration period established for that particular certificate by Education Professional Standards Board administrative regulations.

(6) The beginning teacher committee shall be composed of three (3) persons who have successfully completed special training in the supervision and assessment of the performance of beginning teachers as provided in subsection (8) of this section. The committee shall consist of a resource teacher, the school principal of the school where the internship is served, and a teacher educator from a state-approved teacher training institution to be appointed by the president of that institution. If more than two (2) teacher interns are employed in the same school, the principal's responsibility may be shared with an assistant principal who holds certification as a principal. In unusual situations, the chief state school officer may permit the assistant principal to serve in lieu of the principal on a beginning teacher committee. If the teacher training institution is unable to provide a member, the district superintendent shall appoint an instructional supervisor

from the school district. In the case of a nonpublic school, if the teacher training institution is unable to provide a member to serve on the beginning teacher committee, the chief officer of the school shall appoint an instructional supervisor or a teacher with like qualifications and responsibilities to serve on the beginning teacher committee in lieu of the teacher educator. The resource teacher shall be appointed by the Department of Education from a pool of qualified resource teachers, and, any statutes to the contrary notwithstanding and to the extent of available appropriations, shall be entitled to be paid a reasonable stipend by the Department of Education for work done outside normal working hours. In the case of a resource teacher in a nonpublic school, payment shall be made directly to the resource teacher by the Department of Education. Priority shall be given to resource teachers with the same certification as the teacher intern in the following order:

(a) Teachers in the same school;

(b) Teachers in the same district; and

(c) Teachers in an adjacent school district.

The committee shall meet with the beginning teacher a minimum of three (3) times per year for evaluation and recommendation with all committee members present. In addition, each member of the committee shall observe the beginning teacher in the classroom a minimum of three (3) times per year. If the teacher's first year performance is judged by the committee to be less than satisfactory, the teacher shall be provided with an opportunity to repeat the internship one (1) time if the teacher is employed by a school district.

(7) The resource teacher shall spend a minimum of seventy (70) hours working with the beginning teacher; twenty (20) of these hours shall be observing the beginning teacher in the classroom setting; fifty (50) of these hours shall be in consultation other than class time or attending assessment meetings. The resource teacher shall have completed at least four (4) years of successful teaching experience as attested to by his or her immediate supervisor or by having achieved tenure and be able to show evidence of continuing professional development by having achieved a master's degree or its equivalent or the accumulation of two thousand (2,000) hours of continuing professional activities.

(8) By contract with teacher education institutions in the Commonwealth, the chief state school officer shall provide special training for persons who will be serving on the beginning teacher committees. Completion of special training shall be evidenced by successfully passing the examinations as prescribed by the Education Professional Standards Board.

(9) If an applicant establishes eligibility for a one (1) year certificate under the provisions of subsection (3) of this section, but does not become employed on the basis needed to satisfy the one (1) year internship requirement, the applicant shall be eligible for the issuance of a certificate for substitute teaching as provided by the administrative regulations of the Education Professional Standards Board. The applicant shall remain eligible for the one (1) year certificate, as provided in subsection (3) of this section, and for the opportunity to serve the internship for a period of four (4) years after establishing eligibility. If the internship is not completed within the four (4) year period, the applicant must reestablish eligibility by repeating and passing the testing program in effect for new teachers at that time.

(10) The Education Professional Standards Board shall approve the curricula of any standard college or university, or of any department thereof, for the training of teachers, and shall also approve the curricula of any local district alternative certification program, when the curricula comply with the administrative regulations of the Education Professional Standards Board for the issuance of certificates and when the institution has met the terms and conditions provided in KRS 161.010 to 161.120. Any student who has completed any of these curricula, as approved by the Education Professional Standards Board, and who has completed the prescribed requirements for the issuance of certificates shall be granted a certificate corresponding to the curricula completed.

HB 490, AN ACT relating to school athletics.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.070 is amended to read as follows:

(1) The State Board for Elementary and Secondary Education shall have the management and control of the common schools and all programs operated in these schools, including interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for the Blind, and community education programs and services.

(2) The State Board for Elementary and Secondary Education may designate an organization or agency to manage interscholastic athletics in the common schools, provided that the rules, regulations, and bylaws of any organization or agency so designated shall be approved by the board, and provided further that the board shall adopt administrative regulations providing for the appeal to the board of any decisions made by the designated managing organization or agency.

(a) The state board or its designated agency shall assure through promulgation of administrative regulations that if a secondary school sponsors or intends to sponsor an athletic activity or sport that is similar to a sport for which a Kentucky state university or community college offers an athletic scholarship, the school shall sponsor the athletic activity or sport for which a scholarship is offered. The administrative regulations shall specify which athletic activities are similar to sports for which universities and community colleges offer scholarships.

(b) The state board or any agency designated by the state board to manage interscholastic athletics shall not promulgate rules, administrative regulations, or bylaws which prohibit pupils in grades seven (7) to eight (8) from participating in any high school sports except for high school varsity wrestling, soccer, and football, or from participating on more than one (1) school-sponsored team at the same time in the same sport. The State Board for Elementary and Secondary Education, or an agency designated by the board to manage interscholastic athletics, may promulgate administrative regulations restricting, limiting, or prohibiting participation in high school varsity wrestling, soccer, and football for students who have not successfully completed the eighth grade.

(3) (a) The State Board for Elementary and Secondary Education is hereby authorized to lease from the State Property and Buildings Commission, or others, whether public or private, any lands, buildings, structures, installations, and facilities suitable for use in establishing and furthering television and related facilities as an aid or supplement to classroom instruction, throughout the Commonwealth, and for incidental use in any other proper public functions. The lease may be for any initial term commencing with the date of the lease and ending with the next ensuing June 30, which is the close of the then current fiscal biennium of the Commonwealth, with exclusive options in favor of the board to renew the same for successive ensuing bienniums, July 1 in each even year to June 30 in the next ensuing even year; and the rentals may be fixed at the sums in each biennium, if renewed, sufficient to enable the State Property and Buildings Commission to pay therefrom the maturing principal of and interest on, and provide reserves for, any revenue bonds which the State Property and Buildings Commission may determine to be necessary and sufficient, in agreement with the board, to provide the cost of acquiring the television and related facilities, with appurtenances, and costs as may be incident to the issuance of the bonds.

(b) Each option of the State Board for Elementary and Secondary Education to renew the lease for a succeeding biennial term may be exercised at any time after the adjournment of the session of the General Assembly at which appropriations shall have been made for the operation of the state government for such succeeding biennial term, by notifying the State Property and Buildings Commission in writing, signed by the chief state school officer, and delivered to the secretary of the Finance and Administration Cabinet as a member of the commission. The option shall be deemed automatically exercised, and the lease automatically renewed for the succeeding biennium, effective on the first day thereof, unless a written notice of the board's election not to renew shall have been delivered in the office of the secretary of the Finance and Administration Cabinet before the close of business on the last working day in April immediately preceding the beginning of the succeeding biennium.

(c) The State Board for Elementary and Secondary Education shall not itself operate leased television facilities, or undertake the preparation of the educational presentations or films to be transmitted thereby, but may enter into one (1) or more contracts to provide therefor, with any public agency and instrumentality of the Commonwealth having, or able to provide, a staff with proper technical qualifications, upon which agency and instrumentality the board, through the chief state school officer and the Department of Education, is represented in such manner as to coordinate matters of curriculum with the curricula prescribed for the public schools of the Commonwealth. Any contract for the operation of the leased television or related facilities may permit limited and special uses of the television or related facilities for other programs in the public interest, subject to the reasonable terms and conditions as the board and the operating agency and instrumentality may agree upon; but any contract shall affirmatively forbid the use of the television or related facilities, at any time or in any manner, in the dissemination of political propaganda or in furtherance of the interest of any political party or candidate for public office, or for commercial advertising. No lease between the board and the State Property and Buildings Commission shall bind the board to pay rentals for more than one (1) fiscal biennium at a time, subject to the aforesaid renewal options. The board may receive and may apply to rental payments under any lease and to the cost of providing for the operation of the television or related facilities not only appropriations which may be made to it from state funds, from time to time, but also contributions, gifts, matching funds, devises, and bequests from any source, whether federal or state, and whether public or private, so long as the same are not conditioned upon any improper use of the television or related facilities in a manner inconsistent with the provisions of this subsection.

(4) The state board may, on the recommendation and with the advice of the chief state school officer, prescribe, print, publish, and distribute at public expense such administrative regulations, courses of study, curriculums, bulletins, programs, outlines, reports, and placards as each deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. All administrative regulations published or distributed by the board shall be inclosed in a booklet or binder on which the words "informational copy" shall be clearly stamped or printed.

(5) Upon the recommendation of the chief state school officer or his designee, the state board shall establish policy or act on all matters relating to programs, services, publications, capital construction and facility renovation, equipment, litigation, contracts, budgets, and all other matters which are the administrative responsibility of the Department of Education.

The Committee Amendment No. 1 to **HB 490** is as follows:

On page 1, line 14 after "***which***" by inserting "***National Collegiate Athletic Association members offer***"; and

On page 1, line 14 delete "***a***" the second time it appears; and

On page 1, line 15 by deleting "***Kentucky state university or community college offers***"; and

On page 1, line 18 after "***which***" by inserting "***National Collegiate Athletic Association members***"; and

On page 1, lines 18 and 19 deleting "***universities and community colleges***".

HB 549, AN ACT relating to the creation of safety and security department by school boards for their school districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

The board of education may establish a safety and security department and appoint safety and security officers and other employees for the school district for which it is responsible, to prescribe distinctive uniforms for the safety and security officers of the school district, and to designate and operate emergency vehicles. Safety and security officers shall take an appropriate oath of office, in the form and manner consistent with the Constitution of Kentucky, and shall serve at the pleasure of the board of education.

SECTION 2. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) Safety and security officers shall be peace officers and conservators of the peace. They shall have general police powers including the power to arrest, without process, all persons who within their view commit any crime or misdemeanor. They shall possess all of the common law and statutory powers, privileges, and immunities of sheriffs, except that they shall be empowered to serve civil process to the extent authorized by the employing school board of the school district employing them. Without limiting the generality of the foregoing, safety and security officers shall:

(a) Preserve the peace, maintain order and prevent unlawful use of force or violence or other unlawful conduct on the campuses of their respective school districts and protect all persons and property located thereon from injury, harm, and damage;

(b) Enforce, and assist the officials of their respective school districts in the enforcement of, the lawful rules and regulations of the school district, and assist and cooperate with other law enforcement agencies and officers. Safety and security officers shall exercise the powers herein granted upon any real property owned or occupied by their school districts, including the streets passing through and adjacent thereto. These powers may be exercised in any county of the Commonwealth where the school district owns, uses, or occupies property. Additional jurisdiction may be established by agreement with the chief of police of the municipality or sheriff of the county or the appropriate law enforcement agency in which the property is located, dependent upon the jurisdiction involved.

(2) Safety and security officers may exercise their powers away from the locations described in subsection (1) of this section only upon the following conditions:

(a) When in hot pursuit of an actual or suspected violator of the law; or

(b) When authorized to do so pursuant to the agreement authorized by subsection (1) of this section; or

(c) When requested to act by the chief of police of the city or county in which the institution's property is located; or

(d) When requested to act by the sheriff of the county in which the school district's property is located; or

(e) When requested to act by the Commissioner of State Police; or

(f) When requested to act by the authorized delegates of those persons or agencies listed in (c), (d) or (e) above; or

(g) When requested to assist a state, county or municipal police officer, sheriff, or other peace officer in the performance of his lawful duties; or

(h) When operating under an interlocal cooperation agreement pursuant to KRS Chapter 65.

(3) Safety and security officers appointed pursuant to Sections 1 to 7 of this Act may, in addition to the other powers enumerated herein, conduct investigations anywhere in this Commonwealth if the investigation relates to criminal offenses which occurred on property owned, leased, or controlled by the school district. If desirable, and at the discretion of the school district's officials, the school district safety and security department may coordinate the investigations with any law enforcement agency of this Commonwealth or with agencies of the federal government.

(4) Safety and security departments created and operated by the school board shall, for all purposes, be deemed public police departments and the sworn safety and security officers, for all purposes, shall be deemed public police officers.

(5) Nothing in Sections 1 to 7 of this Act shall be construed as a diminution or modification of the authority or responsibility of any city or county police department, the Kentucky State Police, sheriff, constable, or other peace officer either on the property of the school district or otherwise.

SECTION 3. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

All persons appointed as safety and security officers pursuant to Sections 1 to 7 of this Act, at the time of their employment, shall:

(1) Comply with the requirements of KRS 61.300, and

(2) Possess any other requirements set by the board of education which employs them.

SECTION 4. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

The board of education may provide for the appointment or promotion to the ranks and grades and positions of the department the officers and civilians considered by the board to be necessary for the efficient administration of the department. Officers and civilians shall receive the compensation fixed and paid by the board.

SECTION 5. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) Vehicles used for emergency purposes by the safety and security department of a school district shall be considered as emergency vehicles, shall be equipped with blue lights and sirens, and shall be operated in conformance with the requirements of KRS Chapter 189.

(2) Safety and security officers directly employed by the board of education pursuant to Sections 1 to 7 of this Act shall have the rights accorded to peace officers in cities of the first four (4) classes provided under KRS 527.020, if the board of education authorizes it in writing.

(3) Safety and security departments of a school district may install, maintain, and operate radio systems on police or other radio frequencies under licenses issued by the Federal Communications Commission, or its successor, KRS 432.570 to the contrary notwithstanding.

(4) Safety and security departments of a school districts shall comply with the requirements of the Kentucky Revised Statutes and the Justice Cabinet with regard to reporting of criminal and other statistics.

SECTION 6. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) The boards of education, each having the power and authority to govern and control the method and purpose of use of property owned or occupied by their respective school districts, including travel over the property may regulate the traffic and parking of motor vehicles, bicycles, or other vehicles as well as the traffic of pedestrians on, over, and across the streets, roads, paths, and grounds of real property owned, used, or occupied by the school district. The regulations applicable to traffic and parking may include, but not be limited to, the following provisions:

  (a) Provisions governing the registration, speed, operation, parking, and times, places, and manner of use of motor vehicles, bicycles, and other vehicles.

  (b) Provisions prescribing penalties for the violation of the regulations, which may include the imposition of reasonable charges; the removing and impounding; at the expense of the violator of vehicles which are operated or parked in violation of the regulations; and the denial of permission to operate vehicles on the property of the school district.

  (c) Provisions establishing reasonable charges and fees for the registration of vehicles and for the use of parking spaces or facilities owned or occupied by the school district. Nothing herein contained shall be deemed to limit or restrict the powers of any other governmental authority having jurisdiction over public streets, roads, alleys, or ways.

(2) Motor vehicle moving violations of regulations issued under this section shall be deemed violations of the appropriate equivalent sections of the motor vehicle laws of the Commonwealth and may be prosecuted in the courts having territorial jurisdiction over the physical location of the offense.

SECTION 7. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

No person shall falsely represent himself to be a safety and security officer, agent, or employee of a safety and security department of a school district and in that assumed character, arrest, detain, search, or question, in any manner the person or property of any person, nor shall any person without the authority of the board of education wear its official uniform, insignia, badge, or identification of the department.

Section 8. KRS 160.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 160.250 shall be fined not more than two hundred dollars ($200).

(2) Any person who violates any of the provisions of KRS 160.300 shall be fined not less than ten (10) nor more than fifty dollars ($50).

(3) Any superintendent who violates any of the provisions of KRS 160.350 to 160.400 shall be fined not less than one hundred ($100) nor more than one thousand dollars ($1,000) for each offense, and the violation is grounds for revocation of his certificate.

(4) Any person who violates any of the provisions of KRS 160.550 shall be fined not less than fifty ($50) nor more than one hundred dollars ($100), and shall be subject to removal from office.

(5) The State Board for Elementary and Secondary Education may withhold funds allotted under KRS 157.350 from any local district which violates subsection (3) of KRS 160.380 in the amount of one thousand dollars ($1,000) per violation.

(6) In addition to penalties listed in this section, any local district which violates subsection (3) of KRS 160.380 shall be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

(7) Any person who violates the provisions of Sections 1 to 7 of this Act shall be guilty of a Class A misdemeanor.

The Committee Substitute to **HB 549** is as follows:

HB 549, AN ACT relating to the creation of safety and security department by school boards for their school districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

The board of education may establish a safety and security department and appoint safety and security officers and other employees for the school district for which it is responsible, to prescribe distinctive uniforms for the safety and security officers of the school district, and to designate and operate emergency vehicles. Safety and security officers shall take an appropriate oath of office, in the form and manner consistent with the Constitution of Kentucky, and shall serve at the pleasure of the board of education.

SECTION 2. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) Safety and security officers shall be peace officers and conservators of the peace. They shall have general police powers including the power to arrest, without process, all persons who within their view commit any crime or misdemeanor. They shall possess all of the common law and statutory powers, privileges, and immunities of sheriffs, except that they shall be empowered to serve civil process to the extent authorized by the employing school board of the school district employing them. Without limiting the generality of the foregoing, safety and security officers shall:

(a) Preserve the peace, maintain order and prevent unlawful use of force or violence or other unlawful conduct on the campuses of their respective school districts and protect all persons and property located thereon from injury, harm, and damage;

(b) Enforce, and assist the officials of their respective school districts in the enforcement of, the lawful rules and regulations of the school district, and assist and cooperate with other law enforcement agencies and officers. Safety and security officers shall exercise the powers herein granted upon any real property owned or occupied by their school districts, including the streets passing through and adjacent thereto. These powers may be exercised in any county of the Commonwealth where the school district owns, uses, or occupies property. Additional jurisdiction may be established by agreement with the chief of police of the municipality or sheriff of the county or the appropriate law enforcement agency in which the property is located, dependent upon the jurisdiction involved.

(2) Safety and security officers may exercise their powers away from the locations described in subsection (1) of this section only upon the following conditions:

(a) When in hot pursuit of an actual or suspected violator of the law; or

(b) When authorized to do so pursuant to the agreement authorized by subsection (1) of this section, they may:

1. When requested to act by the chief of police of the city or county in which the institution's property is located; or

2. When requested to act by the sheriff of the county in which the school district's property is located; or

3. When requested to act by the Commissioner of State Police; or

4. When requested to act by the authorized delegates of those persons or agencies listed in (c), (d) or (e) above; or

5. When requested to assist a state, county or municipal police officer, sheriff, or other peace officer in the performance of his lawful duties; or

(c) When operating under an interlocal cooperation agreement pursuant to KRS Chapter 65.

(3) Safety and security officers appointed pursuant to Sections 1 to 7 of this Act may, in addition to the other powers enumerated herein, conduct investigations and make arrests anywhere in this Commonwealth if the investigation relates to criminal offenses which occurred on property owned, leased, or controlled by the school district. If desirable, and at the discretion of the school district's officials, the school district safety and security department may coordinate the investigations with any law enforcement agency of this Commonwealth or with agencies of the federal government.

(4) Safety and security departments created and operated by the school board shall, for all purposes, be deemed public police departments and the sworn safety and security officers, for all purposes, shall be deemed public police

officers.

(5) Nothing in Sections 1 to 7 of this Act shall be construed as a diminution or modification of the authority or responsibility of any city or county police department, the Kentucky State Police, sheriff, constable, or other peace officer either on the property of the school district or otherwise.

SECTION 3. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

All persons appointed as safety and security officers pursuant to Sections 1 to 7 of this Act, at the time of their employment, shall:

(1) Comply with the requirements of KRS 61.300, and

(2) Possess any other requirements set by the board of education which employs them.

SECTION 4. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

The board of education may provide for the appointment or promotion to the ranks and grades and positions of the department the officers and civilians considered by the board to be necessary for the efficient administration of the department. Officers and civilians shall receive the compensation fixed and paid by the board.

SECTION 5. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) Vehicles used for emergency purposes by the safety and security department of a school district shall be considered as emergency vehicles, shall be equipped with blue lights and sirens, and shall be operated in conformance with the requirements of KRS Chapter 189.

(2) Safety and security officers directly employed by the board of education pursuant to Sections 1 to 7 of this Act shall have the rights accorded to peace officers in cities of the first four (4) classes provided under KRS 527.020, if the board of education authorizes it in writing.

(3) Safety and security departments of a school district may install, maintain, and operate radio systems on police or other radio frequencies under licenses issued by the Federal Communications Commission, or its successor, KRS 432.570 to the contrary notwithstanding.

(4) Safety and security departments of a school districts shall comply with the requirements of the Kentucky Revised Statutes and the Justice Cabinet with regard to reporting of criminal and other statistics.

SECTION 6. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) The boards of education, each having the power and authority to govern and control the method and purpose of use of property owned or occupied by their respective school districts, including travel over the property may regulate the traffic and parking of motor vehicles, bicycles, or other vehicles as well as the traffic of pedestrians on, over, and across the streets, roads, paths, and grounds of real property owned, used, or occupied by the school district. The regulations applicable to traffic and parking may include, but not be limited to, the following provisions:

  (a) Provisions governing the registration, speed, operation, parking, and times, places, and manner of use of motor vehicles, bicycles, and other vehicles.

  (b) Provisions prescribing penalties for the violation of the regulations, which may include the imposition of reasonable charges; the removing and impounding; at the expense of the violator of vehicles which are operated or parked in violation of the regulations; and the denial of permission to operate vehicles on the property of the school district.

  (c) Provisions establishing reasonable charges and fees for the registration of vehicles and for the use of parking spaces or facilities owned or occupied by the school district. Nothing herein contained shall be deemed to limit or restrict the powers of any other governmental authority having jurisdiction over public streets, roads, alleys, or ways.

(2) Motor vehicle moving violations of regulations issued under this section shall be deemed violations of the appropriate equivalent sections of the motor vehicle laws of the Commonwealth and may be prosecuted in the courts having territorial jurisdiction over the physical location of the offense.

SECTION 7. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

No person shall falsely represent himself to be a safety and security officer, agent, or employee of a safety and security department of a school district and in that assumed character, arrest, detain, search, or question, in any manner the person or property of any person, nor shall any person without the authority of the board of education wear its official uniform, insignia, badge, or identification of the department.

Section 8. KRS 160.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 160.250 shall be fined not more than two hundred dollars ($200).

(2) Any person who violates any of the provisions of KRS 160.300 shall be fined not less than ten (10) nor more than fifty dollars ($50).

(3) Any superintendent who violates any of the provisions of KRS 160.350 to 160.400 shall be fined not less than one

hundred ($100) nor more than one thousand dollars ($1,000) for each offense, and the violation is grounds for revocation of his certificate.

(4) Any person who violates any of the provisions of KRS 160.550 shall be fined not less than fifty ($50) nor more than one hundred dollars ($100), and shall be subject to removal from office.

(5) The State Board for Elementary and Secondary Education may withhold funds allotted under KRS 157.350 from any local district which violates subsection (3) of KRS 160.380 in the amount of one thousand dollars ($1,000) per violation.

(6) In addition to penalties listed in this section, any local district which violates subsection (3) of KRS 160.380 shall be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

(7) Any person who violates the provisions of Sections 1 to 7 of this Act shall be guilty of a Class A misdemeanor.

HB 550, AN ACT relating to law enforcement officers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 15.310 is amended to read as follows:

As used in KRS 15.315 to 15.510, 15.990 and 15.992, unless the context otherwise requires:

(1) "Council" means the Kentucky Law Enforcement Council established by KRS 15.315 to 15.510, 15.990 and 15.992;

(2) "Department" means the Department of Criminal Justice Training of the Justice Cabinet;

(3) "Law enforcement officer" means a member of a lawfully organized police unit or police force of county, city or metropolitan government who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, as well as sheriffs, sworn deputy sheriffs, campus security officers, ***public school safety and security officers,*** law enforcement support personnel, public airport authority security officers, other public and federal peace officers responsible for law enforcement, and special local peace officers licensed pursuant to KRS 61.360; and

(4) "Secretary" means the secretary of the Justice Cabinet.

Section 2. KRS 15.340 is amended to read as follows:

Subject to approval by the secretary, the department may make its facilities and services available upon the following terms:

(1) The department may determine to which law enforcement agencies, corrections agencies and court agencies and its officers it will offer training;

(2) In determining the law enforcement officers for which it will offer training and in allocating available funds, the department shall give first priority to "police officers" as defined by KRS 15.420(2), public airport authority security officers and campus police ***and public school safety and security officers***;

(3) Except for the officers described in subsection (2) of this section, the department may determine whether persons to whom it offers training or agencies employing such persons must bear any or all costs of such training.

Section 3. KRS 61.900 is amended to read as follows:

As used in KRS 61.902 to 61.930:

(1) "Commission" means a commission issued to an individual by the secretary of justice, entitling the individual to perform special law enforcement duties on public property;

(2) "Council" means the Kentucky Law Enforcement Council;

(3) "Cabinet" means the Justice Cabinet;

(4) "Public property" means property currently owned or used by any organizational unit or agency of state, county, city, metropolitan government, or a combination of these. The term shall include property currently owned or used by public airport authorities;

(5) "Secretary" means the secretary of the Justice Cabinet;

(6) "Special law enforcement officer":

  (a) Means one (1) whose duties include the protection of specific public property from intrusion, entry, larceny, vandalism, abuse, intermeddling, or trespass;

  (b) Means one (1) whose duties include the prevention, observation, or detection of, or apprehension for, any unlawful activity on specific public property;

  (c) Means one (1) whose special duties include the control of the operation, speed, and parking of motor vehicles, bicycles, and other vehicles, and the movement of pedestrian traffic on specific public property;

  (d) Means one (1) whose duties include the answering of any intrusion alarm on specific public property;

  (e) Shall include the Capitol police, the Capital Plaza police, public school district security officers, public airport authority security officers, and the officers of the other public security forces established for the purpose of protecting specific public property; and

  (f) Shall not include members of a lawfully organized police unit or police force of state, county, city, or metropolitan government, or a combination of these, who are responsible for the detection of crime and the enforcement of the general criminal law enforcement of the state; it shall not include any of the following officials or officers:

1. Sheriffs, sworn deputy sheriffs, city marshals, constables, sworn deputy constables, and coroners;
2. Auxiliary and reserve police appointed under KRS 95.160 or 95.445, or citation and safety officers authorized by KRS 83A.087 and 83A.088;
3. State park rangers and conservation officers;
4. Officers of the Transportation Cabinet and Division of Water Patrol responsible for law enforcement;
5. Officers of the Department of Corrections responsible for law enforcement;
6. Fire marshals and deputy fire marshals;
7. Other officers not mentioned above who are employed directly by state government and are responsible for law enforcement;
8. Federal peace officers;
9. Those campus security officers who are commissioned under KRS 164.950 ***or public school safety and security officers commissioned pursuant to KRS Chapter 160***;
10. Private security guards, private security patrolmen, and investigators licensed pursuant to state statute; and
11. Railroad policemen covered by KRS 277.270 and 277.280; and

(7) "Sworn public peace officer" means one (1) who derives plenary or special law enforcement powers from, and is a full-time employee of, the federal government, the Commonwealth, or any political subdivision, agency, department, branch, or service of either, or of any municipality.

HCR 44, A CONCURRENT RESOLUTION requesting local school districts in the Commonwealth of Kentucky to make gender equity a priority while implementing the Kentucky Education Reform Act of 1990.

WHEREAS, the recent report of the American Association of University Women entitled "How Schools Shortchange Girls" concluded that gender-based discrepancies exist nationwide in the current public education system; and

WHEREAS, gender equity is integral to the Kentucky Education Reform Act of 1990 with the main components being:

The basic philosophy that all children can learn, which calls for equity regardless of race, cultural heritage, gender or physical ability;

The encouragement of positive self-concepts fostered by consistent, responsive and caring behavior for all students and a safe educational climate free of harassment;

State guidelines for multicultural education that specifically include gender;

Teacher empowerment through school-based decision making councils enabling teachers to take immediate steps to promote gender equity within their schools;

An emphasis on professional development enabling districts to develop innovative teaching approaches that are gender neutral; and

An emphasis on evaluation through assessment and accountability enabling school systems to identify and address inequities directly affecting students;

WHEREAS, many Kentuckians have signed petitions in support of implementing those aspects of the Kentucky Education Reform Act of 1990 relating to gender equity; and

WHEREAS, equitable education will provide equal opportunity for all and will result in positive outcomes for females and males of all racial and cultural groups;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives stands firm in its commitment to support and promote equitable education for all Kentucky students, as provided for by the Kentucky Education Reform Act of 1990.

Section 2. That the House of Representatives urges local school districts in the Commonwealth of Kentucky to make gender equity a priority while implementing the mandates of the Kentucky Education Reform Act of 1990.

SB 40, AN ACT relating to educational television and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 164.005 is amended to read as follows:

(1) There is established the Governor's Higher Education Nominating Committee which shall consist of seven (7) members representing each of the Supreme Court districts who shall be appointed by the Governor with the consent of the House of Representatives and the Senate. If the General Assembly is not in session at the time of appointment, the consent of the General Assembly shall be obtained during the time the General Assembly next convenes.

(2) (a) In order to be eligible to serve on the Governor's Higher Education Nominating Committee, a member at the time of appointment shall have no conflict of interest pursuant to KRS 45A.340. In addition, no member shall have a relative employed by a public institution of higher education***,*** ~~[or]~~ the Council on Higher Education***, or the Kentucky Authority for Educational Television*** during his tenure on the committee. No more than two (2) persons holding an undergraduate degree from the same institution of higher education shall be members of the committee.

(b) The Governor shall make the appointments so as to reflect no less than proportional representation of the minority racial composition of the Commonwealth.

(c) In selecting the members of the committee, the Governor shall solicit recommendations from each of the following:

1. Advisory Conference of Presidents;
2. Council on Higher Education Student Advisory Committee;
3. Associations representing faculty from universities and community colleges;
4. Associations representing university and community college alumni;
5. Higher education advocacy groups;
6. The State Board for Elementary and Secondary Education; and
7. Associations representing business and civic interests.

(3) (a) Members of the committee representing Supreme Court districts shall serve six (6) year terms and until a successor is appointed, except the initial appointments shall be as follows:

1. Two (2) members shall serve a two (2) year term;
2. Two (2) members shall serve a four (4) year term; and
3. Three (3) members shall serve a six (6) year term.

(b) The terms of the original appointees shall expire on April 14 in the year designated for the term, and the terms of each member appointed thereafter shall begin on April 15. ~~[Appointments shall be submitted to the 1992 Senate and House of Representatives for confirmation as soon as practicable following February 20, 1992. Subsequent]~~ Appointments shall be submitted to the Senate and to the House of Representatives for confirmation by February 1 in each year that a regular session of the General Assembly convenes. Each appointment shall be consented to by both chambers in order for the person to be confirmed. At the first regular meeting of the committee each fiscal year, a chairperson shall be selected by the membership.

(4) The members of the committee may be reimbursed for actual and necessary expenditures incurred in the performance of their duties. The expenses of the committee shall be paid out of the appropriation for the Governor's office.

(5) (a) The committee shall be responsible for submitting three (3) nominations from which the Governor shall select each gubernatorial appointment to a university governing board made pursuant to KRS 164.131, 164.321, and 164.821 and to the Council on Higher Education pursuant to KRS 164.011, except the student member. The committee shall not make recommendations for alumni, faculty, and staff appointments made pursuant to KRS 164.131 and 164.821 and the student appointments made pursuant to KRS 164.131, 164.321, and 164.821. If more than one (1) equivalent gubernatorial appointment is being made to a governing board or the Council on Higher Education at the same time, the committee shall submit a number of nominees equal to three (3) times the number of vacancies. The Governor shall select the appointees from among the nominees.

(b) ***The committee shall be responsible for submitting three (3) nominations from which the Governor shall select each gubernatorial appointment to the Kentucky Authority for Educational Television made pursuant to KRS 168.040. If more than one (1) appointment is being made at the same time, the committee shall submit a number of nominees equal to three (3) times the number of vacancies. The Governor shall select the appointees from among the nominees.***

(c) Nominations shall be made thirty (30) days prior to the expiration of a term or as soon as practicable following an unforeseen ~~[board]~~ vacancy. The Governor shall make the appointment within sixty (60) days following receipt of the nominations. If the Governor does not make the appointment within sixty (60) days, the committee shall select one (1) of the nominees to serve.

(6) In making its nominations, the committee shall consider the needs of the respective institutions, locate potential appointees, review candidates' qualifications and references, conduct interviews, and carry out other search and screening activities as necessary.

(7) The Governor's office staff shall provide support services for the committee.

Section 2. KRS 168.040 is amended to read as follows:

(1) The authority shall consist of nine (9) members, as follows:

The chief state school officer, ex officio, who shall initially serve as temporary chairman and shall call and preside over the organizational meeting or meetings until the members of the authority shall elect a chairman from among their number; a member of the staff or personnel of the department elected by the board upon recommendation of the chief state school officer as being qualified to serve as liaison and coordinator between the authority and the department on matters of curriculum, and his term shall be the same as that of the chief state school officer by whom he is recommended, but terminable by the board in the event he is transferred to other duties in the department, and automatically terminated in the event of his severance from the department for any reason; a representative of the University of Kentucky and a representative of the state universities to be elected by the Council on Higher Education; five (5) additional members appointed by the Governor who need possess no special or prescribed qualifications except that they shall be citizens of Kentucky.

(2) Effective at 11:59 p.m. on June 30, 1994, all terms of gubernatorial appointees to the authority shall expire. Effective July 1, 1994, five (5) appointees nominated pursuant to KRS 164.005 and appointed by the Governor shall become members of the authority.

Section 3. KRS 168.050 is amended to read as follows:

(1) ***Effective July 1, 1994,*** the terms of the members other than the chief state school officer and the member appointed from the staff or personnel of the department shall be originally, two (2) members for a term of four (4) years; two (2) members for a term of three (3) years; two (2) members for a term of two (2) years; and one (1) member for a term of one (1) year, to be determined by ***the Governor*** ~~[lot at the first meeting]~~. Thereafter the terms shall be for four (4) years.

(2) In addition to vacancies from death or resignation, vacancies shall occur upon removal of permanent residence from the Commonwealth; in the case of the elected member representing the department and the board, by change of assignment or by severance from relationship with the department or the board for any reason; and, in the cases of the members representing the University of Kentucky and the state colleges, by termination of the member's membership on the council for any reason. Vacancies during the term of any member shall be filled for the unexpired portion of the term only; and vacancies of elected or appointed members by reason of the expiration of the term shall be for terms of four (4) years each, in the same manner as the initial election or appointment, as the case may be.

(3) Elected or appointed members shall be eligible for reelection or reappointment for any number of terms, as long as the prescribed qualifications prevail.

Section 4. In making the initial gubernatorial appointments to the Kentucky Authority for Educational Television reconstituted by Section 2 of this Act, the Governor shall consider the five (5) lay members serving on June 30, 1994, and ten (10) names submitted by the Governor's Higher Education Nominating Committee. Of the five (5) appointments to the newly-created authority, the Governor shall appoint three (3) members who served on June 30, 1994.

Section 5. Whereas it is critical that the newly appointed members begin their terms at the beginning of the fiscal year, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor.

Calendar

HB 482, HB 519, HB 548, HB 562, HB 398, HB 87, HB 408, HB 445 and **HCR 30** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Consent Calendar

HB 547, HB 386, HB 546 and **HB 569** taken from the Consent Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Orders of the Day

Representative Stumbo moved that the rules be suspended to introduce guests. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to the Committee Substitute to **HB 399**, by Representative Brown:

On page 1, line 14, before "Any" by inserting "***(1)***"; and

On line 6, after "***the***" by changing "***opening***" to "***open***"; and

On line 18, after "***operator of***" by inserting "***a residual landfill,***" and after "***facility***" by inserting "***,***"; and

On line 20, after the text thereon by inserting:

"***(2) The cabinet shall allow the permitting of residual landfills, defined by administrative regulations of the cabinet, to accept waste tires rendered suitable for disposal in a landfill. However, a residual landfill that applies for a permit to accept waste tires shall bepermitted to accept only waste tires.***"

Floor Amendment No. 1 to the Committee Substitute to **HB 276**, by Representative Heleringer:

On page 2, line 24, to delete "***shall***" and to insert in lieu thereof "***may***"; and

On page 3, line 2, to delete "***shall***" and to insert in lieu thereof "***may revoke***"; and

On page 3, line, 3, to delete "***constitute grounds for the revocation of the***"

Report on Enrolled Bills

HB 166 delivered to the Senate, signed by the President. Delivered to the Governor on February 23, 1994 at 2:15 p.m.

Floor Amendments (Continued)

Floor Amendment No. 1 to the Committee Substitute to **HB 225**, by Representative Lee:

On page 7, between lines 13 and 14, insert a new Section 5 to read as follows:

"SECTION 5. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

If a motor vehicle carries a branded title pursuant to the provisions of Sections 2, 3, and 4 of this Act, the Kentucky Revenue Cabinet shall allow a thirty-five percent (35%) deduction on the motor vehicle usage tax due on the retail price of a vehicle as determined by KRS 138.450."; and

On page 7, line 14, renumber the existing "SECTION 5" as "SECTION 6"; and

On page 7, line 21, renumber the existing "Section 6" as "Section 7".

Floor Amendment No. 2 to the Committee Substitute to **HB 225**, by Representative Little:

On page 4, line 18, after the word "***junk***" delete the word "***or***"; and

On page 4, line 19, before the period"***.***" delete the words "***similar classification***".

Orders of the Day (Continued)

HB 466, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative LeMaster moved the adoption of the Committee Substitute to **HB 466**. Agreed.

Representative LeMaster moved that **HB 466**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 89, Nays 1. (See February 23, 1994 roll call on **HB 466** - Appendix)

HB 466, by way of Committee Substitute, was passed and the title agreed to.

Representative LeMaster moved that the vote by which **HB 466**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

SB 12 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rapier moved that **SB 12** be passed.

On the roll call the vote was: Yeas 94, Nays 0. (See February 23 , 1994 roll call on **SB 12** - Appendix)

SB 12 was passed and the title agreed to.

Representative Rapier moved that the vote by which **SB 12** was passed be reconsidered and said motion be placed on the table. Agreed.

SB 2 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rapier moved that **SB 2** be passed.

On the roll call the vote was: Yeas 95, Nays 0. (See February 23 , 1994 roll call on **SB 2** - Appendix)

SB 2 was passed and the title agreed to.

Representative Stumbo moved that the vote by which **SB 2** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 256, with Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 256** be passed.

Representative Lindsay moved the adoption of Floor Amendment No. 2 to **HB 256**.

Representative Scorsone inquired if Floor Amendment No. 2 was germane to **HB 256**.

The Speaker ruled that Floor Amendment No. 2 was germane to **HB 256**.

Representative Lindsay moved the adoption of Floor Amendment No. 2 to **HB 256.**

On the roll call on the adoption of Floor Amendment No. 2 to **HB 256**, the vote was **Yeas 59**--Ackerson, Adkins, Allen, Altman, Arnold, Ballard, Bruce, Bryant, Buis, Cave, P. Clark, Collins, Cyrus, Damron, Deskins, DeWeese, Farley, Ford, Fox, French, Gedling, Gee, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Jensen, Johnson, Keith, Kerr, Lee, Lile, Lindsay, Little, Maggard, Maricle, Mullinix, Napier, Nelson, Noland, Nunn, Reinhardt, Ridley, Riggs, Riner, Sanders, Scott, B. Smith, Stacy, Stengel, Stumbo, Todd, Treesh, Turner, Walton, Yates, Zimmerman. **Nays 35**--Adams, Bentley, Bondurant, Bowling, Brown, Burch, Butler, Callahan, L. Clark, Clarke, Coleman, Crenshaw, Curd, Donnermeyer, Geveden, Lear, LeMaster, Lewis, Long, Lyne, Marzian, Mason, McElroy, Moberly, Nesler, Palumbo, Rapier, Rasche, Richards, Scorsone, Shacklette, Simpson, Trapp, Wayne, Worthington.

Floor Amendment No. 2 to **HB 256** was adopted..

Representative Riner moved the adoption of Floor Amendment No. 3 to **HB 256.**

On the roll call on the adoption of Floor Amendment No. 3 to **HB 256**, the vote was **Yeas 74**--Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Bondurant, Bowling, Brown, Bruce, Bryant, Buis, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Crenshaw, Cyrus, Deskins, DeWeese, Donnermeyer, Farley, Ford, Fox, French, Gedling, Gee, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Heleringer, Jensen, Johnson, Keith, Kerr, Lee, Lile, Lindsay, Little, Lyne, Maggard, Maricle, McElroy, Morris, Mullinix, Napier, Nelson, Nesler, Nunn, Reinhardt, Ridley, Riggs, Riner, Scott, Shacklette, Simpson, B. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Worthington, Yates, Zimmerman. **Nays 4**--Burch, Curd, Marzian, Moberly.

Floor Amendment No. 3 to **HB 256** was adopted.

Representative Stumbo moved that **HB 256**, as amended, be passed.

On the roll call the vote was: Yeas 82, Nays 11. (See February 23, 1994, roll call on **HB 256** - Appendix)

Representative Stumbo moved that the vote by which **HB 256**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 500**, by Representative Lee:

On page 1, line 19, after "*Commonwealth.*", by adding the following:

"*In exercising this authority, however, the commission shall consider the impact of any action it takes on small businesses engaged in the installation and servicing of gas lines, master meter systems, or related equipment and shall act so as to assure that no unfair competitive advantage is given to utilities over such small businesses.*"

Orders of the Day (Continued)

HB 187, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Moberly moved the adoption of the Committee Substitute to **HB 187**. Agreed.

Representative Moberly moved that **HB 187**, by way of Committee Substitute, be passed.

Representative Lindsay moved the adoption of Floor Amendment No. 2 to the Committee Substitute to **HB 187**.

Representative Moberly inquired if Floor Amendment No. 2 was germane to the Committee Substitute to **HB 187**.

The Speaker ruled that Floor Amendment No. 2 was not germane to the Committee Substitute to **HB 187**.

Representative Maricle moved the adoption of Floor Amendment No. 5 to the Committee Substitute to **HB 187**.

On the roll call on the adoption of Floor Amendment No. 5 to the Committee Substitute to **HB 187** the vote was **Yeas 26**–Allen, Altman, Buis, Cave, Deskins, DeWeese, Farley, Ford, Gee, Hampton, Heleringer, Jensen, Keith, Lindsay, Little, Maricle, Mullinix, Napier, Noland, Nunn, Reinhardt, Todd, Treesh, Turner, Walton, Zimmerman. **Nays 68**–Ackerson, Adams, Adkins, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bruce, Burch, Butler, Callahan, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, Donnermeyer, Fox, French, Geveden, Graham, Gray, Hancock, Harper, Hatcher, Johnson, Kerr, Lear, Lee, LeMaster, Lewis, Lile, Long, Lyne, Maggard, Marzian, Mason, McElroy, Moberly, Morris, Nelson, Nesler, Palumbo, Rapier, Rasche, Richards, Ridley, Riggs, Riner, Scorsone, Scott, Shacklette, Simpson, B. Smith, Stacy, Stengel, Stumbo, Trapp, Wayne, Worthington, Yates.

Floor Amendment No. 5 to the Committee Substitute to **HB 187** was rejected.

Representative Barrows moved the adoption of Floor Amendment No. 6 to the Committee Substitute to **HB 187**. Agreed.

Representative Moberly moved that **HB 187**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 96, Nays 0. (See February 23, 1994 roll call on **HB 187** - Appendix)

HB 187, by way of Committee Substitute as amended, was passed and the title agreed to.

Representative Moberly moved that the vote by which **HB 187**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 51, HB 93, HB 125** and **HB 359** have been examined and found correctly enrolled. Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time - 3:15 p.m.)

HB 51, HB 93, HB 125 and **HB 359** delivered to the Senate and signed by the President. Delivered to the Governor on February 23, 1994 at 4:01 p.m.

Orders of the Day (Continued)

HB 505 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Callahan moved that **HB 505** be passed.

On the roll call the vote was: Yeas 91, Nays 0. (See February 23 , 1994 roll call on **HB 505** - Appendix)

HB 505 was passed and the title agreed to.

Representative Callahan moved that the vote by which **HB 505** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 532 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Donnermeyer moved that **HB 532** be passed.

On the roll call the vote was: Yeas 94, Nays 0. (See February 23 , 1994 roll call on **HB 532** - Appendix)

HB 532 was passed and the title agreed to.

Representative Donnermeyer moved that the vote by which **HB 532** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 9 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved that **HB 9** be passed.

On the roll call the vote was: Yeas 73, Nays 14. (See February 23 , 1994 roll call on **HB 9** - Appendix)

HB 9 was passed and the title agreed to.

Representative Long moved that the vote by which **HB 9** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 57, with Committee Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Mullinix moved the adoption of Committee Amendment No. 1 to **HB 57**. Agreed.

Representative Mullinix moved that **HB 57**, as amended, be passed.

On the roll call the vote was: Yeas 96, Nays 0. (See February 23, 1994 roll call on **HB 57** - Appendix)

HB 57, as amended, was passed.

Representative Mullinix moved the adoption of the Committee Title Amendment to **HB 57**. Agreed; and the title was agreed to.

Representative Mullinix moved that the vote by which **HB 57**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Senate Message

Announcing passage of **SB 175, SB 187**, and **HB 123**. Message received on **HB 208**: The Senate has passed **HB 208** with Senate Floor Amendment and respectfully requests concurrence of this Honorable Body. (Time: 3:25 p.m.)

Orders of the Day (Continued)

HB 114, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bowling moved the adoption of the Committee Substitute to **HB 114**. Agreed.

Representative Bowling moved that **HB 114**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 89, Nays 1. (See February 23, 1994 roll call on **HB 114** - Appendix)

HB 114, by way of Committee Substitute, was passed and the title agreed to.

Representative Bowling moved that the vote by which **HB 114**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 264 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 264** be passed.

On the roll call the vote was: Yeas 86, Nays 0. (See February 23 , 1994 roll call on **HB 264** - Appendix)

HB 264 was passed and the title agreed to.

Representative Stumbo moved that the vote by which **HB 264** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 267 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 267** be passed.

On the roll call the vote was: Yeas 88, Nays 0. (See February 23 , 1994 roll call on **HB 267** - Appendix)

HB 267 was passed and the title agreed to.

Representative Stumbo moved that the vote by which **HB 267** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 268 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 268** be passed.

On the roll call the vote was: Yeas 90, Nays 0. (See February 23 , 1994 roll call on **HB 268** - Appendix)

HB 268 was passed and the title agreed to.

Representative Stumbo moved that the vote by which **HB 268** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 278 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Kerr moved that **HB 278** be passed.

On the roll call the vote was: Yeas 94, Nays 0. (See February 23 , 1994 roll call on **HB 278** - Appendix)

HB 278 was passed and the title agreed to.

Representative Kerr moved that the vote by which **HB 278** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 345 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Geveden moved that **HB 345** be passed.

On the roll call the vote was: Yeas 75, Nays 12. (See February 23 , 1994 roll call on **HB 345** - Appendix)

HB 345 was passed and the title agreed to.

Representative Geveden moved that the vote by which **HB 345** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 396 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lewis moved that **HB 396** be passed.

On the roll call the vote was: Yeas 72, Nays 13. (See February 23 , 1994 roll call on **HB 396** - Appendix)

HB 396 was passed and the title agreed to.

Representative Lewis moved that the vote by which **HB 396** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 533, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Curd moved the adoption of Committee Amendment No. 1 to **HB 533**. Agreed.

Representative Curd moved that **HB 533**, as amended, be passed.

On the roll call the vote was: Yeas 96, Nays 0. (See February 23, 1994 roll call on **HB 533** - Appendix)

HB 533, as amended, was passed and the title agreed to.

Representative Curd moved that the vote by which **HB 533**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HCR 24 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Morris moved that **HCR 24** be adopted.

On the roll call the vote was: Yeas 94, Nays 0. (See February 23 , 1994 roll call on **HCR 24** - Appendix)

HCR 24 was adopted.

Representative Stumbo moved that the vote by which **HCR 24** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 25 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Morris moved that **HCR 25** be adopted.

On the roll call the vote was: Yeas 95, Nays 0. (See February 23 , 1994 roll call on **HCR 25** - Appendix)

HCR 25 was adopted.

Representative Stumbo moved that the vote by which **HCR 25** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 34 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Morris moved that **HCR 34** be adopted.

On the roll call the vote was: Yeas 91, Nays 1. (See February 23 , 1994 roll call on **HCR 34** - Appendix)

HCR 34 was adopted.

HCR 35 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Morris moved that **HCR 35** be adopted.

On the roll call the vote was: Yeas 95, Nays 0. (See February 23 , 1994 roll call on **HCR 35** - Appendix)

HCR 35 was adopted.

Representative Stumbo moved that the vote by which **HCR 35** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 38 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Morris moved that **HCR 38** be adopted.

On the roll call the vote was: Yeas 95, Nays 0. (See February 23 , 1994 roll call on **HCR 38** - Appendix)

HCR 38 was adopted.

Representative Stumbo moved that the vote by which **HCR 38** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 39 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Morris moved that **HCR 39** be adopted.

On the roll call the vote was: Yeas 93, Nays 0. (See February 23 , 1994 roll call on **HCR 39** - Appendix)

HCR 39 was adopted.

Representative Morris moved that the vote by which **HCR 39** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 40 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Morris moved that **HCR 40** be adopted.

On the roll call the vote was: Yeas 95, Nays 0. (See February 23 , 1994 roll call on **HCR 40** - Appendix)

HCR 40 was adopted.

Representative Morris moved that the vote by which **HCR 40** was adopted be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Representative Stumbo moved that **HB 622** be reassigned to the Committee on Economic Development. Agreed.

Representative Stumbo moved that **HB 565** be reassigned to the Committee on Cities. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 657, by Representative Reinhardt: AN ACT relating to planning and zoning.

HB 658, by Representatives Walton, Kerr, Gee, Adams, Treesh, Maricle, Johnson, Riner, French, Harper, Gedling, Sanders, Ford, Buis, Turner and P. Clark: AN ACT relating to education on sexual matters.

HB 659, by Representative Maricle: AN ACT relating to road aid funds.

HB 660, by Representative Brown: AN ACT relating to the enforcement of wages and hours violations.

HB 661, by Representative Brown: AN ACT relating to the enforcement of occupational safety and health violations.

HB 662, by Representative Geveden: AN ACT relating to taxation.

HB 663, by Representative Brown: AN ACT relating to education and job training.

HB 664, by Representative Brown: AN ACT relating to environmental protection.

HB 665, by Representative Brown: AN ACT relating to environmental protection.

HB 666, by Representatives Richards and Stacy: AN ACT relating to state publications.

HB 667, by Representative Burch: AN ACT relating to controlled substances.

HB 668, by Representative Burch: AN ACT relating to medical laboratories.

HB 669, by Representative Donnermeyer: AN ACT relating to open meetings of public agencies.

HB 670, by Representatives Ballard, Maggard, Bruce, Morris, Zimmerman, Bentley, Lile, Yates, Riggs, Napier and Turner: AN ACT relating to state veterans' cemeteries.

HB 671, by Representatives Ballard, Maggard, Bruce, Morris, Zimmerman, Bentley, Lile, Yates, Riggs, Napier and Turner: AN ACT relating to veterans.

HB 672, by Representative Deskins: AN ACT relating to health care issues.

HB 673, by Representative Coleman: AN ACT relating to state employees.

HB 674, by Representative Ford: AN ACT relating to county health department boards.

HJR 52, by Representative Bowling: A JOINT RESOLUTION directing the Transportation Cabinet to name U. S. Route 25E from the Bell County line to the Robert Madon Bypass, the Pascal Costanzo, Jr. Memorial Highway.

HCR 53, by Representatives Lear, Maggard, Bentley, Noland, Keith, Bowling and Mason: A CONCURRENT RESOLUTION recommending designation of the Flat Woods community of Clay, Leslie, Owsley, and Perry Counties as a Federal Rural Empowerment Zone.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills have been posted for Committee consideration:

Natural Resources and Environment: **HB 591, HB 618**

Appropriations and Revenue: **HB 492**

Floor Amendments (Continued)

Floor Amendment No. 1 to **SB 61**, by Representative Barrows:

On page 6, line 14, by deleting "***shall***" and by removing the brackets and strikethroughs from "~~[may]~~"; and

On page 6, line 17, by deleting "***shall***" and inserting "***may***" in lieu thereof.

Motions, Petitions and Communications (Continued)

Representative Little moved that the rules be suspended to withdraw **HB 168, HB 403** and **HB 523**. Agreed.

Representative Heleringer moved that the rules be suspended to record a vote on **HCR 34**.

On the roll call to record a vote on **HCR 34** the vote was **Yeas 91**–Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Bryant, Buis, Burch, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Cyrus, Damron, Deskins, DeWeese, Donnermeyer, Farley, Ford, Fox, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Heleringer, Jensen, Johnson, Keith, Kerr, Lear, Lee, LeMaster, Lile, Lindsay, Little, Long, Lyne, Maggard, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riggs, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, R. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 2**–Curd, Lewis.

Representative Richards moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Richards moved that he be recorded as voting "yea" on **HB 264**. Agreed.

Representative Kerr moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Kerr moved that he be recorded as voting "yea" on **HB 264**. Agreed.

Representative Lyne moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Lyne moved that she be recorded as voting "yea" on **HCR 34**. Agreed.

Representative Johnson moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Johnson moved that he be recorded as voting "yea" on **HCR 39**. Agreed.

Representative Deskins moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Deskins moved that he be recorded as voting "yea" on **HB 115, HB 293, HB 452, HB 512, HB 401, HB 504, HCR 47, HB 51, HB 93, HB 125,** and **HB 267**. Agreed.

Representative DeWeese moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative DeWeese moved the adoption of the following **Legislative Citation No. 73**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to Boy Scout Troop 273 Seneca District, Lincoln Heritage Council in recognition of the young men moving from Webelos to Boy Scouts. The honesty, perseverance and dedication to good deeds and becoming significant citizens has earned these young Webelos the rank of Boy Scouts. The entire membership joins Representative Bob DeWeese in commending Boy Scout Troop 273 for earning and making an important step in their lives and thanking their leaders, Kaz Wolkensperg and Mike Maple for the time they've spent in guiding such conscientious young people.

Representative L. Clark moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative L. Clark moved the adoption of the following **Legislative Citation No. 74**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby commends Terry Leach for extraordinary courage in the shocking face of danger. Whereas, Terry Leach survived a heinous attack and exhibited remarkable daring and tremendous stamina in a heroic display, that in the face of enormous obstacles, putting his own safety in jeopardy, he extricated others from the vile face of danger. This prestigious body does hereby commend the bravery of said recipient and the courage exhibited that resulted in the miscarriage of a dastardly crime.

The following members filed requests to have their names added as co-sponsors to Bills : **HB 192, HB 467,** Representative Reinhardt; **HB 252,** Representative Bowling; **HB 479,** Representative Crenshaw; **HB 505, HB 532,** Representative B. Smith; **HB 506,** Representative Todd; **HB 513,** Representatives Gedling, Lyne; **HB 532,** Representative Farley; **HB 626,** Representatives Adkins, Burch, Callahan, Cyrus, Deskins, Morris; **HB 636,** Representative Donnermeyer.

The following member filed a request to have his name withdrawn as co-sponsor to a Bill: **HB 250,** Representative Jensen.

Announcements

The Clerk announced the following meetings:

Natural Resources and Environment, ten minutes upon adjournment, Room 149

Health and Welfare, 1:00 p.m., February 28, 1994 and 8:00 a.m., March 1, 1994

Majority Caucus, during recess, February 24, 1994, Room 327

Labor and Industry, 8:30 a.m., February 24, 1994, Room 125

Budget Review Subcommittee on Natural Resources, February 24, 1994, canceled

Appropriations and Revenue, upon adjournment, February 24, 1994

Education, public hearing, 10:00 a.m., February 24, 1994

Committee on Rules, upon adjournment, Speaker's Office

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Thursday, February 24, 1994.

On the roll call the vote was **Yeas 86**–Ackerson, Adams, Adkins, Altman, Arnold, Ballard, Bentley, Bondurant, Bowling, Brown, Bruce, Bryant, Buis, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Crenshaw, Curd, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Ford, Fox, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Hatcher, Heleringer, Jensen, Johnson, Keith, Kerr, Lee, Lindsay, Little, Lyne, Maggard, Maricle, Marzian, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nelson, Nesler, Noland, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riner, Sanders, Scorsone, Scott, Shacklette, B. Smith, R. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates, Zimmerman. **Nays 2**–LeMaster, Lile.

The motion to adjourn was adopted.

THURSDAY, FEBRUARY 24, 1994

THIRTY-FOURTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend Rick Loader, First Christian Church, Disciples of Christ, Bardstown.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present.

Representative McElroy moved that the reading of the Journal of February 23, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **HB 325**. (Time: 2:05 p.m.)

Introduction of Bills and Resolutions

HB 675, by Representative Jensen: AN ACT relating to contracts.

HB 676, by Representative Barrows: AN ACT relating to the promotion of equine activities.

HB 677, by Representative Collins: AN ACT relating to voting.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Appropriations and Revenue: **HB 662**

Business Operations and Professions: **SB 201**

Counties and Special Districts: **SB 187, HB 657**

Economic Development: **HCR 53**

Education: **HJR 51, HB 658**

Health and Welfare: **HB 667, HB 668, HB 674**

Judiciary: **SB 43, SB 153, SB 186, HB 656, HB 672**

Labor and Industry: **HB 660, HB 661, HB 663**

Natural Resources and Environment: **HB 664, HB 665**

State Government: **SB 175, HB 655, HB 666, HB 669, HB 670, HB 671, HB 673**

Transportation: **HJR 50, HJR 52, HB 659**

Report of Committees

The Committee on Rules reported the following Consent Bills have been posted for passage in the Regular Orders of the Day for February 25, 1994: **HB 546, HB 547, HB 569**

The Committee on Rules reported that **HB 398, HB 445, HB 519, HB 548, HB 562** and **HCR 30** have been posted for passage in the Orders of the Day for February 25, 1994.

The Committee on Rules reported that the following Bills have been recommitted:

Appropriations and Revenue: **HB 87, HB 408**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Cities: **HB 565, HB 651**

Tourism Development and Energy: **HB 501**

Agriculture and Small Business: **SB 138**

Report of Committees (Continued)

The Committee on Labor and Industry reported **HB 425** and **HB 469**, with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 425, AN ACT relating to collective bargaining for firefighters in cities of the second through fourth classes.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 345.010 is amended to read as follows:

When used in this chapter:

(1) "Public employer" means a city of the first ***through fourth*** class or any city that petitions the commissioner of the Department of Workplace Standards, under the direction of the secretary of the Labor Cabinet to be included by this chapter;

(2) "Firefighter" means an employee of the public employer engaged in serving the public by providing fire protection, including those covered by KRS Chapter 95;

(3) "Labor organization" means any chartered labor organization of any kind in which firefighters participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of employment;

(4) "Exclusive representative" means the labor organization [~~which has been~~] designated by the State Labor Relations Board as the representative of the majority of firefighters in appropriate units or has been [~~so~~] recognized by the public employer;

(5) "Board" means the State Labor Relations Board;

(6) "Person" includes one (1) or more individuals, labor organizations, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;

(7) "Commissioner" means the commissioner of the Department of Workplace Standards, under the direction and supervision of the secretary of the Labor Cabinet of the Commonwealth of Kentucky.

SECTION 2. A NEW SECTION OF KRS CHAPTER 345 IS CREATED TO READ AS FOLLOWS:

(1) Firefighters of a city of the second through fourth classes shall have, and shall be protected in the exercise of, the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, and other conditions of employment free from interference, restraint, or coercion.

(2) Labor organizations designated by the State Labor Relations Board as the representative of the majority of firefighters in an appropriate unit or recognized by a public employer as the representative of the majority of employees in an appropriate unit shall be the exclusive representative for the employees of the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.

(3) Labor organizations recognized by a public employer as the exclusive representative or designated in accordance with the provisions of this chapter shall be responsible for representing the interest of all firefighters in the unit without discrimination.

Section 3. KRS 345.050 is amended to read as follows:

(1) Public employers, their representatives or their agents are prohibited from:

- (a) Interfering, restraining or coercing firefighters in the exercise of the rights guaranteed in KRS 345.030 ***and Section 2 of this Act***;
- (b) Dominating or interfering with the formation, existence or administration of any labor organization;
- (c) Discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; provided, that nothing in this chapter, or in any other statute of this state, shall preclude a public employer from making an agreement with a labor organization to require as a condition of employment membership therein on or after the thirtieth day following the beginning of [~~such~~]

employment or on the effective date of ***the*** ~~[such]~~ agreement, whichever is the later;

(d) Discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter;

(e) Refusing to bargain collectively in good faith with a labor organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

(2) Labor organizations or their agents are prohibited from:

(a) Restraining or coercing:

1. Firefighters in the exercise of the right guaranteed in subsection (1) of KRS 345.030 ***and Section 2 of this Act***, and

2. A public employer in the selection of his representative for the purposes of collective bargaining or the adjustment of grievances;

(b) Refusing to bargain collectively in good faith with a public employer, if they have been designated in accordance with the provisions of this chapter as the exclusive representative of firefighters in an appropriate unit.

(3) For the purposes of this chapter, to bargain collectively is to carry out in good faith the mutual obligation of the parties, or their representatives; to meet together at reasonable times, including meetings in advance of the budget-making process; to negotiate in good faith with respect to wages, hours and other conditions of employment; to negotiate an agreement; to negotiate any question arising under any agreement; and to execute a written contract incorporating any agreement reached, if requested by either party. The obligation shall not be interpreted to compel either party to agree to a proposal, or require either party to make a concession.

HB 469, AN ACT relating to business opportunities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 367.801 is amended to read as follows:

As used in KRS ***367.801*** ~~[367.803]~~ to 367.819 and 367.990, unless the context requires otherwise:

(1) "Division" means Division of ***Consumer Protection of the office of the Attorney General*** ~~[Securities]~~.

(2) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, or any other legal entity.

(3) "Offeror" means a person who is engaged in the business of selling business opportunities ***including any subsidiary business which affiliates with the offeror for goods or services or locations***.

(4) "Consumer/investor" means a person who has purchased or is solicited for the purchase of a business opportunity.

(5) "Business opportunity" means ***the sale or lease, or offer to sell or lease, of any products, equipment, supplies or services for the purpose of enabling the consumer investor to start a business*** ~~[an opportunity to offer, sell or distribute through a distribution device goods or services supplied in whole or in part by the offeror]~~ when:

(a) The offeror obtains an initial required consideration of not less than five hundred dollars ($500) from the purchase or lease of the business opportunity or inventory associated therewith; and

(b) The offeror has represented***, directly or indirectly,*** that the consumer/investor will earn, can earn***,*** or is likely to earn a gross or net profit in excess of the initial required investment paid by the consumer/investor for the business opportunity; ***or*** ~~[and]~~

(c) ***1.*** The offeror has represented that he has knowledge of the relevant market and that the market demand will enable the consumer/investor to earn a profit from the business opportunity; or

2. The offeror has represented that locations will be provided or assistance will be given ***directly or indirectly*** to the consumer/investor in finding locations for the use or operation of the business opportunity ***including, but not limited to, supplying the consumer/investor with names of locator companies, contracting with the consumer/investor to provide assistance with or supply names of or collect a fee on behalf of or for a locator company***; or

3. The offeror has represented that there is a guaranteed market or that the offeror will buy back or is likely to buy back any product made, manufactured, produced, fabricated, grown or bred by the consumer/investor using, in whole or in part, the products, supplies, equipment or services which were initially sold or offered for sale to the consumer/investor by the offeror.

~~[(6) "Distribution device" is the method by which the consumer/investor offers, sells or distributes the goods or services supplied to him by the offeror and includes the following:~~

~~(a) Vending machines, electric game machines, racks, display cases and other similar devices for selling goods supplied to the consumer/investor by the offeror;~~

~~(b) Feed, training manuals and materials for breeding and selling chinchillas, earthworms, rabbits, minks, or vicunas;~~

~~(c) Ovens or other cooking devices for the sale of "fast food" or "snack food" such as pizza, sandwiches or hot drinks;~~

~~(d) Water filtration devices;~~

~~(e) Materials for operating a travel agency;~~

~~(f) Equipment and materials to set up a miniature golf course;~~

~~(g) Literature and printed materials for the sale and distribution of "warranty packages" for automobiles or other vehicles;~~

~~(h) Market projection formats for the purpose of selling to retailers plans or arrangements which are represented to increase the retailer's market share;~~

~~(i) Electronic equipment and instructional materials for the purpose of establishing message recording services;~~

~~(j) Equipment and supplies for establishing or renting to third parties cleaning, washing, home and business or insulation services;~~

~~(k) Products for repairing, lubricating, oiling, or maintaining automobiles, digital watches or other machinery;~~

~~(l) Supplies, instructions, and equipment for home manufacture or assembly of products to be sold or distributed by the consumer/investor.~~

~~(7) "Package franchise" means an agreement wherein:~~

~~(a) The franchisee sells goods or services which must meet the quality standards of the franchisor, and~~

~~(b) The franchisee is required by the franchisor to establish a retail business location, not to include the home or residence of the franchisee, to be used primarily for the sale of the goods or services under the trade name of the franchisor; and~~

~~(c) The franchisor exerts or has authority to exert a significant degree of control over the franchisee's business organization, promotional activities, management marketing plan, or business affairs.~~]

Section 2. KRS 367.805 is amended to read as follows:

(1) It is unlawful for any person to engage in the sale of business opportunities unless prior to the offering the offeror has registered with the division and has furnished a bond pursuant to KRS 367.815(2) and provided ***all of*** the following:

(a) All trade names, assumed names, and all trademarks by which the offeror or the prospective consumer/investor of the business opportunity will be doing business.

(b) The names, home addresses, and home telephone numbers of the persons and company offering the business opportunity, and the company's directors and chief executive officers, and the names, home addresses, and home telephone numbers of all representatives selling business opportunities in Kentucky.

(c) A statement as to the length of time the person and company offering the business opportunity has conducted a business of the type being offered both within and without Kentucky.

(d) A statement as to whether the person or company offering the business opportunity or any of its directors or chief executive officers or sales representatives operating in Kentucky ***is currently involved in litigation or*** has been held liable in a civil action by final judgment for having engaged in unfair, false, misleading, or deceptive practices or ***is currently charged with or*** has been convicted of or pleaded nolo contendere to a felony involving fraud, embezzlement, fraudulent conversion, or misappropriation of property during the most recent seven (7) year period, ***or has entered into any agreed settlements or is currently in any bankruptcy proceeding*** or has been declared bankrupt in any judicial proceeding during the most recent seven (7) year period.

(e) A statement as to whether the person or the company offering the business opportunity or its officers, directors, or agents making the offering of the business opportunity has been a party to any legal cause of action brought by a ***consumer/investor*** ~~[purchaser]~~ of the business opportunity within the last seven (7) year period and, if so, the name and address of such individual who has brought the legal action.

(f) A statement disclosing the names, addresses, and telephone numbers of all persons who have been sold a business opportunity by the offeror within the last two (2) year period.

(g) A statement listing the names and addresses of any consumer/investor who has requested within the preceding three (3) years that the offeror return his money.

(h) A current audited financial statement of the offeror.

(i) A specimen of each contract proposed for use in connection with the business opportunity.

(j) A full and detailed description of the actual services that the offeror of the business opportunity undertakes to perform for the consumer/investor.

(k) If training is promised by the offeror, a complete description of the training, including length of the training and costs.

(2) The offeror shall immediately notify the division of any material change in information contained in the application for registration and shall make appropriate amendment of the disclosure statement.

(3) The division shall ***collect, from any offeror required to comply with this section, an initial fee of one hundred fifty dollars ($150), and an annual renewal fee of fifty dollars ($50), and an update fee of twenty five dollars ($25) for the administration and enforcement of KRS 367.801 to KRS 367.819. Funds so collected shall be credited to a trust or agency account for the administrative purpose of the Attorney General's office, Division of Consumer Protection.***

(4) The Attorney General may promulgate administrative regulations as needed to provide for: a hearing procedure for any business opportunity which the Attorney General initially determines should not be registered or should have registration revoked or suspended; for the establishment of specific standards for the form and content of the disclosure document; and for registration procedures including fee schedules [~~furnish the Attorney General with a copy of each registration disclosure form within one (1) week after registration is complete~~].

Section 3. KRS 367.807 is amended to read as follows:

(1) An offeror is exempt from the provisions of KRS 367.801 to 367.819 and 367.990 when the offeror:

(a)[~~(1)~~] ***Meets the definition of a franchise as defined in the Federal Trade Commission's Regulation on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, as set forth in 16 C.F.R. 436 et seq., and has complied with these and filed written notice so stating with the division; or***

(b) Offers a security pursuant to KRS 292.313; or

(c) Offers an ongoing business for sale. [~~Has continuously operated a business from a physical location in Kentucky, including a district office, regional office or headquarters, for twelve (12) consecutive months prior to the time of the offer; or~~]

(2) ***The Attorney General may promulgate administrative regulations as needed to provide for additional exemptions.*** Is offering to sell or selling a package franchise as described in KRS 367.801(7).

Section 4. KRS 367.811 is amended to read as follows:

It shall be unlawful for any offeror to make any oral or written representation, actual or hypothetical, regarding the business opportunity's potential sales, income, gross or net profit unless such sales, income or profits are examples based upon the actual earnings made by existing ***consumer/investors*** [~~purchasers~~] of the business opportunity. ***Upon request by the division, names and addresses of the consumer/investors shall be made available for verification of the earnings claims.*** If such actual or hypothetical earnings examples are in excess of the average net earnings realized by all of the ***consumer/investors*** [~~purchasers~~] of the business opportunity, then there must be a full and complete disclosure of the average net earnings actually realized by all of these ***consumer/investors*** [~~purchasers~~].

Section 5. KRS 367.815 is amended to read as follows:

(1) Any person who offers a business opportunity and makes representations that are false, misleading or deceptive shall be liable to the ***consumer/investor*** [~~purchaser~~] of such business opportunity in an amount equal to the sum of his actual damages or fifteen hundred dollars ($1,500), whichever is greater, as well as the cost of the action together with reasonable attorney's fees, as determined by the court.

(2) ***(a) All persons registering pursuant to KRS 367.805 shall either furnish a bond by a surety company authorized to do business in the Commonwealth or establish a full cash certificate of deposit with a licensed and insured bank or savings institution located in the Commonwealth to insure the veracity of all statements contained in the registration. The amount of the bond or certificate of deposit shall be in an amount equal to the total amount of the initial payments under all business opportunity agreements the offeror has entered into in the Commonwealth during the previous year but in no case shall the amount be less than seventy five thousand dollars ($75,000). The bond or certificate of deposit shall be in the favor of the Attorney General of Kentucky.***

(b) Any person who is damaged by any violation of KRS 367.801 to 367.819, or by the offeror's breach of contract for the business opportunity sale, or of any obligation arising therefrom may bring an action against the bond or certificate of deposit to recover damages suffered, provided that the aggregate liability of the surety or trustee shall be only for the actual damages and shall not exceed the amount of the bond or trust account [~~All persons registering pursuant to KRS 367.805 shall furnish a bond of twenty five thousand dollars ($25,000) with a surety acceptable to the division to insure the veracity of all statements contained in the registration, and any and all persons who are sold a business opportunity in reliance on the registration or any other representations made by the offeror shall be entitled to be compensated from the bond if it is shown that such statements in the registration or representations made during the sales transaction were false, misleading or deceptive~~].

(3) A person who has furnished a bond described in subsection (2) of this section may petition the division for release of the bond by submitting a verified statement that such person has not offered business opportunities in the state for the last five (5) years.

(4) Any offeror of a business opportunity who has offered or sold in this state shall maintain a complete set of books, records, and accounts of its business opportunity sales. The sale documents shall be maintained on each transaction for a period of four (4) years after the date of agreement. The offeror shall make the books and records available to the division upon demand at a location within the state.

SECTION 6. A NEW SECTION OF KRS 367.801 TO 367.819 IS CREATED TO READ AS FOLLOWS:

(1) Every agreement or arrangement for a business opportunity shall be in writing. Copies of the completed agreement and all other documents the offeror requires the consumer/investor to sign shall be given to the consumer/investor at the time they are signed.

(2) Each business opportunity agreement shall set forth in easily legible form all of the following:

(a) The terms and conditions of all payments including the amount owed and a complete schedule for total payment;

(b) A detailed description of the acts or services the offeror or its affiliate undertake to perform for the consumer/investor;

(c) The offeror's name, telephone number, principal business address, by street and number, and the name and address of its agent in this state authorized to receive service of process;

(d) Whether the offeror is doing business as a corporation, partnership, or otherwise, and the state of its incorporation or organization;

(e) The estimated delivery dates of each installment and whether the items are to be delivered to the consumer/investor or are to be placed by the offeror at locations owned or managed by persons other than the consumer/investor;

(f) If applicable, the terms of the "buy-back" or "security" obligation of the offeror pursuant to subsection (5)(c)3. of Section 1 of this Act.

(g) The name and address of each supplier of the items the offeror is to deliver to the consumer/investor; and

(h The following statement in the form below in no smaller than ten (10) point boldface print:

STATEMENT OF CONSUMER INVESTOR RIGHTS

1. You have thirty (30) business days in which you may cancel this contract for any reason.

2. To cancel, you must mail or deliver a written notice to (Seller's name and street address) before (last date to mail or deliver notice). If mailed, the notice must be postmarked by the above date. If you deliver the notice, it must be delivered by the end of the normal business day on the above date.

3. We must promptly refund your payments, and within five (5) business days after you receive your refund, you must allow us to pick up anything we provided to you under this contract.

4. If we or our affiliates mislead you by what we say, or if we violate the Kentucky Business Opportunities law, you may cancel this contract. To cancel, you must give written notice to us within one (1) year of the date of the contract.

5. If you cancel under this provision, you are entitled to a prompt refund of all amounts you have paid, less the value of items we delivered that you do not return.

6. If we do not deliver items promised within thirty (30) days of the delivery date in your contract except for reasons beyond our control, you may cancel this contract and receive an immediate refund of amounts paid, less the value of items you do not return.

(9) The offeror shall not take a negotiable instrument as evidence of the consumer's/investor's obligation unless the instrument on its face abrogates holder in due course status for its holder.

(10) The payment schedule in the agreement shall not require payment of more than twenty percent (20%) of the initial payment before delivery to the consumer/investor of the items to be supplied by the offeror, unless sums in excess of the twenty percent (20%) are placed in escrow until the consumer/investor advises the escrow agent in writing of the delivery of the items, or until the offeror presents the escrow agent with a bill of lading that proves timely delivery of the items. The consumer/investor shall not unreasonably withhold notice of delivery.

(11) A successor or assignee of the offeror's interest or rights in the agreement is subject to all equities, rights, and defenses of the consumer/investor against the offeror.

(12) Until the offeror has complied with this section, the buyer may cancel the purchase of a business opportunity by notifying the offeror in any manner and by any means of his intention to cancel.

(13) Any waiver by the consumer/investor of a business opportunity of the rights provided in this section is null and void and will not operate to relieve the offeror of any obligation placed upon him by KRS 367.801 to 367.819.

Section 7. KRS 367.819 is amended to read as follows:

(1) The purchaser of a business opportunity has the right to cancel *as set forth in KRS Chapter 367 as well as the right to*

cancel such purchase for any reason at any time prior to midnight of the thirtieth calendar day after signing a contract for purchasing the business opportunity. In addition, the purchaser may cancel such purchase at any time for the following violations:

(a) Not providing locations as represented;

(b) Failing to deliver goods or merchandising materials as represented; or

(c) Failing to comply with KRS 367.809(2).

(2) Cancellation occurs when the ***consumer/investor*** [~~person~~] gives written notice to the ***offeror*** [~~seller~~] at the address ***given in the purchase agreement or otherwise provided by the offeror*** [~~stated~~] and the notice and statement of the buyer's right to cancel provided for in subsection (1) of this section.

(3) Notice of cancellation, if given by mail, is given when it is deposited in the mail properly addressed and postage prepaid.

(4) Notice of cancellation given by the purchasers need not take a particular form and is sufficient if it indicates by form of written expression the intention of the buyer not to be bound by any contract to purchase the business opportunity.

(5) [~~In the sale of a business opportunity the seller must present to each purchaser at the time such purchaser assumes any financial obligation with respect to the purchase of the business opportunity, a written notice and statement of the buyer's right to cancel which must:~~

~~(a) Appear under the conspicuous caption, "BUYER'S RIGHT TO CANCEL WITHIN 30 DAYS," and~~

~~(b) Contain the following statement in no smaller type than the body copy portion of the written agreement offer to purchase, or receipt: "THE PURCHASER OF THIS BUSINESS OPPORTUNITY HAS THE RIGHT TO CANCEL THE PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO MIDNIGHT OF THE 30TH CALENDAR DAY AFTER THIS CONTRACT IS ENTERED INTO. YOU MAY CANCEL THE PURCHASE BY NOTIFYING THE SELLER THAT YOU DO NOT WANT THE BUSINESS OPPORTUNITY BY MAILING A NOTICE BEFORE .... TO THE SELLER AT ...."~~

~~(6) Until the seller has complied with this section, the buyer may cancel the purchase of a business opportunity by notifying the seller in any manner and by any means of his intention to cancel.~~

~~(7)~~] Within fifteen (15) days after the date of notice of cancellation by the ***consumer/investor*** [~~purchaser~~], the seller must tender to the ***consumer/investor*** [~~purchaser~~] any payments ***as well as shipping costs*** made by him and terminate all financial obligations created in connection with the purchase of the business opportunity. ***Within five (5) days of refund, the consumer/investor shall make available to the offeror the items delivered by the offeror.***

(6)[~~(8)~~] Any waiver by the ***consumer/investor*** [~~purchaser~~] of a business opportunity of the rights provided in this section is null and void, and will not operate to relieve the seller of any obligation placed upon him by this section.

[~~(9) The purchaser may not cancel a purchase of a business opportunity if the products or inventory furnished to the purchaser cannot be returned to the seller in substantially as good condition as when received by the buyer.~~]

Section 8. KRS 367.990 is amended to read as follows:

(1) Any person who violates the terms of a temporary or permanent injunction issued under KRS 367.190 shall forfeit and pay to the Commonwealth a civil penalty of not more than twenty-five thousand dollars ($25,000) per violation. For the purposes of this section, the Circuit Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the Commonwealth may petition for recovery of civil penalties.

(2) In any action brought under KRS 367.190, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by KRS 367.170, the Attorney General, upon petition to the court, may recover, on behalf of the Commonwealth, a civil penalty of not more than two thousand dollars ($2,000) per violation.

(3) Any person with actual notice that an investigation has begun or is about to begin pursuant to KRS 367.240 and 367.250 who intentionally conceals, alters, destroys, or falsifies documentary material is guilty of a Class A misdemeanor.

(4) Any person who, in response to a subpoena or demand as provided in KRS 367.240 or 367.250, intentionally falsifies or withholds documents, records, or pertinent materials that are not privileged, shall be subject to a fine as provided in subsection (3) of this section.

(5) The Circuit Court of any county in which any plan described in KRS 367.350 is proposed, operated, or promoted may grant an injunction without bond, upon complaint filed by the Attorney General to enjoin the further operation thereof, and the Attorney General may ask for and the court may assess civil penalties against the defendant in an amount not to exceed the sum of five thousand dollars ($5,000) which shall be for the benefit of the Commonwealth of Kentucky.

(6) Any person, business, or corporation who knowingly violates the provisions of KRS 367.540 shall be guilty of a violation. It shall be considered a separate offense each time a magazine is mailed into the state; but it shall be considered only one (1) offense for any quantity of the same issue of a magazine mailed into Kentucky.

(7) Any solicitor who violates the provisions of KRS 367.513 or 367.515 shall be guilty of a Class A misdemeanor.

(8) In addition to the penalties contained in this section, the Attorney General, upon petition to the court, may recover, on

behalf of the Commonwealth a civil penalty of not more than the greater of five thousand dollars ($5,000) or two hundred dollars ($200) per day for each and every violation of KRS 367.175.

(9) Any person who shall willfully and intentionally violate any provision of KRS 367.976 to 367.985 shall be guilty of a Class B misdemeanor.

(10) (a) Any person who violates the terms of a temporary or permanent injunction issued under KRS 367.665 shall forfeit and pay to the Commonwealth a penalty of not more than five thousand dollars ($5,000) per violation. For the purposes of this section, the Circuit Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the Commonwealth may petition for recovery of civil penalties; and

(b) The Attorney General may, upon petition to a court having jurisdiction under KRS 367.190, recover on behalf of the Commonwealth from any person found to have willfully committed an act declared unlawful by KRS 367.655 a penalty of not more than two thousand dollars ($2,000) per violation.

(11) Any dealer who fails to provide a statement under KRS 367.760 or a notice under KRS 367.765 shall be liable for a penalty of one hundred dollars ($100) per violation to be collected in the name of the Commonwealth upon action of the Attorney General.

(12) Any dealer or manufacturer who falsifies a statement under KRS 367.760 shall be liable for a penalty not exceeding one thousand dollars ($1,000) to be collected in the name of the Commonwealth upon action by the Attorney General.

(13) Any person who violates KRS 367.805, 367.809(2), 367.811, or 367.813(1) ***or Section 6 of this Act*** shall be guilty of a Class C felony.

(14) Either the Attorney General or the appropriate Commonwealth's attorney shall have authority to prosecute violations of KRS 367.801 to 367.819.

(15) A violation of KRS 367.474 to 367.478 and 367.482 is a Class C felony. Either the Attorney General or the appropriate Commonwealth's attorney shall have authority to prosecute violators of KRS 367.474 to 367.478 and 367.482.

(16) Any person who violates KRS 367.310 shall be guilty of a violation.

(17) Any person, partnership, or corporation who violates the provisions of KRS 367.850 shall be guilty of a Class A misdemeanor.

(18) Any dealer in motor vehicles or any other person who fraudulently changes, sets back, disconnects, fails to connect, or causes to be changed, set back, or disconnected, the speedometer or odometer of any motor vehicle, to effect the sale of the motor vehicle shall be guilty of a Class D felony.

(19) Any person who negotiates a contract of membership on behalf of a club without having previously fulfilled the bonding requirement of KRS 367.403 shall be guilty of a Class D felony.

(20) Any person or corporation who operates or attempts to operate a health spa in violation of KRS 367.905(1) shall be guilty of a Class A misdemeanor.

(21) (a) Any person who violates KRS 367.832 shall be guilty of a Class C felony; and

(b) The appropriate Commonwealth's attorney shall have authority to prosecute felony violations of KRS 367.832.

(22) (a) Any person who violates the provisions of KRS 367.855 or 367.857 shall be guilty of a violation. Either the Attorney General or the appropriate county health department shall have authority to prosecute violators of KRS 367.855 or 367.857.

(b) The provisions of this subsection shall not apply to any retail establishment if the wholesaler, distributor, or processor fails to comply with the provisions of KRS 367.857.

Section 9. The following KRS section is repealed:

367.803 Addition of distribution devices by Attorney General by regulation.

The Committee Amendment No. 1 to **HB 469** is as follows:

On page 6, line 11, by deleting "***or***";

on line 12, by deleting the "." and by inserting "***; or***" after "***sale***" and after line 15, by adding the following:

"***(d) Offers a not-for-profit sale of sales demonstration equipment, materials, or samples for use in making sales and not for resale for a total price of $500 or less.***".

The Committee on Labor and Industry reported **HB 449, HB 534** and **HB 605,** with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 449, AN ACT relating to liquefied petroleum gas.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 234.120 is amended to read as follows:

(1) Subject to the exceptions provided in subsection (2), no person shall engage in any of the businesses set out herein without first having ***provided proof to the commissioner of ability to respond in damages for personal injury and property damages in the amount prescribed, and having*** obtained from the commissioner the required license or licenses and paid the prescribed fee therefor:

(a) Selling ***or delivering to the ultimate consumer or user of liquefied petroleum gas; selling liquefied petroleum gas regulating equipment; repairing, installing, or connecting of containers, liquefied petroleum gas appliances or liquefied petroleum gas utilization equipment; or filling of D.O.T. liquefied petroleum gas containers for ultimate consumer or wholesale dealer. In-state liquefied petroleum gas dealers shall maintain a liquefied petroleum gas storage facility with an eighteen thousand (18,000) gallon minimum capacity within the boundaries of Kentucky. Out-of-state liquefied petroleum gas dealers shall maintain an eighteen thousand (18,000) gallon minimum capacity liquefied petroleum gas storage facility within fifty (50) miles of the Kentucky border. The fee for this license shall be one hundred dollars ($100). The minimum liability insurance for this license shall be one million dollars ($1,000,000).***

(b) Selling or delivering liquefied petroleum gas in prefilled or filled-on-site containers of one hundred (100) pound liquefied petroleum gas capacity or less; selling of liquefied petroleum gas regulating equipment; assembly, repairing, installing or connecting of liquefied petroleum gas containers, liquefied petroleum gas appliances, or any liquefied petroleum gas utilization equipment. The fee for this license shall be fifty dollars ($50). The minimum liability insurance for this license shall be five hundred thousand dollars ($500,000).

(c) Selling or filling of D.O.T. liquefied petroleum gas containers of forty-five (45) pounds or less capacity, or selling liquefied petroleum gas at a specific site for use as a motor vehicle fuel. The fee for this license shall be fifty dollars ($50). The minimum liability insurance for this license shall be five hundred thousand dollars ($500,000).

(d) Storing, for resale, liquefied petroleum gas in D.O.T. containers of forty-five (45) pounds or less capacity, or selling D.O.T. containers, storage cabinets, racks, docks, for storage of forty-five (45) pound capacity or less. The fee for this license shall be twenty-five dollars ($25). The minimum liability insurance for this license shall be one hundred thousand dollars ($100,000).

(e) Assembling, repairing, installing, or connecting of liquefied petroleum gas containers, or regulating equipment, or liquefied petroleum gas appliances, or any liquefied petroleum gas utilization equipment. The fee for this license shall be twenty-five dollars ($25). The minimum liability insurance for this license shall be five hundred thousand dollars ($500,000). [~~, to the ultimate consumer or user, of liquefied petroleum gas, of liquefied petroleum gas containers, or of liquefied petroleum gas regulating equipment for use with liquefied petroleum gas, $50.00;~~

~~(b) Assembling, repairing, installing or connecting of liquefied petroleum gas containers, or regulating equipment, or liquefied petroleum gas appliances, or any liquefied petroleum gas utilization equipment, or the filling of I.C.C. liquefied petroleum gas containers of less than one hundred (100) pounds capacity, $25.00;~~

~~(c) Selling or delivering liquefied petroleum gas in prefilled containers (this does not authorize the filling of containers or delivery by tank truck), $50.00;~~

~~(d) The selling of liquefied petroleum gas for use in motor vehicles, as a motor fuel, from storage containers, dispensing devices, and pertinent equipment, $25.00;~~

~~(e) Engaging in all the businesses set out in paragraphs (a), (b), (c), and (d), and having not more than five hundred (500) customers (this license shall be in lieu of the four (4) individual licenses required by paragraphs (a), (b), (c), and (d)), $50.00;~~

~~(f) Engaging in all the businesses set out in paragraphs (a), (b), (c) and (d) and having more than five hundred (500) customers (this license shall be in lieu of all other licenses), $100;~~

~~(g) Storing, for resale, of liquefied petroleum gas in other than I.C.C. containers, except qualifications under (b) or (d), $100;~~

~~(h) Transporting of liquefied petroleum gas, by tank truck, over the highways of this state, $100;~~

~~(i) Delivering of liquefied petroleum gas to any person, by tank truck, or the delivering, to any person other than the ultimate consumer, in containers, except where the delivering is incidental to the carrying on of a business licensed under paragraph (f) herein, $100;~~

~~(j) The filling of liquefied petroleum gas containers of one hundred (100) pound capacity or more, $100;~~

~~(k) Engaging in all or any combination of the businesses set out in paragraphs (a) to (j) inclusive (this license shall be in lieu of all individual licenses required herein), $100;~~]

(2) No person shall be required to obtain a license in order to engage in the following activities concerning liquefied

petroleum gas:

(a) Storage, by the ultimate consumer, for consumption only;

(b) Transportation, by the ultimate consumer, in quantities of ten (10) gallons or less;

(c) Handling in quantities of less than one (1) gallon United States water capacity, where the gas is an integral part of a device for its utilization;

(d) Use as a fuel, while in the fuel tank of a motor vehicle.

(3) Any person engaged in any business for which a license is required under the provisions of subsection (1) and who engages in such business at more than one (1) office or place of business in this state shall obtain a separate license for each such office or place of business and shall pay therefor the required license fee; except that for the purposes of issuance of licenses under subsection (1) all facilities for the storage only of liquefied petroleum gas for resale within a radius of twenty (20) miles of an office or place of business shall be considered a part of such office or place of business and shall not require separate licensure.

(4) The commissioner shall further have the authority to make, promulgate, and enforce ~~[such]~~ reasonable regulations requiring proof of ability to respond in damages for personal injury and property damages in the minimum ***amounts required under the provisions of subsection (1)*** ~~[amount of ten thousand dollars ($10,000)]~~, prior to the issuance of a license.

HB 534, AN ACT relating to unemployment insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 341.030 is amended to read as follows:

(1) As used in this chapter, unless the context clearly requires otherwise, and except as provided in subsections (2) to (6) of this section, "wages" means all remuneration for services, including commissions, bonuses, and, except for services performed in agriculture and domestic employment, the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commission.

(2) Amounts paid to traveling salesmen or other workers as allowance or reimbursement for traveling or other expenses, incurred on the business of the employing unit, constitute wages only to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the worker to his employer; provided, however, that the cash value of meals and lodging when furnished to the worker for the convenience of the employer shall not constitute wages.

(3) For purposes of this chapter, the term "wages" includes tips which are:

(a) Received while performing services which constitute employment; and

(b) Included in a written statement furnished to the employer pursuant to Section 6053(a) of the Internal Revenue Code; and

(c) Shall be treated as having been paid by the employing unit.

(4) "Wages" does not include the amount of any payment made to, or on behalf of, a worker under a plan or system established by an employing unit that makes provision for its workers generally or for a class of its workers, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, on account of:

(a) Retirement;

(b) Sickness or accident disability***, or medical and hospitalization expenses in connection with accident or sickness disability, but only those payments which are received under a workers' compensation law or paid after the expiration of six (6) calendar months following the last calendar month in which the employee worked for the employer,***

(c) Medical and hospitalization expenses in connection with accident or sickness disability; or

(d) Death, if the worker has not:

1. The option to receive, instead of provision for such death benefit, any part of the payment, or if such death benefit is insured, any part of the premiums or contributions to premiums paid by his employing unit; and

2. The right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of it either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employing unit.

(5) "Wages" does not include the amount of any payment made by an employing unit without deduction from the remuneration of the worker of the tax imposed under Section 3101 of the Internal Revenue Code or any payment required from an employer under a state unemployment compensation law with respect to remuneration paid to an employee for

domestic service in a private home of the employer or for agricultural labor.

(6) "Wages" does not, for the purposes of KRS 341.260 to 341.310, include that part of remuneration which, after wages equal to eight thousand dollars ($8,000) have been paid in a calendar year to a worker by a subject employer or his predecessor with respect to covered employment during any calendar year, is paid to such worker by such subject employer during such calendar year unless that part of the wages is subject to a tax under a federal law, imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purpose of this subsection, the term "covered employment" shall include service constituting covered employment under any unemployment compensation law of another state.

Section 2. KRS 341.350 is amended to read as follows:

An unemployed worker shall, except as provided in KRS 341.360 and 341.370, be eligible for benefits with respect to any week of unemployment only if:

(1) He has made a claim for benefits;

(2) ***(a)*** He has registered for work with respect to such week in accordance with regulations prescribed by the secretary; ***and***

(b) Participates in reemployment services, such as job search assistance services, if pursuant to a profiling system established by the secretary, he has been determined to be likely to exhaust regular benefits;

(3) He is physically and mentally able to work;

(4) He is available for suitable work, and making such reasonable effort to obtain work as might be expected of a prudent person under like circumstances;

(5) His base-period wages in that calendar quarter of his base period in which such wages were highest are equal to at least seven hundred fifty dollars ($750), and his total base-period wages are not less than one and one-half (1-1/2) times the base-period wages paid to him in such quarter and he was paid base-period wages in the last six (6) months of his base period equal to at least eight (8) times his weekly benefit rate with a minimum of seven hundred fifty dollars ($750) earned outside the high quarter;

(6) An otherwise eligible worker shall not be denied benefits under subsection (4) of this section or because of his failure to actively seek work, nor disqualified under paragraph (a) of subsection (1) of KRS 341.370 with respect to any week he is in training with the approval of the secretary.

(7) Notwithstanding any other provisions of this chapter, no otherwise eligible worker shall be denied benefits for any week because he is in training approved under 19 U.S.C. 2296 (Section 236(a)(1) of the Trade Act of 1974), nor shall such worker be denied benefits by reason of leaving work to enter such training provided such work is not suitable employment, or because of the application to any such week in training of provisions in this law (or any applicable federal unemployment compensation law) relating to availability for work, active search for work, or refusal to accept work. For purpose of this subsection, the term "suitable employment" shall mean employment of a substantially equal or higher skill level than the worker's past adversely affected employment as defined in 19 U.S.C. 2319 (Trade Act of 1974), and wages for such work are not less than eighty percent (80%) of the workers' average weekly wage as determined for purposes of the Trade Act of 1974.

(8) The foregoing eligibility requirements and the conditions of benefit disqualifications imposed by KRS 341.370 shall be strictly construed. Nothing in this section, excepting subsection (5), nor in KRS 341.360 or 341.370 shall affect the establishment of a "benefit year."

Section 3. KRS 341.570 is amended to read as follows:

(1) In any civil action to enforce the provisions of this chapter or in which the commission or the cabinet is an interested party, the commission or the cabinet may be represented by any qualified attorney who is designated by the secretary for that purpose. The expenses and compensation of such special attorney and any experts employed in connection with such proceedings shall be considered a proper cost of the administration of this chapter.

(2) All criminal actions for violation of any provision of this chapter, or of any rules or regulations issued under it, shall be prosecuted by the Attorney General of this state, or, at his request and under his direction, by the county attorney or Commonwealth attorney of any county in which the employing unit has a place of business or the violator resides ***or has filed a claim***.

Section 4. KRS 341.710 is amended to read as follows:

(1) A worker shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the secretary finds that with respect to such week:

(a) He is an "exhaustee" as defined in subsection (6) of KRS 341.096, and

(b) He has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to workers claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(2) A worker shall not be eligible for extended benefits for any week if:

(a) Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan, and no extended benefit period is in effect for such week in such state. However, this provision shall not apply with respect to the first two (2) weeks for which extended benefits are payable to a worker pursuant to an interstate claim filed under the interstate benefit payment plan; or

(b) The secretary finds that during such period:

1. He failed to accept any offer of suitable work (as required for extended benefits), or he failed to apply for any suitable work to which he was referred by the secretary; or

2. He failed to actively engage in seeking work as defined in this section.

(3) Any individual who has been found ineligible for extended benefits by reason of the provisions set forth in this section shall be denied benefits for the week in which such failure occurred and thereafter until he has been employed in each of four (4) subsequent weeks (whether or not consecutive) and has earned at least four (4) times his weekly benefit rate in bona fide full-time covered employment.

(4) For the purpose of this section, a worker shall be treated as actively engaged in seeking work during any week if:

(a) Such worker has engaged in a systematic and sustained effort to obtain work during such week, and

(b) Such worker furnishes tangible evidence that he has engaged in such effort during such week.

(5) The secretary shall refer any claimant entitled to receive extended benefits to any suitable work which meets the criteria as required in KRS 341.712 for workers claiming extended benefits.

(6) Notwithstanding any other provisions of this chapter, if the benefit year of any worker ends within an extended benefit period, the remaining balance of extended benefits that such worker would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero (0)) by the product of the number of weeks for which the worker received any amounts as trade adjustment allowances within that benefit year, multiplied by the worker's weekly benefit amount for extended benefits.

(7) Pursuant to Public Law 102-318, the requalification and eligibility requirements for extended benefits as defined in subsections (2), (3), (4), and (5) of this section are suspended for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995. During this period, the requirements for qualification and payment of extended benefits will be determined in accordance with those prescribed for regular unemployment insurance.

Section 5. KRS 341.712 is amended to read as follows:

(1) No work shall be deemed to be suitable work for a worker making a claim for extended benefits, nor a disqualification imposed for refusal thereof, which does not accord with the labor standard provisions required by 26 U.S.C. 3304(a)(5) (Section 3304(a)(5) of the Internal Revenue Code of 1954) and set forth herein under KRS 341.100, or if a worker would not be denied benefits by reason of the requirements set forth in KRS 341.350 as required by 26 U.S.C. 3304(a)(8) (Section 3304(a)(8) of the Internal Revenue Code of 1954).

(2) For purposes of this section, the term "suitable work" shall mean, with respect to any worker, any work which is within such worker's capabilities, provided, however, that the gross average weekly remuneration payable for the week must exceed the sum of:

(a) The worker's extended weekly benefit amount as determined under this chapter, plus

(b) The amount, if any, of supplemental unemployment benefits as defined in 26 U.S.C. 501(c)(17)(D) (Section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such worker for such week; and further

(c) Pays wages not less than the higher of:

1. The minimum wage provided by 29 U.S.C. 206 (Section 6(a)(1) of the Fair Labor Standards Act of 1938) without regard to any exemption; or

2. The applicable state or local minimum wage;

(d) Provided, however, that no worker shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described above if:

1. The position was not offered to such worker in writing or was not listed with the employment service; or

2. Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants as provided in this chapter to the extent that such criteria of suitability in that section are not inconsistent with the provisions of this subsection; or

3. The worker furnishes satisfactory evidence to the secretary that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such worker shall be made in accordance with the definition of suitable work for regular benefit claimants without regard to the definition specified in this section.

4. Pursuant to Public Law 102-318, suitable work standards for extended benefits claimants as defined in this section are suspended for weeks of unemployment beginning after March 6, 1993, and before

January 1, 1995. During this period, suitable work is to be determined in accordance with the standards prescribed for regular unemployment insurance.

Section 6. KRS 341.990 is amended to read as follows:

(1) Any employee of any state department who violates any of the provisions of KRS 341.110 to 341.230 shall be guilty of a Class B misdemeanor.

(2) Any person subpoenaed to appear and testify or produce evidence in an inquiry, investigation, or hearing conducted under this chapter who fails to obey the subpoena shall be guilty of a Class B misdemeanor.

(3) Any subject employer, or officer or agent of a subject employer, who violates subsection (1) of KRS 341.470 shall be guilty of a Class A misdemeanor.

(4) Any person who violates subsection (2) of KRS 341.470 shall be guilty of a Class A misdemeanor.

(5) Any person who knowingly makes a false statement or representation of a material fact or knowingly fails to disclose a material fact to the secretary to obtain or increase any benefit under this chapter or under an employment security law of any other state, or of the federal government, either for himself or for any other person, ***business entity, or organization*** shall be guilty of a Class A misdemeanor unless the value of the benefits procured or attempted to be procured is one hundred dollars ($100) or more, in which case he shall be guilty of a Class D felony.

(6) (a) Any person who knowingly makes a false statement or representation, or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any worker entitled thereto, or to avoid becoming or remaining subject to this chapter, or to avoid or reduce any payment required of an employing unit under this chapter shall be guilty of a Class A misdemeanor unless the liability avoided or attempted to be avoided is one hundred dollars ($100) or more, in which case he shall be guilty of a Class D felony.

(b) Any person who willfully fails or refuses to furnish any reports required, or to produce or permit the inspection or copying of records required in this chapter shall be guilty of a Class B misdemeanor. Each such false statement, representation or failure and each day of failure or refusal shall constitute a separate offense.

(7) In any prosecution for the violation of subsection (5) or (6) of this section, it shall be a defense if the person relied on the advice of an employee or agent of the department.

(8) Any person who willfully violates any provision of this chapter or any rule or regulation under it, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which no specific penalty is prescribed in this chapter or in any other applicable statute, shall be guilty of a violation. Each day the violation continues shall constitute a separate offense.

HB 605, AN ACT relating to workers' compensation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 342.345 is amended to read as follows:

(1) Whenever an employer has complied with the provisions of KRS 342.340 relating to self-insurance, the board shall issue to such employer a certificate which shall remain in force for a period fixed by the board. But the board may, upon at least sixty (60) days' notice and a hearing to the employer, revoke the certificate upon satisfactory evidence for such revocation having been presented. The board may thereafter, upon petition of the employer and a hearing, grant a new certificate, but the employer shall not, as a matter of right, be entitled to a hearing for this purpose sooner than six (6) months after a previous revocation of his certificate.

(2) Benefits awarded under this chapter to an employee of an insolvent self-insured employer and whose security deposit was insufficient to cover the benefits awarded, shall be paid by the Kentucky Workers' Compensation Funding Commission out of the assets of the special fund created pursuant to KRS 342.120. The provisions of this subsection shall apply to injuries and diseases occurring, and benefits awarded pursuant to those injuries and diseases, for the period extending from January 1, 1982 until the General Assembly enacts legislation that protects the benefits awarded to injured workers of insolvent self-insured employers or self-insurance groups.

The Committee Amendment No. 1 to **HB 605** is as follows:

On page 1, line 11, by deleting "***and***"; and

On page 1, line 16 by deleting "***1982***" and by inserting "***1978***" after "***January 1,***".

The Committee on Judiciary reported **HB 158,** with Committee Substitute attached thereto, **HB 388,** with Committee Substitute attached thereto, **HB 412, HB 479** and **HB 589,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 158, AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 534.030 is amended to read as follows:

(1) Except as otherwise provided for an offense defined outside this code, a person who has been convicted of any felony shall, in addition to any other punishment imposed upon him, be sentenced to pay a fine in an amount not less than one thousand dollars ($1,000) and not greater than ten thousand dollars ($10,000) or double his gain from commission of the offense, whichever is the greater.

(2) In determining the amount and method of paying a fine for commission of a felony, the court shall consider, among others, the following factors:

(a) The defendant's ability to pay the amount of the fine;

(b) The hardship likely to be imposed on the defendant's dependents by the amount of the fine and the time and method of paying it;

(c) The impact the amount of the fine will have on the defendant's ability to make reparation or restitution to the victim; and

(d) The amount of the defendant's gain, if any, derived from the commission of the offense.

(3) When a defendant is convicted of two (2) or more felonies committed through a single act and is sentenced to fines pursuant to subsection (1), the aggregate amount of the fines shall not exceed ten thousand dollars ($10,000) or double the amount of the defendant's gain from commission of the offenses, whichever is the greater.

(4) Fines required by this section shall not be imposed upon any person determined by the court to be indigent pursuant to KRS Chapter 31.

(5) This section shall ***not*** apply to a corporation.

Section 2. KRS 224.99-010 is amended to read as follows:

(1) Any person who violates KRS 224.10-110(2) or (3), 224.70-110, 224.73-120, 224.20-110, 224.46-580, 224.01-400, or who fails to perform any duties imposed by these sections, or who violates any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty not to exceed the sum of twenty-five thousand dollars ($25,000) for each day during which such violation continues, and in addition, may be concurrently enjoined from any further violations as hereinafter provided in this section and KRS 224.99-020.

(2) Any person who violates subsections (4) or (5) of KRS 224.10-110, or KRS 224.40-100, 224.40-305, or any provision of this chapter relating to noise, or who fails to perform any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty not to exceed the sum of five thousand dollars ($5,000) for said violation and an additional civil penalty not to exceed five thousand dollars ($5,000) for each day during which such violation continues, and in addition, may be concurrently enjoined from any further violations as hereinafter provided in this section and KRS 224.99-020.

(3) (a) Any person who shall knowingly violate any of the provisions of this chapter relating to noise or any determination or order of the cabinet promulgated pursuant to those sections which have become final shall be guilty of a Class A misdemeanor. Each day upon which the violation occurs shall constitute a separate violation.

(b) For offenses by motor vehicles, a person shall be guilty of a violation.

(4) Any person who knowingly violates KRS 224.70-110, 224.73-120, 224.40-100, 224.20-110, 224.40-305, or 224.10-110(2) or (3), or any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant to those sections which have become final, or who knowingly provides false information in any document filed or required to be maintained under this chapter, or who knowingly renders inaccurate any monitoring device or method, or who tampers with a water supply, water purification plant, or water distribution system so as to knowingly endanger human life, shall be guilty of a Class D felony, and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars ($25,000), or by imprisonment for a term of not less than one (1) year and not more than five (5) years, or by both fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.

(5) If any person engages in generation, treatment, storage, transportation, or disposal of hazardous waste in violation of the hazardous waste management provisions of this chapter or contrary to a permit, order, or rule issued or promulgated under this chapter, or fails to provide information or to meet reporting requirements required by terms and conditions of a permit or administrative regulations promulgated pursuant to this chapter, the secretary may issue an order requiring compliance within a specified time period or may commence a civil action in a court of appropriate jurisdiction. The violator shall be liable for a civil penalty not to exceed the sum of twenty-five thousand dollars ($25,000) for each day during which the violation continues, and in addition, may be enjoined from continuing the violations in a court of appropriate jurisdiction.

(6) Any person who knowingly is engaged in generation, treatment, storage, transportation, or disposal of hazardous waste in violation of this chapter or contrary to a permit, order, or administrative regulation issued or promulgated under this

chapter, or knowingly makes a false statement, representation, or certification in an application for or form pertaining to a permit or in a notice or report required by the terms and conditions of an issued permit, shall be guilty of a Class D felony***, and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars ($25,000) for each day of violation, or by imprisonment for a term of not less than one (1) year and not more than five (5) years, or by both fine and imprisonment, for each separate violation***. Each day upon which a violation occurs shall constitute a separate violation.

(7) Nothing contained in subsections (4) or (5) of this section shall abridge the right of any person to recover actual compensatory damages resulting from any violation.

(8) Any person who violates any provision of this chapter to which no express penalty provision applies, except as provided in KRS 211.995, or who fails to perform any duties imposed by those sections, or who violates any determination or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty not to exceed the sum of one thousand dollars ($1,000) for said violation and an additional civil penalty not to exceed one thousand dollars ($1,000) for each day during which such violation continues, and in addition, may be concurrently enjoined from any such violations as hereinafter provided in this section and KRS 224.99-020.

(9) The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil, criminal, and injunctive actions instituted by the cabinet or by the Attorney General on its behalf for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto.

(10) Any person who deposits leaves, clippings, prunings, garden refuse, or household waste materials in any litter receptacle, except with permission of the owner of the receptacle, or who places litter into a receptacle in such a manner that the litter may be carried away or deposited by the elements upon any property or water not owned by him is guilty of a Class B misdemeanor.

(11) In addition to or in lieu of the penalties set forth in this section or in KRS Chapters 532 and 534, any person found guilty of a second or subsequent offense related to littering may be ordered by the court to pick up litter for not less than four (4) hours.

(12) Any person who violates KRS 224.20-300, 224.20-310, any other provision of this chapter, or any determination, permit, administrative regulation, or order of the cabinet relating to the Asbestos Hazard Emergency Response Act of 1986 (AHERA), Public Law 99-519, as amended, shall be liable to the Commonwealth of Kentucky for a civil penalty in an amount not to exceed twenty-five thousand dollars ($25,000) for each violation. Each day a violation continues shall, for purposes of this subsection, constitute a separate violation of provisions of this chapter relating to AHERA.

(13) A violation of KRS 224.50-413 shall be subject to a fifty dollar ($50) fine for each day the violation continues.

The Committee Substitute to **HB 158** is as follows:

HB 158, AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 534.030 is amended to read as follows:

(1) Except as otherwise provided for an offense defined outside this code, a person who has been convicted of any felony shall, in addition to any other punishment imposed upon him, be sentenced to pay a fine in an amount not less than one thousand dollars ($1,000) and not greater than ten thousand dollars ($10,000) or double his gain from commission of the offense, whichever is the greater.

(2) In determining the amount and method of paying a fine for commission of a felony, the court shall consider, among others, the following factors:

(a) The defendant's ability to pay the amount of the fine;

(b) The hardship likely to be imposed on the defendant's dependents by the amount of the fine and the time and method of paying it;

(c) The impact the amount of the fine will have on the defendant's ability to make reparation or restitution to the victim; and

(d) The amount of the defendant's gain, if any, derived from the commission of the offense.

(3) When a defendant is convicted of two (2) or more felonies committed through a single act and is sentenced to fines pursuant to subsection (1), the aggregate amount of the fines shall not exceed ten thousand dollars ($10,000) or double the amount of the defendant's gain from commission of the offenses, whichever is the greater.

(4) Fines required by this section shall not be imposed upon any person determined by the court to be indigent pursuant to KRS Chapter 31.

(5) This section shall ***not*** apply to a corporation.

Section 2. KRS 224.99-010 is amended to read as follows:

(1) Any person who violates KRS 224.10-110(2) or (3), 224.70-110, 224.73-120, 224.20-110, 224.46-580, 224.01-400, or

who fails to perform any duties imposed by these sections, or who violates any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty not to exceed the sum of twenty-five thousand dollars ($25,000) for each day during which such violation continues, and in addition, may be concurrently enjoined from any [~~further~~] violations as hereinafter provided in this section and KRS 224.99-020.

(2) Any person who violates subsections (4) or (5) of KRS 224.10-110, or KRS 224.40-100, 224.40-305, or any provision of this chapter relating to noise, or who fails to perform any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty not to exceed the sum of five thousand dollars ($5,000) for said violation and an additional civil penalty not to exceed five thousand dollars ($5,000) for each day during which such violation continues, and in addition, may be concurrently enjoined from any [~~further~~] violations as hereinafter provided in this section and KRS 224.99-020.

(3) (a) Any person who shall knowingly violate any of the provisions of this chapter relating to noise or any determination or order of the cabinet promulgated pursuant to those sections which have become final shall be guilty of a Class A misdemeanor. Each day upon which the violation occurs shall constitute a separate violation.

(b) For offenses by motor vehicles, a person shall be guilty of a violation.

(4) Any person who knowingly violates KRS 224.70-110, 224.73-120, 224.40-100, 224.20-110, 224.40-305, or 224.10-110(2) or (3), or any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant to those sections which have become final, or who knowingly provides false information in any document filed or required to be maintained under this chapter, or who knowingly renders inaccurate any monitoring device or method, or who tampers with a water supply, water purification plant, or water distribution system so as to knowingly endanger human life, shall be guilty of a Class D felony, and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars ($25,000), or by imprisonment for a term of not less than one (1) year and not more than five (5) years, or by both fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.

(5) If any person engages in generation, treatment, storage, transportation, or disposal of hazardous waste in violation of the hazardous waste management provisions of this chapter or contrary to a permit, order, or rule issued or promulgated under this chapter, or fails to provide information or to meet reporting requirements required by terms and conditions of a permit or administrative regulations promulgated pursuant to this chapter, the secretary may issue an order requiring compliance within a specified time period or may commence a civil action in a court of appropriate jurisdiction. The violator shall be liable for a civil penalty not to exceed the sum of twenty-five thousand dollars ($25,000) for each day during which the violation continues, and in addition, may be enjoined from ***any*** [~~continuing the~~] violations in a court of appropriate jurisdiction.

(6) Any person who knowingly is engaged in generation, treatment, storage, transportation, or disposal of hazardous waste in violation of this chapter or contrary to a permit, order, or administrative regulation issued or promulgated under this chapter, or knowingly makes a false statement, representation, or certification in an application for or form pertaining to a permit or in a notice or report required by the terms and conditions of an issued permit, shall be guilty of a Class D felony***, and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars ($25,000) for each day of violation, or by imprisonment for a term of not less than one (1) year and not more than five (5) years, or by both fine and imprisonment, for each separate violation***. Each day upon which a violation occurs shall constitute a separate violation.

(7) Nothing contained in subsections (4) or (5) of this section shall abridge the right of any person to recover actual compensatory damages resulting from any violation.

(8) Any person who violates any provision of this chapter to which no express penalty provision applies, except as provided in KRS 211.995, or who fails to perform any duties imposed by those sections, or who violates any determination or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty not to exceed the sum of one thousand dollars ($1,000) for said violation and an additional civil penalty not to exceed one thousand dollars ($1,000) for each day during which ***the*** [~~such~~] violation continues, and in addition, may be concurrently enjoined from any [~~such~~] violations as hereinafter provided in this section and KRS 224.99-020.

(9) The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil, criminal, and injunctive actions instituted by the cabinet or by the Attorney General on its behalf for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto.

(10) Any person who deposits leaves, clippings, prunings, garden refuse, or household waste materials in any litter receptacle, except with permission of the owner of the receptacle, or who places litter into a receptacle in such a manner that the litter may be carried away or deposited by the elements upon any property or water not owned by him is guilty of a Class B misdemeanor.

(11) In addition to or in lieu of the penalties set forth in this section or in KRS Chapters 532 and 534, any person found guilty of a second or subsequent offense related to littering may be ordered by the court to pick up litter for not less than four (4) hours.

(12) Any person who violates KRS 224.20-300, 224.20-310, any other provision of this chapter, or any determination, permit,

administrative regulation, or order of the cabinet relating to the Asbestos Hazard Emergency Response Act of 1986 (AHERA), Public Law 99-519, as amended, shall be liable to the Commonwealth of Kentucky for a civil penalty in an amount not to exceed twenty-five thousand dollars ($25,000) for each violation. Each day a violation continues shall, for purposes of this subsection, constitute a separate violation of provisions of this chapter relating to AHERA.

(13) A violation of KRS 224.50-413 shall be subject to a fifty dollar ($50) fine for each day the violation continues.

HB 388, AN ACT relating to the funding of the statewide public advocacy system, and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 31.051 is amended to read as follows:

(1) With the exception of the administrative fee contained in subsection (2) of this section, all moneys received by the public advocate from indigent defendants pursuant to KRS Chapter 31 or which are collected by the public advocate pursuant to KRS Chapter 431 shall be credited to the public advocate fund of the county in which the trial is held and shall not be credited to any general account maintained by or for the public advocate. Moneys credited to a county public advocate fund may be used only to support the public advocate program of that county.

(2) Any person provided counsel under the provisions of this chapter shall be assessed at the time of appointment, a nonrefundable forty dollar ($40) administrative fee, payable, at the court's discretion, in a lump sum or in installments. The court may reduce or waive the fee if the person remains in custody or does not have the financial resources to pay the fee. In any case or legal action a needy person shall be assessed a total administrative fee of no more than forty dollars ($40), regardless of the stages of the matter at which the needy person is provided appointed counsel. In the event the defendant fails to pay the fee, the fee shall be deducted from any posted cash bond or shall constitute a lien upon any property which secures the person's bail, regardless of whether the bond is posted by the needy person or another. The failure to pay the fee shall not reduce or in any way affect the rendering of public defender services to the person.

(3) The administrative fee shall be in addition to any other contribution or recoupment assessed by the court pursuant to KRS 31.120 and shall be collected in accordance with that section.

(4) The administrative fees collected pursuant to this subsection (2) shall be placed in a special trust and agency account for the Department of Public Advocacy, and the funds shall not lapse.

Section 2. KRS 31.120 is amended to read as follows:

(1) The determination of whether a person covered by KRS 31.110 is a needy person shall be deferred no later than his first appearance in court or in a suit for payment or reimbursement under KRS 31.150, whichever occurs earlier. Thereafter, the court concerned shall determine, with respect to each step in the proceedings, whether he is a needy person. However, nothing herein shall prevent appointment of counsel at the earliest necessary proceeding at which the person is entitled to counsel, upon declaration by the person that he is needy under the terms of this chapter. In that event, the person involved shall be required to make reimbursement for the representation involved if he later is determined not a needy person under the terms of this chapter. At arraignment, the court shall conduct a nonadversarial hearing to determine whether a person for whom a public defender has been appointed is able to pay a partial fee.

(2) In determining whether a person is a needy person and in determining the extent of his, and, in the case of an unemancipated minor under KRS 31.100(3)(c), his custodial parent's or guardian's inability to pay, the court concerned shall consider such factors as income, property owned, outstanding obligations, and the number and ages of his dependents. Release on bail, or any other method of release provided in KRS Chapter 431, shall not necessarily prevent him from being a needy person. In each case, the person, and, if an unemancipated minor under KRS 31.100(3)(c) and (d), his custodial parent or guardian***,*** subject to the penalties for perjury, shall certify by affidavit of indigency ***which shall be*** compiled by the pre-trial release officer[~~, where practical~~], as provided under KRS Chapter 431 and Supreme Court Rules or orders promulgated pursuant thereto, the material factors relating to his ability to pay in the form the Supreme Court prescribes.

(3) It shall be prima facie evidence that a person is not indigent or needy within the meaning of this chapter if he and, in the case of an unemancipated minor under KRS 31.100(3)(c) and (d), if his custodial parent or guardian:

(a) Owns real property in the Commonwealth or without the Commonwealth;

(b) Is not receiving, or if not receiving is not eligible to receive, public assistance payments at the time the affidavit of indigency is executed;

(c) Has paid money bail (other than a property bond of another), whether deposited by himself or another, to secure his release from confinement on the present charge of which he stands accused or convicted; or

(d) Owns more than one (1) motor vehicle.

(4) To the extent that a person covered by KRS 31.110, and, in the case of an unemancipated minor under KRS 31.100(3)(c) and (d), his custodial parent or guardian, is able to provide for an attorney, the other necessary services and facilities of

representation, and court costs, the court shall order payment in an amount determined by the court and may order that the payment be made in a lump sum or by installment payments. The determination shall be made at each stage of the proceedings.

(5) The court shall order all moneys collected pursuant to subsection (4) of this section be paid to the clerk of that court pursuant to the schedule of payment. The clerk shall forward to the Office for Public Advocacy on a monthly basis a copy of all the orders and the moneys collected pursuant thereto with an accounting as to each case.

(6) The affidavit of indigency, to be subscribed and sworn to by the person, and, in the case of an unemancipated minor under KRS 31.100(3)(c), by his custodial parent or guardian, shall be as set out herein:

Commonwealth of Kentucky

County of...............

Affiant........................, being first duly sworn says that he is not now represented by private counsel and that he does not have the money or assets out of which to employ one; that he is indigent and requests the court to appoint counsel.

Affiant states that his income is ....; that he owns the following property:

Description	Value
....	....
....	....
....	.........................;

that he has the following dependents:

Name	Age	Relationship
....	....	....
....	....	....
....	....	.........................;

and that he has the following obligations:

To whom owed	Amount owing
....	....
....	....
....	....

....

Signature of affiant

Subscribed and sworn to before me this .... , day of ...., 19 .....

....

Signature and title of officer
administering the oath

Any persons making false statements in the above affidavit shall be subject to the penalties for perjury under KRS Chapter 523, the maximum penalty for which is five (5) years imprisonment.

Section 3. KRS 189A.050 is amended to read as follows:

(1) All persons convicted of violation of KRS 189A.010 shall be sentenced to pay a service fee of ***two*** [~~one~~] hundred [~~fifty~~] dollars ***($200)***[~~($150)~~], which shall be in addition to all other penalties authorized by law.

(2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for nonpayment of the fee.

(3) The service fee shall be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, [~~and~~] treatment and education programs authorized by this chapter***, and the Department of Public Advocacy***.

(4) Twenty-five percent (25%) of the service fee collected pursuant to this section shall be allocated to the Department of Public Advocacy. These funds shall be placed in a special trust and agency account for the Department of Public Advocacy, and the funds shall not lapse.

Section 4. The funds made available to the trust and agency account established by Sections 1 and 3 of this Act are hereby appropriated for expenditure for the purposes provided for by this Act.

The Committee Substitute to **HB 388** is as follows:

HB 388, AN ACT relating to the funding of the statewide public advocacy system, and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 31.051 is amended to read as follows:

(1) With the exception of the administrative fee contained in subsection (2) of this section, all moneys received by the public advocate from indigent defendants pursuant to KRS Chapter 31 or which are collected by the public advocate pursuant to KRS Chapter 431 shall be credited to the public advocate fund of the county in which the trial is held and shall not be credited to any general account maintained by or for the public advocate. Moneys credited to a county public advocate fund may be used only to support the public advocate program of that county.

(2) Any person provided counsel under the provisions of this chapter shall be assessed at the time of appointment, a nonrefundable forty dollar ($40) administrative fee, payable, at the court's discretion, in a lump sum or in installments. The court may reduce or waive the fee if the person remains in custody or does not have the financial resources to pay the fee. In any case or legal action a needy person shall be assessed a total administrative fee of no more than forty dollars ($40), regardless of the stages of the matter at which the needy person is provided appointed counsel. In the event the defendant fails to pay the fee, the fee shall be deducted from any posted cash bond or shall constitute a lien upon any property which secures the person's bail, regardless of whether the bond is posted by the needy person or another. The failure to pay the fee shall not reduce or in any way affect the rendering of public defender services to the person.

(3) The administrative fee shall be in addition to any other contribution or recoupment assessed by the court pursuant to KRS 31.120 and shall be collected in accordance with that section.

(4) The administrative fees collected pursuant to this subsection (2) shall be placed in a special trust and agency account for the Department of Public Advocacy, and the funds shall not lapse.

Section 2. KRS 31.120 is amended to read as follows:

(1) ***(a)*** The determination of whether a person covered by KRS 31.110 is a needy person shall be deferred no later than his first appearance in court or in a suit for payment or reimbursement under KRS 31.150, whichever occurs earlier. Thereafter, the court concerned shall determine, with respect to each step in the proceedings, whether he is a needy person. However, nothing herein shall prevent appointment of counsel at the earliest necessary proceeding at which the person is entitled to counsel, upon declaration by the person that he is needy under the terms of this chapter. In that event, the person involved shall be required to make reimbursement for the representation involved if he later is determined not a needy person under the terms of this chapter. At arraignment, the court shall conduct a nonadversarial hearing to determine whether a person ***who has requested*** [~~for whom~~] a public defender [~~has been appointed~~] is able to pay a partial fee***, if indigent, or can afford to retain the services of a private attorney. If the person can prove, under oath, at a subsequent hearing or by a pro se written motion with appropriate documentation that a licensed attorney in Kentucky will not represent him for a reduced fee or a fee paid in installments, the court may appoint a public defender. The court may inquire of the person seeking free legal representation what specific attorneys he contacted. The court may allow, if deemed necessary, any public defender to represent a person at his arraignment only upon a claim of indigency if the court is unable, at that time, to verify the claim***.

(b) The judge at the arraignment, during the nonadversarial hearing, shall specifically inquire as to the person's employment status and, if the person is unemployed, or is unable to afford counsel, shall specifically inquire as to how the person financially supports himself, and as to his current living and financial arrangements with other parties. If a public defender is appointed, at every stage of the subsequent criminal proceedings, the court shall conduct a similar inquiry as to the person's unemployment status, and as to his living arrangements and financial arrangements.

(2) In determining whether a person is a needy person and in determining the extent of his, and, in the case of an unemancipated minor under KRS 31.100(3)(c), his custodial parent's or guardian's inability to pay, the court concerned shall consider such factors as income, property owned, outstanding obligations, and the number and ages of his dependents. Release on bail, or any other method of release provided in KRS Chapter 431, shall not necessarily prevent him from being a needy person. In each case, the person, and, if an unemancipated minor under KRS 31.100(3)(c) and (d), his custodial parent or guardian, subject to the penalties for perjury, shall certify by affidavit of indigency ***which shall be*** compiled by the pre-trial release officer[~~, where practical~~], as provided under KRS Chapter 431 and Supreme Court Rules or orders promulgated pursuant thereto, the material factors relating to his ability to pay in the form the Supreme Court prescribes.

(3) It shall be prima facie evidence that a person is not indigent or needy within the meaning of this chapter if he and, in the case of an unemancipated minor under KRS 31.100(3)(c) and (d), if his custodial parent or guardian:

(a) ***Is employed, in any capacity, unless he becomes unemployed during the proceedings and his attorney has withdrawn as his counsel as a direct result thereof;***

(b) Is an adult or a minor and lives in a residence where he is supported by others, unless he becomes dispossessed and the support is terminated during the proceedings;

(c) Owns real property in the Commonwealth or without the Commonwealth;

(d)[~~(b)~~] Is not receiving, or if not receiving is not eligible to receive, public assistance payments at the time the affidavit of indigency is executed;

(e)[~~(c)~~]Has paid money bail (other than a property bond of another), whether deposited by himself or another, to secure his release from confinement on the present charge of which he stands accused or convicted; or

(f)[~~(d)~~] Owns more than one (1) motor vehicle.

(4) To the extent that a person covered by KRS 31.110, and, in the case of an unemancipated minor under KRS 31.100(3)(c) and (d), his custodial parent or guardian, is able to provide for an attorney, the other necessary services and facilities of representation, and court costs, the court shall order payment in an amount determined by the court and may order that the payment be made in a lump sum or by installment payments. The determination shall be made at each stage of the proceedings.

(5) The court shall order all moneys collected pursuant to subsection (4) of this section be paid to the clerk of that court pursuant to the schedule of payment. The clerk shall forward to the Office for Public Advocacy on a monthly basis a copy of all the orders and the moneys collected pursuant thereto with an accounting as to each case.

(6) The affidavit of indigency, to be subscribed and sworn to by the person, and, in the case of an unemancipated minor under KRS 31.100(3)(c), by his custodial parent or guardian, shall be as set out herein:

Commonwealth of Kentucky

County of...............

Affiant........................, being first duly sworn says that he is not now represented by private counsel and that he does not have the money or assets out of which to employ one; that he is indigent and requests the court to appoint counsel.

Affiant states that his income is ....; that he owns the following property:

Description	Value
....	....
....	....
....	.........................;

that he has the following dependents:

Name	Age	Relationship
....	....	....
....	....	....
....	....	.........................;

and that he has the following obligations:

To whom owed	Amount owing
....	....
....	....
....	....

....

Signature of affiant

Subscribed and sworn to before me this .... , day of ...., 19 .....

....

Signature and title of officer
administering the oath

Any persons making false statements in the above affidavit shall be subject to the penalties for perjury under KRS Chapter 523, the maximum penalty for which is five (5) years imprisonment.

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(1) All persons convicted of violation of KRS 189A.010 shall be sentenced to pay a service fee of *two* [~~one~~] hundred [~~fifty~~] dollars *($200)*[~~($150)~~], which shall be in addition to all other penalties authorized by law.

(2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for nonpayment of the fee.

(3) The service fee shall be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, [~~and~~] treatment and education programs authorized by this chapter*, and the Department of Public Advocacy*.

(4) Twenty-five percent (25%) of the service fee collected pursuant to this section shall be allocated to the Department of

Public Advocacy. These funds shall be placed in a special trust and agency account for the Department of Public Advocacy, and the funds shall not lapse.

Section 4. KRS 31.185 is amended to read as follows:

(1) Any defending attorney operating under the provisions of this chapter is entitled to use the same state facilities for the evaluation of evidence as are available to the attorney representing the Commonwealth. If he considers their use impractical, the court concerned may authorize the use of private facilities to be paid for on court order by the county.

(2) The fiscal court of each county containing less than ten (10) circuit judges shall annually appropriate twelve and a half ($0.125) cents per capita of the population of the county, as determined by the Council of Local Governments' most recent population statistics, to a special account to be administered by the Finance and Administration Cabinet to pay court orders entered against counties pursuant to subsection (1) of this section. The funds in this account shall not lapse and shall remain in the special account.

(3) The Finance and Administration Cabinet shall pay all court orders entered pursuant to subsection (1) of this section from the special account until the funds in the account are depleted. If in any given year the special account including any funds from prior years is depleted and court orders entered against counties pursuant to subsection (1) of this section for that year or any prior year remain unpaid, the Finance and Administration Cabinet shall pay those orders from the Treasury in the same manner in which judgments against the Commonwealth and its agencies are paid.

(4) Only court orders entered after July 15, 1994, shall be payable from the special account administered by the Finance and Administration Cabinet or from the Treasury as provided in subsections (2) and (3) of this section.

(5) Each county with a judicial district containing ten (10) or more Circuit Judges shall be solely liable for any court order entered against it pursuant to subsection (1) of this section.

Section 5. KRS 31.200 is amended to read as follows:

(1) Subject to KRS 31.190, any direct expense, including the cost of a transcript or bystander's bill of exceptions or other substitute for a transcript that is necessarily incurred in representing a needy person under this chapter, is a charge against the county on behalf of which the service is performed***; provided, however, that such a charge shall not exceed the established rate charged by the Commonwealth and its agencies.***

(2) The cost of a transcript or bystander's bill of exceptions or other substitute for a transcript shall be paid from the special account established in KRS 31.185(2) and in accordance with the procedures provided in KRS 31.185(3).

(3)[~~(2)~~] If two (2) or more counties jointly establish an office for public advocacy, the expenses not otherwise allocable among the participating counties under subsection (1) shall be allocated, unless the counties otherwise agree, on the basis of population according to the most recent decennial census.

(4)[~~(3)~~] Expenses incurred in the representation of needy persons confined in a state correctional institution shall be borne by the state Department of Public Advocacy.

Section 6. The funds made available to the trust and agency account established by Sections 1 and 3 of this Act are hereby appropriated for expenditure for the purposes provided for by this Act.

HB 412, AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 532.030 is amended to read as follows:

(1) When a person is convicted of a capital offense he shall have his punishment fixed at death, ***or at a term of imprisonment for life without benefit of probation or parole,*** or at a term of imprisonment for life without benefit of probation or parole until he has served a minimum of twenty-five (25) years of his sentence, or to a sentence of life, or to a term of not less than twenty (20) years.

(2) When a person is convicted of a Class A felony he shall have his punishment fixed at imprisonment in accordance with KRS 532.060.

(3) When a person is convicted of an offense other than a capital offense or Class A felony, he shall have his punishment fixed at:

(a) A term of imprisonment authorized by this chapter; or

(b) A fine authorized by KRS Chapter 534; or

(c) Both imprisonment and a fine unless precluded by the provisions of KRS Chapter 534.

(4) In all cases in which the death penalty may be authorized the judge shall instruct the jury in accordance with subsection (1) of this section. The instructions shall state, subject to the aggravating and mitigating limitations and requirements of KRS 532.025, that the jury may recommend upon a conviction for a capital offense a sentence of death, ***or at a term of imprisonment for life without benefit of probation or parole,*** or a term of imprisonment for life without benefit of

probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, or a sentence of life, or to a term of not less than twenty (20) years.

Section 2. KRS 532.025 is amended to read as follows:

(1) (a) Upon conviction of a defendant in cases where the death penalty may be imposed, a hearing shall be conducted. In such hearing, the judge shall hear additional evidence in extenuation, mitigation, and aggravation of punishment, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant, or the absence of any prior conviction and pleas; provided, however, that only such evidence in aggravation as the state has made known to the defendant prior to his trial shall be admissible. The judge shall also hear argument by the defendant or his counsel and the prosecuting attorney, as provided by law, regarding the punishment to be imposed. The prosecuting attorney shall open and the defendant shall conclude the argument. In cases in which the death penalty may be imposed, the judge when sitting without a jury shall follow the additional procedure provided in subsection (2) of this section. Upon the conclusion of the evidence and arguments, the judge shall impose the sentence or shall recess the trial for the purpose of taking the sentence within the limits prescribed by law. If the trial court is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered shall apply only to the issue of punishment;

(b) In all cases in which the death penalty may be imposed and which are tried by a jury, upon a return of a verdict of guilty by the jury, the court shall resume the trial and conduct a presentence hearing before the jury. Such hearing shall be conducted in the same manner as presentence hearings conducted before the judge as provided in paragraph (a) of this subsection, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant. Upon the conclusion of the evidence and arguments, the judge shall give the jury appropriate instructions, and the jury shall retire to determine whether any mitigating or aggravating circumstances, as defined in subsection (2) of this section, exist and to recommend a sentence for the defendant. Upon the findings of the jury, the judge shall fix a sentence within the limits prescribed by law.

(2) In all cases of offenses for which the death penalty may be authorized, the judge shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law and any of the following statutory aggravating or mitigating circumstances which may be supported by the evidence:

(a) Aggravating circumstances:

1. The offense of murder or kidnapping was committed by a person with a prior record of conviction for a capital offense, or the offense of murder was committed by a person who has a substantial history of serious assaultive criminal convictions;

2. The offense of murder or kidnapping was committed while the offender was engaged in the commission of arson in the first degree, robbery in the first degree, burglary in the first degree, rape in the first degree, or sodomy in the first degree;

3. The offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one (1) person in a public place by means of a destructive device, weapon, or other device which would normally be hazardous to the lives of more than one (1) person;

4. The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value, or for other profit;

5. The offense of murder was committed by a person who was a prisoner and the victim was a prison employee engaged at the time of the act in the performance of his duties;

6. The offender's act or acts of killing were intentional and resulted in multiple deaths; and

7. The offender's act of killing was intentional and the victim was a state or local public official or police officer, sheriff, or deputy sheriff engaged at the time of the act in the lawful performance of his duties;

(b) Mitigating circumstances:

1. The defendant has no significant history of prior criminal activity;

2. The capital offense was committed while the defendant was under the influence of extreme mental or emotional disturbance even though the influence of extreme mental or emotional disturbance is not sufficient to constitute a defense to the crime;

3. The victim was a participant in the defendant's criminal conduct or consented to the criminal act;

4. The capital offense was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct even though the circumstances which the defendant believed to provide a moral justification or extenuation for his conduct are not sufficient to constitute a defense to the crime;

5. The defendant was an accomplice in a capital offense committed by another person and his participation in the capital offense was relatively minor;

6. The defendant acted under duress or under the domination of another person even though the duress or the domination of another person is not sufficient to constitute a defense to the crime;

7. At the time of the capital offense, the capacity of the defendant to appreciate the criminality of his conduct to the requirements of law was impaired as a result of mental illness or retardation or intoxication even though the impairment of the capacity of the defendant to appreciate the criminality of his conduct or to conform the conduct to the requirements of law is insufficient to constitute a defense to the crime; and

8. The youth of the defendant at the time of the crime.

(3) The instructions as determined by the trial judge to be warranted by the evidence or as required by KRS 532.030(4) shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict be a recommendation of death, ***or imprisonment for life without benefit of probation or parole,*** or imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall designate in writing, signed by the foreman of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In nonjury cases, the judge shall make such designation. In all cases unless at least one (1) of the statutory aggravating circumstances enumerated in subsection (2) of this section is so found, the death penalty***, or imprisonment for life without benefit of probation or parole,*** or the sentence to imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall not be imposed.

HB 479, AN ACT relating to the Kentucky Unified Juvenile Code.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 620.040 is amended to read as follows:

(1) Upon receipt of a report alleging abuse or neglect by a parent, guardian, or person exercising custodial control or supervision, pursuant to KRS 620.030(1) or (2), the recipient of the report shall forthwith notify the cabinet or its designated representative, the local law enforcement agency or Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report ***unless they are the reporting source***. The cabinet shall investigate the matter immediately and within ***seventy-two (72)*** [~~forty-eight (48)~~] hours, exclusive of weekends and holidays, make a written report to the Commonwealth's or county attorney and the local enforcement agency or Kentucky State Police concerning the action which has been taken on the matter. If the report alleges abuse or neglect by someone other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall forthwith notify the Commonwealth's or county attorney and the local law enforcement agency or Kentucky State Police.

(2) Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and (2), the recipient shall forthwith notify the cabinet or its designated representative. The cabinet shall investigate reports of alleged dependency not later than forty-eight (48) hours after receipt of the report but need not notify the local law enforcement agency or Kentucky State Police or county attorney or Commonwealth's attorney of such reports. If the cabinet or its designated representative receives a report of abuse by other than a parent, guardian, or other person exercising custodial control or supervision of a child, it shall forthwith notify the local law enforcement agency or Kentucky State Police and the Commonwealth's or county attorney of the receipt of the report and its contents and they shall investigate the matter. The cabinet or its designated representative may participate in an investigation of noncustodial abuse at the request of the local law enforcement agency or the Kentucky State Police.

(3) School personnel or other persons listed in KRS 620.030(2) do not have the authority to conduct internal investigations in lieu of the official investigations outlined in this section.

(4) (a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be issued by the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer.

(b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he is returned to the persons having custody of him, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours.

(c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exists reasonable grounds for the officer to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order.

(d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he shall provide written notice to the parent or other person stating the reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability.

(5) (a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties.

(b) Membership of the multidisciplinary team shall include representatives of the cabinet, the Kentucky State Police, other local law enforcement agencies with investigation responsibilities in child sexual abuse cases, the Commonwealth's and county attorneys, and other professionals whose participation the multidisciplinary team believes is important to carry out its purpose.

(c) The multidisciplinary team may review child sexual abuse cases referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child, or is not responsible for the child's welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system.

(d) The team shall hold regularly scheduled meetings if new reports of sexual abuse are received or if active cases exist. At each meeting, each active case shall be presented and the agencies' responses assessed.

(e) The multidisciplinary team shall provide an annual report to the public of nonidentifying case information to allow assessment of the processing and disposition of child sexual abuse cases.

(f) Multidisciplinary team members, and anyone invited by the multidisciplinary team to participate in a meeting, shall not divulge case information, including information regarding the identity of the victim or source of the report. Team members, and others attending meetings, shall sign a confidentiality statement that is consistent with statutory prohibitions on disclosure of this information.

(g) The multidisciplinary team may establish operating rules and procedures as it deems necessary to carry out the purposes of this subsection.

(h) The multidisciplinary team review of a case may include information from reports generated by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case, KRS 610.320 to KRS 610.340 notwithstanding.

HB 589, AN ACT relating to persons under disability.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) This section shall apply when a principal designates another person, through a writing, as the principal's attorney in fact or agent by power of attorney, and the writing does not expressly provide for the making of gifts from the principal's estate. Unless the writing prohibits him from doing so, the person so designated shall act pursuant to this section.

(2) The person designated pursuant to subsection (1) of this section may expend principal or income of the principal's estate, if it is not required for the support of the principal or the principal's family members during the principal's lifetime, towards the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the principal's estate. However, the person designated pursuant to subsection (1) of this section shall not act pursuant to this section unless the District Court of the judicial district where the principal resides permits the designated person to make gifts of the principal's real or personal property, outright or in trust, and to release, execute, exercise, renounce, disclaim, or assign powers, property and trust rights and interests, options, rights, and beneficiary designations on behalf of the principal, with full substitution of judgment, to or for the benefit of:

(a) Organizations to which charitable contributions may be made under the Internal Revenue Code and in which it is shown that the principal has had or would reasonably have an interest;

(b) The principal's heirs at law who are identifiable at the time of the gift;

(c) Beneficiaries under the principal's last validly executed will;

(d) The person designated pursuant to subsection (1) of this section if he is eligible to receive a gift pursuant to paragraph (b) or (c) of this subsection; and

(e) Other objects of the principal's bounty, including friends, who have been or would likely be recipients of gifts from the principal.

(3) The person designated pursuant to subsection (1) of this section shall pay all taxes due on transfers from the principal's estate carried out pursuant to this section.

Section 2. KRS 387.065 is amended to read as follows:

(1) A guardian of a ward shall have the powers and responsibilities of a parent regarding the ward's support, care, and

education, but a guardian shall not be personally liable for the ward's expenses and shall not be liable to third persons by reason of the relationship for acts of the ward.

(2) In particular and without qualifying the foregoing, a guardian shall:

(a) Take custody of the person of the ward and establish the ward's place of abode within the Commonwealth; and

(b) Take reasonable care of the ward's personal effects.

(3) *(a)* A guardian may:

1.[~~(a)~~] Receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, or custodianship;

2.[~~(b)~~] Consent to medical or other professional care, treatment, or advice for the ward, without liability by reason of the consent, for injury to the ward resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;

3.[~~(c)~~] Consent to the ward's marriage, adoption, or enlistment in military service;

4.[~~(d)~~] Extend funds of the ward's estate for the support of persons legally dependent on the ward*; and*

5. Expend principal or income of the ward's estate, if it is not required for the support of the ward or the ward's family members during the ward's lifetime, towards the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate. However, the District Court may appoint separate counsel to represent the ward prior to the guardian's taking any action pursuant to this subparagraph, and the guardian shall not act pursuant to this subparagraph, unless the District Court permits the guardian to make gifts of the ward's real or personal property, outright or in trust, and to release, execute, exercise, renounce, disclaim, or assign powers, property and trust rights and interests, options, rights, and beneficiary designations on behalf of the ward, with full substitution of judgment, to or for the benefit of:

a. Organizations to which charitable contributions may be made under the Internal Revenue Code and in which it is shown that the ward has had or would reasonably have an interest;

b. The ward's heirs at law who are identifiable at the time of the gift;

c. Beneficiaries under the ward's last validly executed will;

d. The guardian if he is eligible to receive a gift pursuant to subdivision b. or c. of this subparagraph; and

e. Other objects of the ward's bounty, including friends, who have been or would likely be recipients of gifts from the ward.

(b) The guardian shall pay all taxes due on transfers from the ward's estate carried out pursuant to subparagraph 5. of paragraph (a) of this subsection.

(4) A guardian shall expend or distribute income or principal of the ward's estate without District Court authorization or confirmation for the support, care, and education of the ward. The District Court may limit or restrict the guardian's exercise of this power.

(5) In performing the guardian's duties relating to support, care, and education of the ward, a guardian shall consider:

(a) Recommendations relating to the appropriate standard of support, care, and education for the ward made by a parent or limited guardian, if any:

(b) The size of the estate under the guardian's supervision or control;

(c) The ward's age, capacities, limitations, needs, opportunities, and physical and mental health;

(d) The likelihood that the ward will be able to labor and earn money when the ward becomes an adult;

(e) The accustomed standard of living of the ward; and

(f) Other funds or sources used for the support of the ward which have not been placed under the control or supervision of the guardian.

(6) A guardian shall not provide for the support, care, or education of a ward which a parent of the ward is legally obligated and financially able to provide.

(7) Funds expended under this section may be paid by a guardian to any person, including the ward, to reimburse for expenditures that the guardian might have made, or in advance for services to be rendered to the ward if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances.

(8) When a ward attains age eighteen (18), the guardian, after meeting all claims and expenses of administration, shall pay over and distribute all funds and properties to the ward as soon as possible, unless:

(a) The ward has been determined to be disabled or partially disabled under KRS 387.500 to 387.770, in which event the ward's funds and properties shall be paid over and distributed to the guardian, limited guardian, conservator, or limited conservator appointed pursuant to KRS 387.500 to 387.770; or

(b) The guardian has reason to believe that the ward is disabled or partially disabled as defined in KRS 387.510, in which event, the guardian shall institute a proceeding for appointment of a guardian, limited guardian, conservator or limited conservator pursuant to KRS 387.500 to 387.770.

Section 3. KRS 387.125 is amended to read as follows:

(1) A guardian shall apply the income or principal of the ward's estate to the payment of debts, taxes, claims, charges, and expenses of the guardianship and, in accordance with KRS 387.065, for the support, care, and education of the ward or the ward's dependents.

(2) A guardian shall take possession of all of the ward's real and personal property.

(3) A guardian may sell any of the ward's personal property without District Court authorization or confirmation. To sell any of the ward's real property, a guardian shall comply with the provisions of KRS Chapter 389A.

(4) A guardian shall invest any of the ward's money or property which is not required for the ward's current support, care and education. The investments made of a ward's funds shall be investments authorized by KRS 386.020.

(5) A guardian may expend the ward's funds to repair and maintain the ward's personal and real property.

(6) A guardian may institute or defend actions, claims, or proceedings in any jurisdiction for the protection of the ward's estate. Subject to the approval of the court in which the action, claim, or proceeding has been filed, a guardian may settle or compromise the action, claim, or proceeding on behalf of the ward. If the action, claim, or proceeding has not been filed in any court, the District Court of the county where a guardian qualified shall approve the settlement or compromise. Upon approval of a settlement or compromise, a guardian may execute a release on behalf of the ward. A guardian shall receive any proceeds from a settlement for management in accordance with the provisions of this statute.

(7) A guardian may lease any real property of the ward until the ward reaches majority, but no lease shall be made for a term longer than seven (7) years unless otherwise approved by the District Court.

(8) A guardian shall obtain approval from the District Court of the county where the guardian qualified for any of the following made on behalf of the ward:

(a) Any lease of mineral rights;

(b) Any lease of oil and gas rights;

(c) Any sale of timber owned by the ward; or

(d) Any consolidation agreement, as defined by KRS 353.220.

To aid it in making the decision on a proposed sale, lease, or consolidation agreement, the court shall appoint a guardian ad litem for the ward. The guardian ad litem shall report to the court on the suitability of the transaction.

(9) A guardian shall comply with the reporting requirements specified in KRS 387.175.

(10) (a) A guardian may expend principal or income of the ward's estate, if it is not required for the support of the ward or the ward's family members during the ward's lifetime, towards the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate. However, the District Court may appoint separate counsel to represent the ward prior to the guardian's taking any action pursuant to this subsection, and the guardian shall not act pursuant to this subsection unless the District Court permits the guardian to make gifts of the ward's real or personal property, outright or in trust, and to release, execute, exercise, renounce, disclaim or assign powers, property and trust rights and interests, options, rights, and beneficiary designations on behalf of the ward, with full substitution of judgment, to or for the benefit of:

1. Organizations to which charitable contributions may be made under the Internal Revenue Code and in which it is shown that the ward has had or would reasonably have an interest;

2. The ward's heirs at law who are identifiable at the time of the gift;

3. Beneficiaries under the ward's last validly executed will;

4. The guardian if he is eligible to receive a gift pursuant to subparagraph 2. or 3. of this paragraph; and

5. Other objects of the ward's bounty, including friends, who have been or would likely be recipients of gifts from the ward.

(b) The guardian shall pay all taxes due on transfers from the ward's estate carried out pursuant to this subsection.

Section 4. This Act shall apply to all transfers made after the effective date of this Act, regardless of when the person designated pursuant to subsection (1) of Section 1 of this Act was designated or when the guardian, limited guardian, or conservator was appointed.

The Committee Substitute to **HB 589** is as follows:

HB 589, AN ACT relating to persons under disability.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) This section shall apply when a principal designates another person, through a writing, as the principal's attorney in fact or agent by power of attorney, and the writing does not expressly provide for the making of gifts from the principal's estate. Unless the writing prohibits him from doing so, the person so designated shall act pursuant to this section.

(2) The person designated pursuant to subsection (1) of this section may expend principal or income of the principal's estate, if it is not required for the support of the principal or the principal's family members during the principal's lifetime, towards the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the principal's estate. However, the person designated pursuant to subsection (1) of this section shall not act pursuant to this section unless the District Court of the judicial district where the principal resides permits the designated person to make gifts of the principal's real or personal property, outright or in trust, and to release, execute, exercise, renounce, disclaim, or assign powers, property and trust rights and interests, options, rights, and beneficiary designations on behalf of the principal, with full substitution of judgment, to or for the benefit of:

- ***(a) Organizations to which charitable contributions may be made under the Internal Revenue Code and in which it is shown that the principal has had or would reasonably have an interest;***
- ***(b) The principal's heirs at law who are identifiable at the time of the gift;***
- ***(c) Beneficiaries under the principal's last validly executed will;***
- ***(d) The person designated pursuant to subsection (1) of this section if he is eligible to receive a gift pursuant to paragraph (b) or (c) of this subsection; and***
- ***(e) Other objects of the principal's bounty, including friends, who have been or would likely be recipients of gifts from the principal.***

(3) The person designated pursuant to subsection (1) of this section shall pay all taxes due on transfers from the principal's estate carried out pursuant to this section.

Section 2. KRS 387.065 is amended to read as follows:

(1) A guardian of a ward shall have the powers and responsibilities of a parent regarding the ward's support, care, and education, but a guardian shall not be personally liable for the ward's expenses and shall not be liable to third persons by reason of the relationship for acts of the ward.

(2) In particular and without qualifying the foregoing, a guardian shall:

- (a) Take custody of the person of the ward and establish the ward's place of abode within the Commonwealth; and
- (b) Take reasonable care of the ward's personal effects.

(3) ***(a)*** A guardian may:

- ***1.***[~~(a)~~] Receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, or custodianship;
- ***2.***[~~(b)~~] Consent to medical or other professional care, treatment, or advice for the ward, without liability by reason of the consent, for injury to the ward resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;
- ***3.***[~~(c)~~] Consent to the ward's marriage, adoption, or enlistment in military service;
- ***4.***[~~(d)~~] Extend funds of the ward's estate for the support of persons legally dependent on the ward***; and***
- ***5. Expend principal or income of the ward's estate, if it is not required for the support of the ward or the ward's family members during the ward's lifetime, towards the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate. However, the District Court shall appoint separate counsel to represent the ward prior to the guardian's taking any action pursuant to this subparagraph, and the guardian shall not act pursuant to this subparagraph, unless the District Court permits the guardian to make gifts of the ward's real or personal property, outright or in trust, and to release, execute, exercise, renounce, disclaim, or assign powers, property and trust rights and interests, options, rights, and beneficiary designations on behalf of the ward, with full substitution of judgment, to or for the benefit of:***
  - ***a. Organizations to which charitable contributions may be made under the Internal Revenue Code and in which it is shown that the ward has had or would reasonably have an interest;***
  - ***b. The ward's heirs at law who are identifiable at the time of the gift;***

c. Beneficiaries under the ward's last validly executed will;

d. The guardian if he is eligible to receive a gift pursuant to subdivision b. or c. of this subparagraph; and

e. Other objects of the ward's bounty, including friends, who have been or would likely be recipients of gifts from the ward.

(b) The guardian shall pay all taxes due on transfers from the ward's estate carried out pursuant to subparagraph 5. of paragraph (a) of this subsection.

(4) A guardian shall expend or distribute income or principal of the ward's estate without District Court authorization or confirmation for the support, care, and education of the ward. The District Court may limit or restrict the guardian's exercise of this power.

(5) In performing the guardian's duties relating to support, care, and education of the ward, a guardian shall consider:

(a) Recommendations relating to the appropriate standard of support, care, and education for the ward made by a parent or limited guardian, if any:

(b) The size of the estate under the guardian's supervision or control;

(c) The ward's age, capacities, limitations, needs, opportunities, and physical and mental health;

(d) The likelihood that the ward will be able to labor and earn money when the ward becomes an adult;

(e) The accustomed standard of living of the ward; and

(f) Other funds or sources used for the support of the ward which have not been placed under the control or supervision of the guardian.

(6) A guardian shall not provide for the support, care, or education of a ward which a parent of the ward is legally obligated and financially able to provide.

(7) Funds expended under this section may be paid by a guardian to any person, including the ward, to reimburse for expenditures that the guardian might have made, or in advance for services to be rendered to the ward if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances.

(8) When a ward attains age eighteen (18), the guardian, after meeting all claims and expenses of administration, shall pay over and distribute all funds and properties to the ward as soon as possible, unless:

(a) The ward has been determined to be disabled or partially disabled under KRS 387.500 to 387.770, in which event the ward's funds and properties shall be paid over and distributed to the guardian, limited guardian, conservator, or limited conservator appointed pursuant to KRS 387.500 to 387.770; or

(b) The guardian has reason to believe that the ward is disabled or partially disabled as defined in KRS 387.510, in which event, the guardian shall institute a proceeding for appointment of a guardian, limited guardian, conservator or limited conservator pursuant to KRS 387.500 to 387.770.

Section 3. KRS 387.125 is amended to read as follows:

(1) A guardian shall apply the income or principal of the ward's estate to the payment of debts, taxes, claims, charges, and expenses of the guardianship and, in accordance with KRS 387.065, for the support, care, and education of the ward or the ward's dependents.

(2) A guardian shall take possession of all of the ward's real and personal property.

(3) A guardian may sell any of the ward's personal property without District Court authorization or confirmation. To sell any of the ward's real property, a guardian shall comply with the provisions of KRS Chapter 389A.

(4) A guardian shall invest any of the ward's money or property which is not required for the ward's current support, care and education. The investments made of a ward's funds shall be investments authorized by KRS 386.020.

(5) A guardian may expend the ward's funds to repair and maintain the ward's personal and real property.

(6) A guardian may institute or defend actions, claims, or proceedings in any jurisdiction for the protection of the ward's estate. Subject to the approval of the court in which the action, claim, or proceeding has been filed, a guardian may settle or compromise the action, claim, or proceeding on behalf of the ward. If the action, claim, or proceeding has not been filed in any court, the District Court of the county where a guardian qualified shall approve the settlement or compromise. Upon approval of a settlement or compromise, a guardian may execute a release on behalf of the ward. A guardian shall receive any proceeds from a settlement for management in accordance with the provisions of this statute.

(7) A guardian may lease any real property of the ward until the ward reaches majority, but no lease shall be made for a term longer than seven (7) years unless otherwise approved by the District Court.

(8) A guardian shall obtain approval from the District Court of the county where the guardian qualified for any of the following made on behalf of the ward:

(a) Any lease of mineral rights;

(b) Any lease of oil and gas rights;

(c) Any sale of timber owned by the ward; or

(d) Any consolidation agreement, as defined by KRS 353.220.

To aid it in making the decision on a proposed sale, lease, or consolidation agreement, the court shall appoint a guardian ad litem for the ward. The guardian ad litem shall report to the court on the suitability of the transaction.

(9) A guardian shall comply with the reporting requirements specified in KRS 387.175.

(10) (a) A guardian may expend principal or income of the ward's estate, if it is not required for the support of the ward or the ward's family members during the ward's lifetime, towards the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate. However, the District Court shall appoint separate counsel to represent the ward prior to the guardian's taking any action pursuant to this subsection, and the guardian shall not act pursuant to this subsection unless the District Court permits the guardian to make gifts of the ward's real or personal property, outright or in trust, and to release, execute, exercise, renounce, disclaim or assign powers, property and trust rights and interests, options, rights, and beneficiary designations on behalf of the ward, with full substitution of judgment, to or for the benefit of:

1. Organizations to which charitable contributions may be made under the Internal Revenue Code and in which it is shown that the ward has had or would reasonably have an interest;

2. The ward's heirs at law who are identifiable at the time of the gift;

3. Beneficiaries under the ward's last validly executed will;

4. The guardian if he is eligible to receive a gift pursuant to subparagraph 2. or 3. of this paragraph; and

5. Other objects of the ward's bounty, including friends, who have been or would likely be recipients of gifts from the ward.

(b) The guardian shall pay all taxes due on transfers from the ward's estate carried out pursuant to this subsection.

Section 4. This Act shall apply to all transfers made after the effective date of this Act, regardless of when the person designated pursuant to subsection (1) of Section 1 of this Act was designated or when the guardian, limited guardian, or conservator was appointed.

The Committee on Transportation reported **HB 448,** with Committee Substitute attached thereto, **HB 558,** with Committee Amendment attached thereto, and **SB 146** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 448, AN ACT relating to hazardous materials.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 174.425 is amended to read as follows:

The provisions of KRS 174.400 to ***174.425*** [~~174.435~~] shall not apply to hazardous materials shipped by [~~or for~~] the United States government [~~for military or national security purposes or which relate to national defense~~]. Nothing herein shall be construed as requiring the disclosure of any defense information or restricted data as defined in ***42 U.S.C. Section 2011 et seq. and 42 U.S.C. Section 5801 et seq*** [~~the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974, as amended~~].

Section 2. KRS 174.400 is amended to read as follows:

Due to the central geographical location of the Commonwealth with respect to the hazardous materials industry, and since most predictions indicate that the amount of hazardous material in transport should substantially increase in the future, it is the intent of KRS 174.405 to ***174.425*** [~~174.435~~] to provide for the public health and safety of the citizens and to protect the environment of the Commonwealth when any hazardous material is being transported within, or, in the case of radioactive materials, within or through this state.

Section 3. KRS 174.405 is amended to read as follows:

As used in KRS 174.400 to ***174.425*** [~~174.435~~]:

(1) "Carrier" means a person engaged in the commercial transportation of passengers or property, except for pipelines and railways, by:

(a) Land, as a common, contract, or private carrier; or

(b) Civil aircraft.

(2) "General permit" means written authorization issued pursuant to KRS 174.400 to ***174.425*** [~~174.435~~] to persons for the transport of radioactive material or the intrastate transport of other hazardous material in the Commonwealth.

(3) "Hazardous material" means a substance designated hazardous by the Federal Hazardous Materials Transportation Act

(49 U.S.C. sec. 1801, et seq.) and regulations issued pursuant thereto, including but not limited to hazardous and radioactive waste, but shall not include agricultural wastes, coal mining wastes, utility waste (fly ash, bottom ash, scrubber sludge), sludge from water treatment and sewage treatment facilities, cement kiln dust, gas and oil drilling muds, oil production brines or waste oil.

(4) "Hazardous waste" means a substance or material defined as hazardous waste by KRS Chapter 224 and regulations issued pursuant thereto.

(5) "Radioactive material" means any material or combination of material, which spontaneously emits ionizing radiation. Materials in which the estimated specific activity is not greater than 0.002 microcuries per gram of material, and in which the radioactivity is essentially uniformly distributed, are not considered to be radioactive materials.

(6) "Radioactive waste" means any waste substance or combination of substances, in any form which because of its radioactive material content may create a threat to public health or to animal, plant, and aquatic life forms.

(7) "Vehicle" means any device or contrivance for carrying or conveying persons, property, or substances, including conveyance by highways or by airway.

Section 4. KRS 174.410 is amended to read as follows:

(1) The secretary shall be responsible for controlling and regulating the movement of all radioactive materials and the intrastate transport of other hazardous materials transported by all carrier modes within the Commonwealth.

(2) The secretary, in consultation with the secretary of the Natural Resources and Environmental Protection Cabinet and the secretary of the Cabinet for Human Resources, shall adopt by reference or in entirety, the Federal Hazardous Materials Transportation Regulations, 49 C.F.R. (1978), as amended, to effectively carry out the intent of KRS 174.400 to ***174.425*** ~~[174.435]~~.

(3) The cabinet and the Justice Cabinet shall cooperate with and assist the Natural Resources and Environmental Protection Cabinet in implementing and enforcing the transportation provisions of any state hazardous waste regulations promulgated pursuant to KRS Chapter 224. The specific nature and details of the assistance effort shall be established by a formal cooperative agreement acceptable to the cabinets, and all activities shall occur in accordance with the terms of the agreement. The agreement shall address and include, but not necessarily be limited to, the following items:

(a) As a part of routine and periodic transportation checks and inspections, ensure that shipments of hazardous waste do not present a threat to the public or the environment; are accompanied by the required hazardous waste manifest or such other shipping or delivery documents as may be acceptable to the Natural Resources and Environmental Protection Cabinet; and comply with applicable shipping standards;

(b) Upon receipt of a written request from the secretary or general counsel of the Natural Resources and Environmental Protection Cabinet, actively conduct field investigations relating to the illegal, improper, or unauthorized transport of hazardous waste in the state. Such investigations may, at a minimum, include passive and active surveillance, apprehension, and reporting, with the scope and extent of each investigation to be previously agreed to by the involved cabinets;

(c) Compile and maintain such necessary records as may normally be required to carry out the provisions of this subsection and shall for minor violations report quarterly, and for major violations report weekly, to the Natural Resources and Environmental Protection Cabinet on the status of the interagency hazardous waste transportation monitoring and enforcement activity for irregularities or violations;

(d) Provide such information, evidence, and other support, either in written form or in the form of oral testimony during a legal proceeding or both, as may be required by the Natural Resources and Environmental Protection Cabinet to fully carry out its statutory responsibility under the appropriate sections of KRS Chapter 224;

(e) The Natural Resources and Environmental Protection Cabinet shall, unless specifically agreed otherwise, have primary responsibility for initiating and conducting all legal proceedings arising from the terms and provisions of this subsection; and

(f) The Natural Resources and Environmental Protection Cabinet shall provide sufficient training, technical assistance, and other support to the appropriate cabinets to prepare representatives of the cabinets to adequately carry out the responsibilities set forth in this subsection.

Section 5. KRS 174.415 is amended to read as follows:

(1) Unless found inconsistent with the Federal Hazardous Materials Transportation Act (49 U.S.C. sec. 1801 et seq.), effective January 1, 1981, no person shall haul, transport, or cause to be transported into, out of, within, or through the Commonwealth any radioactive material unless such person holds a valid permit or certificate issued by the cabinet or its designated agent.

(2) Effective January 1, 1981, no person involved exclusively in the intrastate movement of materials shall haul, transport, or cause to be transported on any public way within the Commonwealth any hazardous material unless such person holds a valid permit or certificate issued by the cabinet or its designated agent.

(3) Carriers of radioactive materials and intrastate carriers of other hazardous materials required to obtain permits or certificates pursuant to KRS Chapter 281 shall be required to provide annually the following information in a form

designated by the cabinet:

(a) Name of carrier, and the individual associated with the carrier who can be immediately contacted in the event of emergencies;

(b) A description of emergency procedures which the carrier will follow in the event of an accident.

(4) All carriers of radioactive materials and intrastate carriers of other hazardous materials not subject to permits or certificates pursuant to KRS Chapter 281 shall be required to:

(a) Comply with the regulations adopted pursuant to KRS 174.410;

(b) Provide documentation of compliance in a form or manner prescribed by the cabinet;

(c) Provide the additional information annually required by subsection (3) of this section; and

(d) Obtain a general permit, to be renewed annually, from the cabinet upon satisfactory documentation of compliance with this section.

(5) The secretary shall transmit any information contained in an application, permit or certificate renewal, needed to make decisions for proper emergency response, to other state and local agencies having emergency action responsibilities.

(6) The secretary shall establish an inspection and enforcement program to determine compliance with the provisions of KRS 174.400 to ***174.425*** [~~174.435~~], and any regulations promulgated under KRS 174.410. In carrying out the provisions of KRS 174.400 to ***174.425*** [~~174.435~~], the secretary shall not duplicate the enforcement and inspection activities performed by the federal government.

Section 6. KRS 174.990 is amended to read as follows:

(1) Any person who willfully hauls, transports, or causes to be transported any hazardous material which is not a hazardous waste, into, out of, within, or through the Commonwealth in violation of the provisions of KRS 174.400 to ***174.425*** [~~174.435~~], or contrary to a permit, order, or regulation issued or promulgated under KRS 174.400 to ***174.425*** [~~174.435~~], or willfully makes a false statement, representation, or certification in an application for a permit or in a report required by KRS 174.400 to ***174.425*** [~~174.435~~], shall be fined not less than two hundred fifty dollars ($250) nor more than twenty-five thousand dollars ($25,000), for each day of violation.

(2) Any person who operates a vehicle which transports municipal solid waste in violation of KRS 174.450 and administrative regulations promulgated by the cabinet pursuant to KRS 174.450 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each day of violation.

Section 7. The following KRS sections are repealed:

174.430 Fees.

174.435 Exemption.

The Committee Substitute to **HB 448** is as follows:

HB 448, AN ACT relating to hazardous materials.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 174.425 is amended to read as follows:

The provisions of KRS 174.400 to ***174.425*** [~~174.435~~] shall not apply to hazardous materials shipped by [~~or for~~] the United States government [~~for military or national security purposes or which relate to national defense~~]. Nothing herein shall be construed as requiring the disclosure of any defense information or restricted data as defined in ***42 U.S.C. Section 2011 et seq. and 42 U.S.C. Section 5801 et seq*** [~~the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974, as amended~~].

Section 2. KRS 174.400 is amended to read as follows:

Due to the central geographical location of the Commonwealth with respect to the hazardous materials industry, and since most predictions indicate that the amount of hazardous material in transport should substantially increase in the future, it is the intent of KRS 174.405 to ***174.425*** [~~174.435~~] to provide for the public health and safety of the citizens and to protect the environment of the Commonwealth when any hazardous material is being transported within, or, in the case of radioactive materials, within or through this state.

Section 3. KRS 174.405 is amended to read as follows:

As used in KRS 174.400 to ***174.425*** [~~174.435~~]:

(1) "Carrier" means a person engaged in the commercial transportation of passengers or property, except for pipelines and railways, by:

(a) Land, as a common, contract, or private carrier; or

(b) Civil aircraft.

(2) [~~"General permit" means written authorization issued pursuant to KRS 174.400 to 174.435 to persons for the transport of~~

~~radioactive material or the intrastate transport of other hazardous material in the Commonwealth.~~

~~(3)~~] "Hazardous material" means a substance designated hazardous by the Federal Hazardous Materials Transportation Act (49 U.S.C. sec. 1801, et seq.) and regulations issued pursuant thereto, including but not limited to hazardous and radioactive waste, but shall not include agricultural wastes, coal mining wastes, utility waste (fly ash, bottom ash, scrubber sludge), sludge from water treatment and sewage treatment facilities, cement kiln dust, gas and oil drilling muds, oil production brines or waste oil.

(3)[~~(4)~~] "Hazardous waste" means a substance or material defined as hazardous waste by KRS Chapter 224 and regulations issued pursuant thereto.

(4)[~~(5)~~] "Radioactive material" means any material or combination of material, which spontaneously emits ionizing radiation. Materials in which the estimated specific activity is not greater than 0.002 microcuries per gram of material, and in which the radioactivity is essentially uniformly distributed, are not considered to be radioactive materials.

(5)[~~(6)~~] "Radioactive waste" means any waste substance or combination of substances, in any form which because of its radioactive material content may create a threat to public health or to animal, plant, and aquatic life forms.

(6)[~~(7)~~] "Vehicle" means any device or contrivance for carrying or conveying persons, property, or substances, including conveyance by highways or by airway.

Section 4. KRS 174.410 is amended to read as follows:

(1) The secretary shall be responsible for controlling and regulating the movement of all radioactive materials and the intrastate transport of other hazardous materials transported by all carrier modes within the Commonwealth.

(2) The secretary, in consultation with the secretary of the Natural Resources and Environmental Protection Cabinet and the secretary of the Cabinet for Human Resources, shall adopt by reference or in entirety, the Federal Hazardous Materials Transportation Regulations, 49 C.F.R. (1978), as amended, to effectively carry out the intent of KRS 174.400 to ***174.425*** [~~174.435~~].

(3) The cabinet and the Justice Cabinet shall cooperate with and assist the Natural Resources and Environmental Protection Cabinet in implementing and enforcing the transportation provisions of any state hazardous waste regulations promulgated pursuant to KRS Chapter 224. The specific nature and details of the assistance effort shall be established by a formal cooperative agreement acceptable to the cabinets, and all activities shall occur in accordance with the terms of the agreement. The agreement shall address and include, but not necessarily be limited to, the following items:

   (a) As a part of routine and periodic transportation checks and inspections, ensure that shipments of hazardous waste do not present a threat to the public or the environment; are accompanied by the required hazardous waste manifest or such other shipping or delivery documents as may be acceptable to the Natural Resources and Environmental Protection Cabinet; and comply with applicable shipping standards;

   (b) Upon receipt of a written request from the secretary or general counsel of the Natural Resources and Environmental Protection Cabinet, actively conduct field investigations relating to the illegal, improper, or unauthorized transport of hazardous waste in the state. Such investigations may, at a minimum, include passive and active surveillance, apprehension, and reporting, with the scope and extent of each investigation to be previously agreed to by the involved cabinets;

   (c) Compile and maintain such necessary records as may normally be required to carry out the provisions of this subsection and shall for minor violations report quarterly, and for major violations report weekly, to the Natural Resources and Environmental Protection Cabinet on the status of the interagency hazardous waste transportation monitoring and enforcement activity for irregularities or violations;

   (d) Provide such information, evidence, and other support, either in written form or in the form of oral testimony during a legal proceeding or both, as may be required by the Natural Resources and Environmental Protection Cabinet to fully carry out its statutory responsibility under the appropriate sections of KRS Chapter 224;

   (e) The Natural Resources and Environmental Protection Cabinet shall, unless specifically agreed otherwise, have primary responsibility for initiating and conducting all legal proceedings arising from the terms and provisions of this subsection; and

   (f) The Natural Resources and Environmental Protection Cabinet shall provide sufficient training, technical assistance, and other support to the appropriate cabinets to prepare representatives of the cabinets to adequately carry out the responsibilities set forth in this subsection.

Section 5. KRS 174.415 is amended to read as follows:

[~~(1) Unless found inconsistent with the Federal Hazardous Materials Transportation Act (49 U.S.C. sec. 1801 et seq.), effective January 1, 1981, no person shall haul, transport, or cause to be transported into, out of, within, or through the Commonwealth any radioactive material unless such person holds a valid permit or certificate issued by the cabinet or its designated agent.~~

~~(2) Effective January 1, 1981, no person involved exclusively in the intrastate movement of materials shall haul, transport, or cause to be transported on any public way within the Commonwealth any hazardous material unless such person holds a~~

~~valid permit or certificate issued by the cabinet or its designated agent.~~

~~(3) Carriers of radioactive materials and intrastate carriers of other hazardous materials required to obtain permits or certificates pursuant to KRS Chapter 281 shall be required to provide annually the following information in a form designated by the cabinet:~~

~~(a) Name of carrier, and the individual associated with the carrier who can be immediately contacted in the event of emergencies;~~

~~(b) A description of emergency procedures which the carrier will follow in the event of an accident.~~

~~(4) All carriers of radioactive materials and intrastate carriers of other hazardous materials not subject to permits or certificates pursuant to KRS Chapter 281 shall be required to:~~

~~(a) Comply with the regulations adopted pursuant to KRS 174.410;~~

~~(b) Provide documentation of compliance in a form or manner prescribed by the cabinet;~~

~~(c) Provide the additional information annually required by subsection (3) of this section; and~~

~~(d) Obtain a general permit, to be renewed annually, from the cabinet upon satisfactory documentation of compliance with this section.~~

~~(5) The secretary shall transmit any information contained in an application, permit or certificate renewal, needed to make decisions for proper emergency response, to other state and local agencies having emergency action responsibilities.~~

~~(6)~~] The secretary shall establish an inspection and enforcement program to determine compliance with the provisions of KRS 174.400 to ***174.425*** [~~174.435~~], and any regulations promulgated under KRS 174.410. In carrying out the provisions of KRS 174.400 to ***174.425*** [~~174.435~~], the secretary shall not duplicate the enforcement and inspection activities performed by the federal government.

Section 6. KRS 174.990 is amended to read as follows:

(1) Any person who willfully hauls, transports, or causes to be transported any hazardous material [~~which is not a hazardous waste,~~] into, out of, within, or through the Commonwealth in violation of the provisions of KRS 174.400 to ***174.425*** [~~174.435~~], or contrary to ***an*** [~~a permit,~~] order, or regulation issued or promulgated under KRS 174.400 to ***174.425*** [~~174.435, or willfully makes a false statement, representation, or certification in an application for a permit or in a report required by KRS 174.400 to 174.435~~], shall be fined not less than two hundred fifty dollars ($250) nor more than twenty-five thousand dollars ($25,000), for each day of violation.

(2) Any person who operates a vehicle which transports municipal solid waste in violation of KRS 174.450 and administrative regulations promulgated by the cabinet pursuant to KRS 174.450 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each day of violation.

Section 7. KRS 174.420 is amended to read as follows:

(1) Any person transporting hazardous materials in the Commonwealth shall carry a copy of the shipping papers required in 49 C.F.R. (1978), as amended, [~~and a copy of the certificate or permit issued by the cabinet~~] in the transporting vehicle while in the Commonwealth.

(2) In the event of an accident involving hazardous material, the operator of the vehicle shall:

(a) Notify the Kentucky State Police of the accident within one (1) hour, who shall then notify the local jurisdiction and any other appropriate state agency with emergency action responsibility, and

(b) Provide the shipping papers to state and local emergency response authorities, and immediately bring to their attention the fact that the vehicle is transporting hazardous materials.

(3) In addition to the other requirements of this section, any person transporting hazardous wastes shall carry in the transporting vehicle a copy of a manifest in a form approved by the Natural Resources and Environmental Protection Cabinet.

Section 8. The following KRS sections are repealed:

174.430 Fees.

174.435 Exemption.

HB 558, AN ACT relating to the extended weight coal and coal by-products haul road system.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 177.979 is amended to read as follows:

(1) [~~Upon application the Department of Highways shall enter into cooperative agreements with~~] Any person engaged in the mining, processing, transporting or sale of coal ***that provides*** [~~providing~~] for the transportation of coal in vehicles exceeding the maximum weight limits on the state-maintained system ***shall enter into a cooperative agreement with the Department of Highways, or give bond for damages as provided by KRS 189.271, if a road to be used is not part of***

the extended weight coal or coal by-products haul road system. Such cooperative agreements shall provide for an equitable apportionment of the incremental costs for design, maintenance, construction or reconstruction of those roads and bridges, except those roads and bridges which are part of the federal interstate highway system, resulting from the transportation of coal by trucks transporting coal in excess of the maximum weight limits on the state-maintained system and covered by the cooperative agreement. Nothing contained herein shall effect the continuing validity of any existing agreement.

(2) Notwithstanding KRS Chapter 143 the total tax contributions from any person entering into a cooperative agreement, as specified in this section, shall not exceed, in the aggregate, the sum of five thousand dollars ($5,000) per mile per year on those roads covered by the cooperative agreement, but shall equal a minimum of one thousand two hundred dollars ($1,200) per motor vehicle hauling coal over those cooperative road segments over three (3) miles in length, but such contribution shall not exceed ten cents ($0.10) per ton of coal hauled on cooperative roads per year from an individual coal operator unless otherwise agreed to by the operator. The Transportation Cabinet may allow any person, under the cooperative agreement, to provide for the design, approved maintenance, construction or reconstruction provided for in subsection (1) of this section in accordance with guidelines or standards prescribed by the cabinet. In the event any person exceeds his annual total tax contribution as authorized under a cooperative agreement, such person may petition the commissioner of vehicle regulation for a carry over for future years liability. All funds collected pursuant to this section shall be expended on those roads covered by the cooperative agreement.

(3) Notwithstanding any provision of KRS 177.976 to 177.981 or 186.057, the Commonwealth shall not be relieved of expending its normal routine maintenance on all roads covered by the cooperative agreements.

The Committee Amendment No. 1 to **HB 558** is as follows:

On page 2, after line 10, by inserting a new Section 2 to read as follows:

"Section 2. KRS 177.9771 is amended to read as follows:

(1) The "extended weight coal or coal by-products haul road system" shall consist of public highways over which quantities of coal or coal by-products in excess of fifty thousand (50,000) tons were transported by motor vehicles during the period from January 1, 1985, through December 31, 1985, and shall be updated annually thereafter.

(2) The secretary of the Transportation Cabinet shall by official order on or before November 1, of each year, certify such public highways or portions thereof, as fulfill the criteria in subsection (1) of this section, as the extended weight coal or coal by-products haul road system.

(3) The total tons of coal or coal by-products transported by motor vehicles over any public highway shall be determined from the official coal or coal by-products road system transportation report required pursuant to KRS 177.977.

(4) Any vehicle, when registered with a declared gross weight of eighty thousand (80,000) pounds and when transporting coal or coal by-products over public highways which are part of the extended weight coal or coal by-products haul road system or portions thereof, may be operated at the weights as set forth below in excess of the maximum gross weight prescribed in KRS 189.221 and 189.222 and any other maximum weight limitations on state or county maintained systems ~~[by entering into a cooperative agreement as provided in KRS 177.979 or]~~ by paying the corresponding decal fee as set forth below:

(a) A single unit truck having one (1) steering axle and two (2) axles in tandem shall be limited to a maximum gross weight of ninety thousand (90,000) pounds with a tolerance of five percent (5%), and pay a decal fee of one hundred sixty dollars ($160) annually;

(b) A single unit truck having one (1) steering axle and three (3) axles in tridem arrangement shall be limited to a maximum gross weight of one hundred thousand (100,000) pounds with a tolerance of five percent (5%), and pay a decal fee of two hundred sixty dollars ($260) annually;

(c) Tractor-semitrailer combinations with five (5) or more axles shall be limited to a maximum gross weight of one hundred twenty thousand (120,000) pounds with a tolerance of five percent (5%), and pay a decal fee of three hundred sixty dollars ($360) annually;

(d) Any motor carrier involved in the transportation of coal or coal by-products which meets gross axle weights of twenty thousand (20,000) pounds per axle and twelve thousand (12,000) pounds for the steering axle may register in excess of eighty thousand (80,000) pounds by payment of eight hundred forty dollars ($840) plus an additional decal fee of ten dollars ($10) per one thousand (1,000) pounds of registered weight above eighty thousand (80,000) pounds;

(e) For purposes of this section, KRS 177.979 and 189.230, and for purposes of the extended weight coal or coal by-products haul system, the dimensional requirements of motor vehicles shall conform to all appropriate federal laws and regulations;

(f) The payment of the decal fee shall be in addition to any state registration fee, user fee or other decal fee, including the registration fee as specified in KRS 186.050(3);

(g) Motor vehicles used in the transportation of coal or coal by-products under cooperative agreements pursuant to KRS 177.979 shall be exempt from the payment of the decal fee as set forth in this section and the registration fee as set forth in KRS 186.050(3) as long as the truck is driven over cooperative roads only while full. The Transportation Cabinet shall issue identifying license plates for those motor vehicles under cooperative agreements;

(h) All fees under this section shall be scheduled for payment and prorated pursuant to the provisions of KRS 186.051; and

(i) All revenues generated pursuant to this section shall be credited to a special account within the road fund called the "energy recovery road fund."

(5) Sixty percent (60%) of all energy recovery road funds shall be used by the Department of Highways for construction, maintenance, and repair of the state-maintained portion of the extended weight coal or coal by-products haul road system.

(6) Forty percent (40%) of all energy recovery road funds shall be distributed to the fiscal court of those counties in which coal or coal by-products are transported for the sole purpose of construction, maintenance and repair of the county-maintained portion of the extended weight coal or coal by-products haul system. The distribution of funds to the counties shall be proportioned based on the miles of county roads on the extended weight coal or coal by-products haul system in each county compared to the total mileage of county roads in the total extended weight coal or coal by-products haul road system and the tons of coal or coal by-products transported over county roads on the extended weight coal or coal by-products haul system in each county compared to the total tons of coal or coal by-products transported over county roads in the total extended weight coal or coal by-products haul road system.

(7) Nothing in this section shall be construed or administered to jeopardize the receipt of federal funds for highway purposes and the secretary of transportation shall not act in any manner which shall jeopardize federal highway funds or funds to be received by the Commonwealth. [~~In no event shall~~] This section ***shall not*** be construed to authorize any vehicle to operate on a federal interstate highway in excess of those limits prescribed in KRS 189.222. [~~Likewise, nothing in~~] This section shall ***not*** be construed to prohibit the Department of Highways from providing for the public safety and convenience of the traveling public on the highway.

(8) As soon as practical after the report is prepared and published pursuant to KRS 177.977 for any calendar year after 1985, the secretary shall add to or delete from the extended weight coal or coal by-products haul road system public highways or portions thereof based upon the criteria set out in this section. [~~However,~~] Deletion of a public road or portion ***of it*** [~~thereof~~] from the extended weight coal or coal by-products haul road system shall not affect the eligibility of ***the***[~~such~~] roads for highway funds or programs applicable to the extended weight coal or coal by-products haul road system.

(9) A fiscal court or a governing body of a city of the first through fourth class or urban-county government may by resolution, make recommendation to the secretary of the Transportation Cabinet that certain roads or road segments in the county or corporate city limits pose inherent and definite hazards or special conditions and that the secretary shall meet with said fiscal court or local governing body and take into consideration their concerns before adding to or deleting from the extended weight coal or coal by-products haul system.

(10) The secretary of the Transportation Cabinet ***may*** [~~is authorized to~~] promulgate administrative regulations pursuant to KRS Chapter 13A [~~as may be~~] necessary to administer the provisions of this section, KRS 177.9772, 177.979 and 189.230.

SB 146, AN ACT relating to railroads.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.561 is amended to read as follows:

(1) The cabinet shall investigate any public grade crossing not equipped with gates, with an average daily traffic of four thousand (4,000) or more, at which two (2) or more accidents involving a train and a vehicle ***traversing the crossing of a railroad and a highway*** have occurred in a consecutive five (5) year period, beginning January 1, 1986. ***The cabinet shall not consider nonfatal accidents caused by mechanical failure of the motor vehicle; accidents in which the operator of the highway motor vehicle was in violation of the provisions of KRS Chapter 189A; or other nonwarning signal related cause as set forth by the cabinet in an administrative regulation. If the cabinet installed active warning devices under its normal crossing safety improvement program since January 1, 1986, the five (5) year period for the determination of accidents shall begin at the time of this installation.*** The cabinet shall request written comments from the affected local government prior to reaching a decision on a particular crossing. After receiving ***a report from the affected*** local government ***supporting the installation of gates*** [~~comments~~], the cabinet, utilizing matching funds available from the Federal Highway Administration's rail/highway grade crossing safety program, shall ***program the installation of*** [~~either install~~] gates at the crossing***.***[~~, or shall condemn and close the crossing if:~~] ***Locations which do not receive a favorable report from the affected local government shall be reconsidered at the time of the next update of***

the five (5) year accident period.

[~~(a) An alternative route meeting requirements of public safety and necessity is no more than one (1) city block from a condemned crossing within an incorporated city limit; or~~

~~(b) If outside an incorporated city limit, a safe and adequately maintained alternate route exists that will require a motorist to drive no more than one (1) highway mile to resume travel on the affected road or highway.~~]

(2) The cost of installing gates[~~, and the cost associated with the condemnation and closing of a railway crossing including without limitation any cost of construction improvements to alternative routes,~~] shall be the responsibility of the cabinet and railroad in accordance with KRS 277.065 and shall not be charged to any unit of local government.

Section 2. KRS 177.120 is amended to read as follows:

(1) Whenever the department considers it necessary for the public safety, it may order any railroad company[~~, either steam or electric,~~] owning or operating a railroad in this state, to eliminate any grade crossing or change any existing overhead or underpass structure where any public road crosses the railroad tracks of the company. The department may determine whether a substitute crossing should be established and if so, the location of the crossing to be substituted, and whether it shall pass over or under the railroad tracks or intersect them at grade.

(2) In accordance with this section, the department shall promulgate administrative regulations by December 1, 1992, that contain standards governing the ***closure of*** [~~establishment, vacation, relocation, consolidation, and separation of grades at~~] public grade crossings. In adopting standards, the department shall request and consider written comments from affected local governments and shall consider that the number of redundant and inherently dangerous grade crossings in this state should be reduced and that public safety will be enhanced by reducing the number of redundant and inherently dangerous grade crossings.

(3) On or before July 1, 1993, and on or before July 1 of each of the next four (4) years, and as necessary thereafter, the department shall compose a list of grade crossings proposed to be ***closed*** [~~vacated~~]. The list shall be developed by applying the standards set forth in the administrative regulations adopted under subsection (2) of this section. Grade crossings that are part of an abandonment, closing, or removal shall not be included in the list. The department shall notify the public officials having the necessary authority and the railway companies operating the railroads of the proposed ***closures*** [~~vacations~~]. Either affected party may request a ***public*** hearing, and if requested, the department shall hold a ***public*** [~~contested case~~] hearing ***and apply*** [~~applying~~] in its determination the ***information gained at the public hearing and*** administrative regulations developed under subsection (2) of this section. ***If after the hearing, the department determines that closure is warranted, it may order the crossing closed.***

(4) [~~If after the hearing the department determines that the vacation is consistent with the standards adopted under subsection (2) of this section, it may order the crossing vacated.~~] If a request for a hearing on a particular crossing is not received within thirty (30) days of ***notice of the opportunity for a public hearing advertised pursuant to the requirements of KRS Chapter 424*** [~~the publication in the Kentucky Administrative Register~~], the department shall order the crossing ***closed*** [~~vacated~~].

The Committee on Transportation reported **SB 142** and **SB 147**, with Committee Amendments attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

SB 142, AN ACT relating to highway signage.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 177.0736 is amended to read as follows:

The commissioner of the Department of Highways shall promulgate administrative regulations, pursuant to KRS Chapter 13A, to provide for the erection of specific service signs on fully controlled access highways. The administrative regulations shall conform to the Manual on Uniform Traffic Control Devices (MUTCD), and shall include, but not be limited to, criteria for the following:

(1) Distances to eligible businesses;

(2) Selection of eligible businesses;

(3) Acceptance of logo signs that conform to the MUTCD;

(4) Removing or covering logo signs during off seasons for eligible businesses operated on a seasonal basis;

(5) Defining the circumstances in which specific service signs are erected[~~, specific service signs shall not be erected at parkway interchanges unless there is a commitment from eligible businesses to occupy fifty percent (50%) or more of a particular category of specific service sign~~]; and

(6) Determining the costs to eligible businesses for initial installation, annual maintenance, and removal of logo signs.

SB 147, AN ACT relating to highways.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 177.035 is amended to read as follows:

If {~~Whenever~~} the Kentucky State Department of Highways ***determines*** {~~shall determine~~} that it is necessary ***for*** {~~that~~} any fireplugs, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances, belonging to any municipality or a municipally-owned utility, or any water district established pursuant to KRS Chapter 74, any water association established pursuant to KRS Chapter 273, ***any local school district,*** or any sanitation district established pursuant to KRS Chapter 220, ***to*** {~~must~~} be removed or relocated on, along, over, or under a highway, in order to construct, reconstruct, relocate, or improve any {~~such~~} highway, the municipality***,*** {~~or the~~} municipally-owned utility***,*** {~~or the~~} water district***, local school district,*** or the sanitation district shall relocate or remove ***them*** {~~same~~} in accordance with the order of the Department of Highways***.***{~~; and~~} The costs and expenses of {~~such~~} relocation or removal ***required by this section***, including the costs of installing {~~such~~} facilities in a new location {~~or new locations~~}, and the cost of any lands, or any rights or interest in lands, and any other rights, acquired to accomplish ***the*** {~~such~~} relocation or removal, shall be ascertained and paid by the Department of Highways as a part of the cost of improving or constructing {~~such~~} highways.

The Committee Amendment No. 1 to **SB 147** is as follows:

On page 1, after line 16, by adding a new Section 2 to read as follows:

"Section 2. Whereas highway construction projects usually begin in early spring prior to the normal effective date for legislation, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor."

The Committee Title Amendment to **SB 147** is as follows:

By amending the title to read as follows: "AN ACT relating to highways, and declaring an emergency."

The Committee on Natural Resources and Environment reported **HB 503, HB 526, HB 527, HB 528** and **HB 529** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 503, AN ACT relating to forfeited mining reclamation bonds.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 350.131 is amended to read as follows:

(1) When a bond for an interim or preinterim program permit was forfeited prior to July 15, 1988, by the cabinet, and the entire forfeited amount is not necessary to establish proper drainage and revegetation on the permit area for which it was submitted, the cabinet may use any remaining funds to supplement reclamation of other forfeited or released permit areas, if ***the*** {~~such~~} other permit areas endanger public health and safety.

(2) When the bond for an interim or permanent program permit is forfeited by the cabinet, and the entire forfeited amount is more than the amount necessary to complete reclamation, the unused funds ***less any interest that has accrued*** shall be returned to the party from whom they were collected, subject to the cabinet's right to attach or set off ***the*** {~~such~~} proceeds under other state laws.

Section 2. KRS 350.139 is amended to read as follows:

(1) All prior enactments of this General Assembly to the contrary notwithstanding, all funds received by the Natural Resources and Environmental Protection Cabinet through the payment of fees and civil penalties shall be deposited in the State Treasury to the credit of the general fund ***except as provided in KRS 350.990(1)***. All funds from the forfeiture of bonds shall be placed in the State Treasury ***in an interest-bearing account*** and credited to a special agency account. ***The interest shall become a supplemental fund and may be used to supplement forfeited bonds which are inadequate to complete the reclamation plan. Except as provided in KRS 350.131(1), forfeited bond funds*** {~~As far as is practicable, this fund~~} shall be expended upon the lands for which the bond was given. ***The interest may be expended upon lands other than those for which the bond was given. No more than twenty-five percent (25%) of the supplemental fund may be expended upon any single site, unless a larger expenditure is necessary to abate an imminent danger to public health or safety.***

(2) The State Treasurer shall on or before August 1 of each year transfer thirty-three and one-third percent (33-1/3%) of all funds paid during the preceding fiscal year as fees for the issuance of any permit for surface coal mining operations to the fiscal courts of the county in which the permitted operation is located for the general purposes of that fiscal court.

Section 3. KRS 350.990 is amended to read as follows:

(1) Any permittee, person, or operator who violates any of the provisions of this chapter or ***administrative*** regulations

adopted pursuant thereto or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit or other authorization as provided in this chapter, or who violates any determination or order promulgated pursuant to the provisions of this chapter, may be liable to a civil penalty of not more than five thousand dollars ($5,000) for the violation, and an additional civil penalty of not more than five thousand dollars ($5,000) for each day during which the violation continues, and in addition, may be enjoined from continuing the violations provided in this section. Any permittee, operator, or person who fails to abate a violation noted in a notice of noncompliance or an order for immediate compliance and cessation within the time period prescribed for the abatement shall be assessed a civil penalty of not less than seven hundred fifty dollars ($750) for each day during which the violation continues. A civil penalty of not more than five thousand dollars ($5,000) for each day shall be assessed against any person issued an order pursuant to KRS 350.130(4). Each day of continuing violation may be deemed a separate violation for purposes of penalty assessment. The cabinet shall develop a method for calculating monetary penalties and shall promulgate it as an administrative regulation. The secretary or a designated representative, upon his or her own initiative or upon written request received within fifteen (15) days after the cabinet mails its proposed penalty assessment, may waive the use of the method for calculating monetary penalties if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. The basis for every waiver shall be fully explained and documented in the records of the case. If the secretary or his or her designated representative waives the use of the formula, he or she shall determine the appropriate penalty upon consideration of the permittee's history of previous violations at the particular surface coal mining operation, the seriousness of the violation, whether the permittee was negligent, and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation. The penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the cabinet's Department of Law. The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions instituted by the cabinet for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto. All sums recovered shall be placed in the State Treasury, except those moneys collected in excess of eight hundred thousand dollars ($800,000) in any fiscal year shall be deposited in the bond pool fund for purposes set forth in KRS 350.595 and 350.700 to 350.755 ***until the fund reaches seven million dollars ($7,000,000) or such higher amount as may be established by the most recent actuarial study, after which excess money collected shall be deposited fifty percent (50%) to the bond pool fund and fifty percent (50%) to the supplemental fund established under KRS 350.139(1), and used for the purposes of that section. If the bond pool fund falls below seven million dollars ($7,000,000) or such higher amount as may be established by the most recent actuarial study, all excess moneys shall be deposited in the bond pool fund until that fund reaches seven million dollars ($7,000,000) or such higher amount as may be established by the most recent actuarial study***. All moneys previously deposited in the abandoned mine land enhancement fund shall be redeposited in the bond pool fund.

(2) Any person or operator who engages in surface coal mining operations without first securing a permit, as provided in KRS 350.060, or any person who engages in coal exploration operations, exclusive of core drilling, without proper authorization, as required by the cabinet pursuant to KRS 350.057 or administrative regulations promulgated pursuant thereto, or any person or operator who engages in other mining operations, without proper authorization as required by this chapter or administrative regulations promulgated pursuant thereto, shall be liable to a civil penalty for damages to the Commonwealth of not less than five thousand dollars ($5,000) nor more than twenty-five thousand dollars ($25,000) and in addition, may be enjoined from continuing the violations. Each day shall constitute a separate violation. In addition to the foregoing penalties, any permittee, person, or operator who fails to abate a violation of KRS 350.060 or KRS 350.029 or KRS 350.057, as noted in a notice of noncompliance or an order for immediate compliance and cessation within the time period prescribed for the abatement, shall be assessed an additional civil penalty of not less than seven hundred and fifty dollars ($750) for each day during which the violation continues. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided in this subsection where an operator or permittee through inadvertence has exceeded the boundaries or expiration date of the permit in effect at that time.

(3) The cabinet's Department of Law shall bring an action for the recovery of penalties and bring an action for a restraining order, temporary or permanent injunction, against any permittee, operator, or person violating or threatening to violate any of the provisions of this chapter or violating or threatening to violate any order or determination promulgated pursuant to the provisions of this chapter. The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions instituted by the cabinet for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto.

(4) Any permittee, operator, or person who knowingly and willfully violates any of the provisions of this chapter, except as provided in subsection (5) of this section, or any determination or order promulgated pursuant to the sections of this chapter which have become final, shall be guilty of a Class A misdemeanor. Each day on which the violation occurs may constitute a separate offense.

(5) (a) Any person or operator who, in violation of KRS 350.060(1)(a) willfully and knowingly engages in surface coal mining operations without first obtaining a permit from the cabinet, or any person or operator who willfully and knowingly engages in coal exploration operations, exclusive of core drilling, without proper authorization, as required by the cabinet pursuant to KRS 350.057 or administrative regulations promulgated pursuant thereto, or

any person or operator who willfully and knowingly engages in other mining operations without proper authorization as required by this chapter or administrative regulations promulgated pursuant thereto, with the intent to violate the laws, shall be guilty of a Class D felony.

(b) Any person or operator who in violation of KRS 350.060(1)(b) willfully and knowingly receives, transports, sells, conveys, transfers, trades, exchanges, donates, purchases, delivers, or in any way derives benefit from coal removed from any surface mining operations conducted in violation of KRS 350.060(1)(a) or 350.057 shall be guilty of a Class D felony.

(6) Any person who violates any of the provisions of KRS 350.600 or administrative regulations promulgated pursuant thereto shall be subject to civil penalties of not more than twenty-five thousand dollars ($25,000). Each day of continuing violation shall be deemed a separate violation.

(7) Any permittee, operator, or person who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained by the cabinet, shall upon conviction be guilty of a Class A misdemeanor.

(8) Except as permitted by law, any permittee, operator, or person who willfully and knowingly resists, prevents, impedes, or interferes with the secretary or other personnel of the cabinet in the performance of duties pursuant to this chapter shall be guilty of a Class A misdemeanor.

(9) When a corporate permittee violates any provision of this chapter or administrative regulation issued pursuant thereto or fails or refuses to comply with any final order issued by the secretary, any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.

(10) Upon notice by the secretary that any surety has failed to comply with the provisions of KRS 350.032(3), the commissioner of the Kentucky Department of Insurance shall revoke the surety's certificate of authority to conduct insurance business within the Commonwealth of Kentucky.

(11) The cabinet, upon written request by any permittee, person, or operator subject to any penalty assessment under this section and pursuant to procedures, if any, set forth by administrative regulation and after consultation with the local county fiscal court, may allow as an alternative to the payment of any assessed penalty under this section the performance of in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution. The in-kind work shall not substitute for those remedial measures mandated by the cabinet for the correction of any violations. The estimated cost of the in-kind work shall be greater than the penalty assessment. The cabinet Division of Abandoned Lands shall have the authority to approve proposed in-kind projects and to recommend projects to the cabinet, and shall determine whether the estimated cost of the in-kind work exceeds the penalty assessment. For the purposes of this subsection, the cost of the in-kind work shall include only those expenditures for actual on-site reclamation or rehabilitation work, including direct equipment, personnel, and material cost, but excluding administrative overhead or transportation costs. Failure to perform the in-kind work as agreed upon by the person or operator subject to the penalty assessment shall reinstate the liability of the person, permittee, or operator for the full amount of the assessed penalty. The cabinet may prepare and promulgate administrative regulations as are necessary to implement and administer the provisions of this subsection.

HB 526, AN ACT relating to mine electricians and electricity in underground and surface mines.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 351.109 is amended to read as follows:

(1) An individual is a qualified and certified person, within the meaning of this chapter, to perform electrical work, other than work on energized surface, high voltage lines, if[~~:~~

~~(a) He has been qualified and certified as a coal mine electrician by the department; or~~

~~(b) He has at least one (1) year of experience in performing electrical work underground in a coal mine, in the surface work areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and has satisfactorily completed the coal mine electrical training program administered or approved by the department; or~~

~~(c)~~] he has at least one (1) year of experience ***under direct supervision of a qualified electrician*** in performing electrical work underground in a coal mine, in the surface work areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and he attains a satisfactory grade on each of the series of [~~five (5)~~] written tests administered by the department and required in subsection (2) of this section.

(2) The series of [~~five (5)~~] written tests shall include***, but not be limited to,*** the following ***subjects*** [~~categories~~]:

(a) Direct current theory and application;

(b) Alternating current theory and application;

(c) Electric equipment and circuits;

(d) Permissibility of electric equipment; [~~and~~]

(e) Requirements of both federal and state laws***; and***

(f) Pertinent sections of the National Electrical Code.

(3) A score of at least eighty (80) percent on each of the [~~five (5)~~] written tests ***shall*** [~~will~~] be deemed to be a satisfactory grade. Recognition shall be given to practical experience in that one (1) percentage point shall be added to an individual's score in each test for each additional year of experience beyond the one (1) year minimum requirement specified in subsection (1)[~~(e)~~] of this section; however, in no case shall an individual be given more than five (5) percentage points for such practical experience.

(4) An individual may, within thirty (30) days from the date on which he received notification from the department of his test scores, repeat those on which he received an unsatisfactory score. If further retesting is necessary after this initial repetition, a minimum of thirty (30) days from the date of receipt of notification of the initial retest scores shall elapse prior to such further retesting***, whereupon the entire series of written tests shall be retaken***.

(5) An individual qualified and certified in accordance with this section shall, in order to retain qualification and certification, satisfactorily complete ***annually*** a retraining program ***approved by the department*** [~~annually~~].

Section 2. KRS 352.220 is amended to read as follows:

(1) The following shall apply to underground installations:

(a) On all haulage roads, landings, and partings, where men are required to regularly work or pass under bare power wires placed less than six and one-half (6-1/2) feet above the top of the rail, suitable protection shall be provided. This protection shall consist of channeling the roof, placing boards along the wires and extending below them, or the use of some other approved device that affords protection;

(b) All machine feed wires shall be placed on insulators which shall be so placed as to prevent the wires coming in contact with the coal;

(c) When the machine or feed wires are carried in the same entry as the trolley wire, they shall be placed on the same side as the trolley wire, between the trolley wire and rib, and shall be protected from contact therewith. Positive feed wires crossing places where persons or animals are required to travel shall be safely guarded or protected from such persons or animals coming in contact therewith, as provided in paragraph (a) of this subsection;

(d) All trolley and positive feed wires shall be placed on opposite sides of track from refuge holes or necks of rooms when so ordered by the department, but wires, when protected as provided for in paragraph (a) of this subsection, may be placed across the necks of rooms. Switches or circuit breakers shall be provided to control the current at the mine and all important sections in the mine;

(e) All power wires and cables in hoisting shafts or manway compartments shall be properly insulated, substantially fixed, and well protected;

(f) Ground wires for low-voltage circuits shall be at least ***one-half (1/2)*** [~~one-fourth (1/4)~~] as large as the circuit wires;

(g) Extra length or long trailing cables [~~preferably~~] shall be spread out in long open loops on clean, well rock-dusted floor where the cable can be protected against mechanical injury, but cables in suspended long loops ***shall*** [~~will~~] be acceptable;

(h) One (1) temporary splice may be made in any trailing cable. No temporary splice shall be made in a trailing cable within twenty-five (25) feet of the machine except cable reel equipment. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have splices that heat and spark under load shall not be used;

(i) Single conductor trailing cables shall not be used on cutting machines;

(j) [~~Low and medium voltage~~] Three-phase alternating-current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all the electrical equipment supplied power from that circuit[~~, except that the commissioner or his authorized representative may permit underground low and medium voltage circuits to be used underground to feed such stationary electrical equipment if such circuits are either steel armored or installed in grounded rigid steel conduit throughout their entire length~~];

(k) The frames of hand-held electrically driven tools and portable sump pumps shall be properly grounded, and ***the hand-held tools and portable pumps shall be properly protected by fuses, circuit breakers, or other no less effective devices to provide the minimum overload and short-circuit protection required by the department*** [~~they shall be provided with fuses or circuit breakers~~];

(l) All pump frames and all pipe lines shall be grounded to the rail or the grounding system at about two hundred (200) foot intervals, except nonmetallic pipes or pipes using insulated type couplings or pipes installed remotely from track or power systems;

(m) Where track is used for the return circuit, at least one (1) side must be bonded to the full length of the trolley wire installation. Cross-bonds shall be installed not to exceed two hundred (200) foot intervals along the track;

(n) After June 16, 1972, all underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work or pass under them unless they are six and one-half (6-1/2) feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with trolley wires and other low-voltage circuits. Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor, with one (1) or more ground conductors having a total cross-sectional area of not less than one-half (1/2) the power conductor, and with an insulated internal or external conductor not smaller than No. 8 (AWG) for the ground continuity check circuit;

(o) High voltage cables shall have disconnecting switches, overload protective devices, and lightning arresters at~~[,]~~ or near the outside end of the cable;

(p) Permanent battery charging stations, permanent pump installations, motor generator sets, rotary converters, and oil filled transformers and switches used underground shall be housed in fireproof enclosures ventilated by a separate split of air direct to the main return. Underground stations containing transformers or circuit breakers filled with inflammable oil shall be provided with door sills or their equivalent, which will confine the oil if leakage or rupture occur, and shall be of fireproof construction. Underground transformers purchased after June 16, 1972, shall be air cooled or cooled with noninflammable liquid or inert gas. Sectional type portable power centers, portable transformers, and distribution centers which are essentially fireproof are not required to be placed on separate splits of air but must be stationed in well ventilated places out by last open crosscuts;

(q) All mine locomotives shall be fused or otherwise protected at the switch or at the nip;

(r) Suitable firefighting equipment shall be located at strategic points along the belt conveyor, and proper fire extinguishers shall be provided at the transfer points. The commissioner may prescribe any other safety measures for the prevention and combating of mine fires as they pertain to conveyor belts. After June 16, 1972, only approved flame resistant belting shall be taken into and used inside any mine, and all underground belt conveyors shall be provided with slippage and sequence switches and with controls at locations recommended by the mine inspector. This does not prevent the use of belting which is being used on June 16, 1972,~~[;]~~ but the use of rubber belting shall be under such conditions as may be prescribed by the commissioner;

(s) Telephone lines shall be provided with lightning arresters where the lines enter the mine and at the boxes on the outside;

(t) Telephone lines crossing trolley wires shall be carefully guarded in a nonconductive conduit;

(u) Insulating mats shall be placed in front of switchboards, beside stationary motors, in decks of locomotives, telephones, etc.;

(v) Ground wires in trailing cables shall be tested periodically for open circuit and~~[/or]~~ high resistance joints;

(w) Power circuits in tipples, buildings, cleaning plants, etc., and all inside electrical circuits shall be deenergized when not in use over a long period;

(x) Where electric circuits cross over or pass under belt conveyors the wiring shall be protected by conduit.

(2) The following shall apply to surface installations:

(a) High-voltage lines shall be at least twenty (20) feet above the ground where there is a possibility of contact by traffic passing underneath;

(b) Protective barriers shall be so constructed between high-voltage wires and telephone wires, trolley circuits, and any other similar conveyor wires or circuits as to prevent their failure by the falling of such high tension lines across such other circuits, wires, or conveyors;

(c) On four (4)-wire circuits, the fourth or neutral wire terminating at transformers, or elsewhere, shall be of substantial construction to minimize any possibility of the wire being cut in two (2) or damaged mechanically;

(d) On low-voltage circuits, wires shall be supported on insulators except when cables made for use without insulators, which are of such design as can be safely used without insulators, are used;

(e) Lightning arresters shall be installed on all ~~[direct current and alternating current]~~ circuits entering a mine, regardless of voltage. Overload protection and disconnect switches ***of sizes and ratings approved by the department*** shall also be provided;

(f) Every metallic building in which electricity is used or connected with any circuit shall be effectively grounded;

(g) All transformer tanks shall be effectively grounded;

(h) Switch boxes, contactors, controllers, and all other similar devices shall be kept free of dust accumulations;

(i) Surface transformer stations shall be housed or fenced in when lower than fifteen (15) feet above the earth, and the fences shall be a minimum of six (6) feet in height.

(3) (a) Notwithstanding any provisions of subsections (1) or (2) of this section, the department may authorize the construction, maintenance, operation, or conducting of any activity regulated by this section, to be constructed, maintained, operated, or conducted in a different manner than specified in any provision of subsections (1) or (2) of this section, when scientific or engineering information is made available to the department substantially indicating that the different manner would afford equal or greater protection and safety than the manner required in subsections (1) or (2) of this section;

(b) The department may prescribe any other regulations with respect to the above ground or underground installations in connection with any mine operation when information is made available indicating that such regulation is reasonably necessary to prevent injury to, or loss of, life and property.

HB 527, AN ACT relating to reports of a mine owner, lessee, or superintendent.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 351.170 is amended to read as follows:

The owner, lessee, or superintendent of each commercial coal or clay mine shall give ***quarterly*** [~~at the end of each month~~] and at the end of each calendar year accurate information, on blanks furnished by the commissioner, as to the number of accidents that have occurred, the number of persons employed, the tons of coal or clay mined and any other related information that the commissioner requests.

HB 528, AN ACT relating to the safety rights of miners.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 351.193 is amended to read as follows:

No miner ***shall*** [~~will~~] be required to operate any [~~unsafe~~] equipment ***or work in any condition which he reasonably believes to be unsafe***. If the miner invokes his or her safety rights under this section, the miner shall have the right to be relieved from the assignment in dispute. No other miner shall be assigned to perform this job until the dispute is settled. The miner's authorized representative and the company shall review the condition immediately and attempt to resolve the dispute. Should the miner not have an authorized representative, he may represent himself in the dispute. If the dispute is not settled by the company and the miner or his or her authorized representative, either party reserves the right to call in the commissioner or his authorized representative immediately and the dispute shall be settled on the basis of the inspector's finding with a written copy of his finding given to the company and the miner and his authorized representative. No disciplinary action shall be taken against the miner before the miner or his authorized representative and the company review the disputed condition.

HB 529, AN ACT relating to training of surface coal miners.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 351 IS CREATED TO READ AS FOLLOWS:

(1) All inexperienced surface coal miners shall complete a sixteen (16) hour course of instruction devised or approved by the department in subjects including but not limited to: accident prevention, cutting and welding, equipment operation, fire protection, first-aid methods, ground control and transportation, handling and use of explosives, mine communications, mine electrical safety standards, mining law, including miners' rights, safety around bins and hoppers, and any other subjects deemed appropriate by the department. For purposes of this section, "inexperienced coal miners" means all persons who have not previously worked at least ninety (90) days at a surface coal mine in this Commonwealth.

(2) All surface coal miners shall complete an eight (8) hour course of annual retraining devised or approved by the department in the subjects identified in subsection (1) of this section.

(3) The commissioner shall certify all surface coal miners who complete the courses of instruction required in subsections (1) and (2) of this section.

Section 2. KRS 351.990 is amended to read as follows:

(1) Any commissioner of the Department of Mines and Minerals who willfully violates any of the provisions of subsection (2) of KRS 351.020, or any of the provisions of KRS 351.070 to 351.110 or KRS 351.160 shall be guilty of a Class A misdemeanor.

(2) Any person who violates standards promulgated under KRS 351.070 shall be guilty of a violation.

(3) Any person who violates any of the provisions of KRS 351.100 to 351.120 shall be guilty of a violation.

(4) Any mine inspector who violates any of the provisions contained in KRS 351.140 or 351.150 shall be guilty of a Class B

misdemeanor.

(5) Any operator who violates any of the provisions of KRS 351.170 shall be guilty of a Class B misdemeanor.

(6) Any person who violates any of the provisions of subsection (1) of KRS 351.180 shall be guilty of a Class B misdemeanor.

(7) Any person who violates any of the provisions of KRS 351.315 to 351.375 or any regulation, determination, or order issued thereunder shall be subject to a civil fine not less than twenty dollars ($20) nor more than one thousand dollars ($1,000) for each violation.

(8) Any person who shall willfully violate any of the provisions of KRS 351.315 to 351.375, or any regulation, determination, or order promulgated pursuant to the sections of KRS 351.315 to 351.375 which have become final shall be guilty of a Class A misdemeanor.

(9) Any person who violates any of the provisions of KRS 351.330(16) shall be guilty of a Class B misdemeanor.

(10) Any person who violates any of the provisions of KRS 351.345(3) shall be guilty of a Class D felony.

(11) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to KRS Chapter 351 or 352, or any order or decision issued under KRS Chapter 351 or 352 shall, upon conviction, be guilty of a Class A misdemeanor.

(12) Any person who knowingly works in or at a mine without a certificate issued under the provisions of this chapter, any person who knowingly employs an uncertified miner to work in an underground coal mine ***or surface coal mine*** in this state, or any operator who fails to insure the supervision of trainee miners shall be guilty of a Class B misdemeanor. Each day of employment shall constitute a separate offense.

(13) Any operator who fails to obtain his license as required by KRS 351.175 shall be guilty of a Class A misdemeanor as defined in KRS 532.090. Each day the mine is operated without a license constitutes a separate offense. Venue for the offenses shall lie in the county in which the offense occurred.

(14) Any operator operating a mine with knowledge that the mine has been placed under a valid closure order pursuant to KRS 351.175 shall be guilty of a Class D felony. Jurisdiction shall lie in the Circuit Court of the county in which the offense occurred.

Section 3. The following KRS section is repealed:

351.129 First-aid instruction for surface coal miners -- Certification -- Annual retraining.

Calendar

HB 478, SB 1, HB 333, HB 405, HB 442, HB 490, HB 549, HB 550, HCR 44, and **SB 40** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Representative Stumbo moved that the rules be suspended to introduce guests. Agreed.

Representative Keith moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Keith moved that he be recorded as voting "yea" on **SB 4, SB 27, SB 60, SB 91, SB 120, HB 41, HB 166, HB 427, HB 436, HB 204, HB 426, HB 175, HB 231, HB 327, HB 328, HB 329, HB 370, HB 395, HB 400, HB 45, HB 91, HB 206, HB 297, HB 316, HB 318, HB 319, HB 320, HB 321, HB 322, HB 229, HB 232, HB 275, HB 357, HB 447, HB 50, HB 127, HB 180,** and **HB 272,** and "nay" on **HB 289** and **HB 34**. Agreed.

Representative Turner moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Turner moved that his vote be changed from "yea" to "abstain" on **HB 50**. Agreed.

The Clerk announced a Majority Caucus upon recess in Room 327.

The Clerk announced a Minority Caucus upon recess in Room 211.

Recess

Representative Stumbo moved that the House recess for a Majority Caucus and a Minority Caucus. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Floor Amendments

Floor Amendment No. 3 to the Committee Substitute to **HB 225**, by Representative Little:

On page 2, line 20, after the word "***performed***" and before the opening bracket "[" insert the following new language: "***.***
(d) A vehicle which has been issued a nonrepairable title or similar title issued by another state."; and

On page 3, line 24, after the word "***Kentucky***" delete "***, or the equivalent thereof by another licensing***"; and

On page 3, line 25, before the word "***and***" delete "***jurisdiction,***"; and

On page 4, lines 2 through 10, delete lines 2 through 10 in their entirety and insert in lieu thereof the following new language:

"***(2) The Transportation Cabinet shall maintain the word "rebuilt" printed on the face of the title of any motor vehicle whose owner is seeking a certificate of title for a motor vehicle which has had a similar title issued by another state. The motor vehicle shall be required to conform to all laws of the Commonwealth relating to requirements for titling and registration.***

(3) Once a motor vehicle receives the notation of rebuilt on the face of the title, that notation shall be carried forward and printed in the appropriate section on the face of all titles issued thereafter for the motor vehicle."; and

On page 6, lines 6 through 27, delete lines 6 through 27 in their entirety; and

On page 7, lines 1 through 13, delete lines 1 through 13 in their entirety.

Floor Amendment No. 4 to the Committee Substitute to **HB 225**, by Representative Little:

On page 1, line 12, before the word "***history***" delete "***portion of the***" and insert in lieu thereof the word "***complete***"; and

On page 1, between lines 13 and 14, insert a new subsection (2) to read as follows:

"***(2) "Complete history of the motor vehicle" means the title shall reflect if:***

(a) The motor vehicle was previously owned by a private individual or business;

(b) The motor vehicle was leased by a private individual or business;

(c) The motor vehicle was a rental vehicle;

(d) The motor vehicle was repossessed by a lienholder and the length of time the vehicle was in the possession of a private individual or business before the vehicle was repossessed;

(e) Any other detailed condition of ownership or use not specifically mentioned in this subsection; and

(f) It shall not mean, and the title shall not use, a generic term to describe previous history of the motor vehicle, specifically, the title shall not use the term "program"."; and

On page 1, line 14, renumber subsection "***(2)***" as subsection "***(3)***"; and

On page 1, line 16, renumber subsection "***(3)***" as subsection "***(4)***"; and

On page 1, line 18, renumber subsection "***(4)***" as subsection "***(5)***"; and

On page 1, line 19, renumber subsection "***(5)***" as subsection "***(6)***"; and

On page 1, line 21, renumber subsection "***(6)***" as subsection "***(7)***" and after the word "***Rebuilt***" and before the word "***vehicle***" delete the word "***salvage***"; and

On page 1, line 25, renumber subsection "***(7)***" as subsection "***(8)***".

Floor Amendment No. 5 to the Committee Substitute to **HB 225**, by Representative Little:

On page 2, line 10, after the word "***exceeds***" and before the word "***of***" delete "***seventy-five percent (75%)***" and insert in lieu thereof: "***sixty-five percent (65%)***"; and

On page 5, line 26, after the word "***exceeds***" delete "***seventy-five percent***" and insert in lieu thereof "***sixty-five percent (65%)***"; and

On page 5, line 27, delete the number "***(75%)***".

Floor Amendment No. 1 to **HB 333**, by Representative Bentley:

On page 3, line 10 by placing an opening bracket "[" before "(g)" and striking through that line; and

On page 3, lines 11 through 17 by striking through all language; and

On page 3, line 17 by placing a closing bracket "]" after "paragraph."

Floor Amendment No. 2 to **HB 333**, by Representative Bentley:

On page 3, line 1 by placing an opening bracket "[" before "No" and striking through that line; and

On page 3, lines 2 through 9 by striking through all language; and

On page 3, line 10 by placing a closing bracket "]" after "(g)" and striking through "~~(g)~~".

Floor Amendment No. 1 to **HB 398**, by Representative Gedling:

On page 3, after line 9, by inserting the following:

"Section 2. KRS 227.400 is amended to read as follows:

(1) No owner shall fail to furnish and use reasonable adequate protection and safeguards against fire loss, or fail to adopt and use processes and methods reasonably adequate to render such places safe from fire loss.

(2) No owner shall require or allow the public or any employee to go into or be in any property under his control which is not reasonably safe from the fire loss.

(3) Private companies which use employees to form a fire brigade to fight fires at their plant or on the premises of the company shall use the employees for the fire brigade only if the employees volunteer."

Floor Amendment No. 1 to the Committee Substitute to **HB 549**, by Representative Trapp:

On page 1, line 3, before the word "***The***", by inserting the paragraph heading "***(1)***"; and

On page 1, after line 9, and before line 10, insert the following:

"***(2) Before the school board establishes a department and appoints safety and security officers, it shall consult with the school-based decision making councils in the school district.***".

Report On Enrolled Bills

The Committee on Enrollment reported that **SB 12** and **SB 2** have been examined and found correctly enrolled . Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time - 3:32 p.m.)

Report On Enrolled Bills (Continued)

The Committee on Enrollment reported that **HB 123** and **HB 325** have been examined and found correctly enrolled . Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time - 3:35 p.m.)

HB 123 and **HB 325** delivered to the Senate and signed by the President. Delivered to the Governor on February 24, 1994 at 3:45 p.m.

Orders of the Day

HB 177, with Committee Amendment and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Sanders moved the adoption of Floor Amendment No. 1 to **HB 177**. Agreed.

Representative Sanders moved that **HB 177**, as amended, be passed.

On the roll call the vote was: Yeas 90, Nays 0. (See February 24, 1994 roll call on **HB 177** - Appendix)

HB 177, as amended, was passed and the title agreed to.

Representative Sanders moved that the vote by which **HB 177**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 360, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Ballard moved the adoption of Floor Amendment No. 1 to **HB 360**. Agreed.

Representative Ballard moved that **HB 360**, as amended, be passed.

On the roll call the vote was: Yeas 94, Nays 0. (See February 24, 1994 roll call on **HB 360** - Appendix)

HB 360, as amended, was passed and the title agreed to.

Representative Ballard moved that the vote by which **HB 360**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 482**, by Representative Graham:

On page 11, line 8, by placing brackets before and after and striking through "250.371".

Orders of the Day (Continued)

HB 420, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lear moved the adoption of the Committee Substitute to **HB 420**. Agreed.

Representative Lear moved that **HB 420**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 93, Nays 2. (See February 24, 1994 roll call on **HB 420** - Appendix)

HB 420, by way of Committee Substitute, was passed and the title agreed to.

Representative Lear moved that the vote by which **HB 420**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 421 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative R. Smith moved that **HB 421** be passed.

On the roll call the vote was: Yeas 92, Nays 0. (See February 24 , 1994 roll call on **HB 421** - Appendix)

HB 421 was passed and the title agreed to.

Representative R. Smith moved that the vote by which **HB 421** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 500, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative R. Smith moved that **HB 500** be passed.

Representative Lee moved the adoption of Floor Amendment No. 1 to **HB 500**. Agreed.

Representative R. Smith moved that **HB 500**, as amended, be passed.

On the roll call the vote was: Yeas 80, Nays 8. (See February 24, 1994 roll call on **HB 500** - Appendix)

HB 500, as amended, was passed and the title agreed to.

Representative R. Smith moved that the vote by which **HB 500**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 385 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative R. Smith moved that **HB 385** be passed.

On the roll call the vote was: Yeas 96, Nays 0. (See February 24 , 1994 roll call on **HB 385** - Appendix)

HB 385 was passed and the title agreed to.

Representative R. Smith moved that the vote by which **HB 385** was passed be reconsidered and said motion be placed on the table. Agreed.

SJR 13 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Little moved that **SJR 13** be adopted.

On the roll call the vote was: Yeas 96, Nays 0. (See February 24 , 1994 roll call on **SJR 13** - Appendix)

SJR 13 was adopted.

Representative Little moved that the vote by which **SJR 13** was adopted be reconsidered and said motion be placed on the table. Agreed.

HB 399, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Brown moved the adoption of the Committee Substitute to **HB 399**. Agreed.

Representative Brown moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 399**. Agreed.

Representative Brown moved that **HB 399**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 91, Nays 1. (See February 24, 1994 roll call on **HB 399** - Appendix)

HB 399, by way of Committee Substitute as amended, was passed and the title agreed to.

Representative Brown moved that the vote by which **HB 399**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

SB 106 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Little moved that **SB 106** be passed.

On the roll call the vote was: Yeas 97, Nays 0. (See February 24 , 1994 roll call on **SB 106** - Appendix)

SB 106 was passed and the title agreed to.

Representative Little moved that the vote by which **SB 106** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 4, with Senate Committee Substitute and Senate Floor Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Committee Substitute to **HB 4** is as follows:

HB 4, AN ACT relating to fire protection.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 7 of this Act, unless the context requires otherwise:

(1) "Commission" means the Commission on Fire Protection Personnel Standards and Education, attached to the state fire marshal's office in the Department of Housing, Buildings and Construction.

(2) "Fire department" includes all of the officers, firefighters, and clerical and maintenance employees, whether paid or volunteer.

(3) "Full-time paid firefighter" means an individual who receives a minimum salary of eight thousand dollars ($8,000) annually, and who works a minimum of two thousand and eighty (2,080) hours per year as an employee of a fire department recognized by the fire commission.

(4) "Paid fire department" means a fire department recognized by the commission, of which at least fifty percent (50%) of its firefighters are full-time paid firefighters.

(5) "Volunteer fire department" means a fire department with a minimum of twelve (12) members and a chief, at least one (1) operational fire apparatus or one (1) on order, with fewer than fifty percent (50%) of its firefighters being full-time paid firefighters.

SECTION 2. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

(1) The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to create a program for recognition and annual certification of volunteer fire departments. The criteria for recognition and certification shall be consistent with the provisions of KRS 95A.262.

(2) In order to be recognized and certified, a volunteer fire department shall be organized pursuant to KRS 75.010, KRS

67.083, KRS Chapter 95, or KRS Chapter 273.

(3) Volunteer fire departments existing on the effective date of this Act which are receiving volunteer fire department aid pursuant to KRS 95A.262(2) shall have until July 1, 1995, to comply with regulations promulgated pursuant to subsection (1) of this section in order for their aid to continue. Volunteer fire departments created after the effective date of this Act shall comply with the criteria of these regulations in a manner consistent with the time requirements specified in KRS 95A.262(2).

SECTION 3. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

(1) The commission shall recognize all fire departments which comply with the provisions of Section 2 of this Act and regulations promulgated in compliance therewith. Applications for recognition shall be made on forms provided by the commission. The department shall attach to the application an accurate map and a written description which delineates the boundaries of the area served by the department. The map and description shall also be filed with the county clerk of the county in which the department is located. If the boundaries extend into two (2) or more counties, the map and description shall be filed with the county clerk in each county in which a part of the department's service area is located.

(2) The boundaries between two (2) or more departments created pursuant to KRS Chapter 273 may be altered if the departments enter into a written agreement establishing the boundaries, and if a majority of the property owners in the affected area approve the new boundaries. A new map and written description of the altered boundaries shall be filed with the commission and with the county clerks in the affected counties.

SECTION 4. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

(1) Each recognized and certified fire department created pursuant to KRS Chapter 273 shall send a copy of its annual report as required by KRS 273.3671 to the commission at the time the report is filed with the Secretary of State.

(2) The governing body of each recognized and certified volunteer fire department created pursuant to KRS Chapter 273 which, for the year in question, receives from all sources or expends for all purposes less than one hundred thousand dollars ($100,000) shall prepare a financial statement and submit it to the commission by July 31 of each year.

(3) The governing body of each recognized and certified volunteer fire department created pursuant to KRS Chapter 273 which, for the year in question, receives from all sources or expends for all purposes one hundred thousand dollars ($100,000) or more shall prepare a financial statement and shall employ an independent certified public accountant or contract with the Auditor of Public Accounts to perform a review of the financial statement, and shall submit the reviewed statement to the commission by July 31 of each year.

SECTION 5. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

(1) Only fire departments recognized and certified by the commission shall be eligible to receive volunteer fire department aid pursuant to KRS 95A.262(2), to receive low interest loans pursuant to KRS 95A.262(14), or to participate in the Professional Firefighters Foundation Program, pursuant to KRS 95A.200 to 95A.290.

(2) A fire department created pursuant to KRS Chapter 273 which has been recognized and certified by the commission shall have the following rights and responsibilities:

(a) Designation as the only fire department authorized to protect property within its geographic area as filed with the commission and the county clerk, but the department may seek the assistance of other departments, and may make reciprocal aid contracts pursuant to KRS 75.050;

(b) Authority to secure water immediately for purposes of fighting a fire from any source, public or private. Upon request, the department shall compensate the owner in a reasonable amount for water used within six (6) months of use; and

(c) All rights identified in the Kentucky Revised Statutes for fire departments.

(3) The officers and firefighters, whether paid or unpaid, of each fire department created pursuant to KRS Chapter 273 and recognized and certified by the commission shall select a chief. The appointment of the chief shall be subject to the approval of the governing board of the department. The chief shall establish a chain of command within the department. The chief, or the highest person available in the chain of command if the chief cannot be present, shall, subject to all state statutes as applicable, have the following rights and responsibilities:

(a) Authority to order the immediate evacuation of areas endangered by fire, a hazardous materials incident, or other impending disaster that constitutes a threat to life or property;

(b) Authority to be in charge of all fire ground operations at the scene of a fire or other emergency;

(c) Control of all department personnel while on duty; and

(d) Control of all equipment of the department.

(4) The chief of each fire department created pursuant to KRS Chapter 273 and recognized and certified by the commission shall perform necessary actions to maintain recognition and certification of the department by the

commission.

SECTION 6. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

(1) A fire department which collects membership charges or subscriber fees for combatting fires or serving in other emergencies shall base its annual fee or charge on the level of protection offered.

(2) A fire department that responds to a fire or other emergency on the property of a nonmember or nonsubscriber may charge the following fees for services rendered:

(a) Up to five hundred dollars ($500) for single family residential units; utility occupancies of two thousand (2,000) or fewer square feet; assembly and business occupancies having a capacity which does not exceed one hundred (100) persons; equipment; vehicles; and grass or woods fires; and

(b) Up to one thousand dollars ($1,000) for multifamily residential units; assembly and business occupancies having a capacity exceeding one hundred (100) persons; storage occupancies; utility occupancies of more than two thousand (2,000) square feet; and all industrial, educational, or institutional occupancies; and

(c) Up to five hundred dollars ($500) for responding to emergencies not covered in subsections (2)(a) and (2)(b) of this section, including response to high hazard occupancies as defined in KRS 198B.010. The department may be entitled to recover necessary and reasonable costs in excess of the five hundred dollar ($500) limit based upon submission of a written itemized claim for the total costs incurred. Disputes involving fees in excess of the five hundred dollar ($500) limit shall be submitted to arbitration by the commission.

(3) For the purposes of subsections (2)(a) and (2)(b) of this section, the meaning of assembly, business, industrial, educational, and institutional occupancies shall be as defined in KRS 198B.010. The meaning of storage and utility occupancies shall be as defined in the Kentucky Building Code, sections 310.1 and 311.1 respectively, promulgated pursuant to KRS 198B.050.

(4) Property owned by the Commonwealth of Kentucky and the federal government shall be exempt from charges.

(5) If more than one (1) department responds to a fire or other emergency, the fee shall be paid only to the department which is authorized to protect the property pursuant to Section 5(2)(a) of this Act.

(6) A fire department shall respond within its jurisdiction to all fires and to other emergencies for which it is responsible as set forth in its mission statement. A copy of each fire department mission statement shall be filed with the commission. A new department shall file its statement when it is incorporated. A department in existence on the effective date of this Act shall file its mission statement by July 1, 1995. A copy of the mission statement shall be posted in a conspicuous location in each station of the department, and shall be filed with the county clerk of each county in which the department has jurisdiction pursuant to Section 5(2)(a) of this Act. The mission statement shall remain in effect until amended, and filed and posted by the fire department in the locations as required by this subsection.

SECTION 7. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

(1) If a property owner who is not a member or subscriber of the fire department which charges membership or subscriber fees experiences a fire, incident, or emergency that the department responds to, he may provide his insurance company with the billing statement from the fire department.

(2) All insurance companies paying a claim pursuant to subsection one (1) of this section shall make payment of the stated charge for service in the following manner:

(a) The insurance company may make the check or draft payable to both the affected property owner and the affected fire department; or

(b) The insurance company may make the check or draft payable solely to the affected fire department.

(3) If an insurance company makes a claim check or draft payable both to the property owner and the fire department, the property owner shall make payment to the fire department within thirty (30) days of receipt of the check or draft. If the claim check or draft is not sufficient to cover the charge levied by the fire department, the property owner shall be responsible for payment of the balance to the fire department.

(4) A property owner who is not a member or subscriber of the fire department who does not have fire insurance coverage shall be fully responsible for payment of all charges levied by a fire department for services rendered in response to a fire, incident, or emergency within thirty (30) days of the date of the response by the department, or within thirty (30) days of the date of an arbitration award rendered pursuant to subsection (2)(c) of Section 6 of this Act. Payment to the fire department shall be in full, unless a written agreement has been reached between the fire department and the property owner to establish a payment schedule to satisfy all charges to the property owner.

(5) If payment for services rendered has not been received within sixty (60) days from the date of response, or within thirty (30) days of the date of an arbitration award rendered pursuant to subsection (2)(c) of Section 6 of this Act, and if a payment schedule has not been established, a fire department may proceed in small claims court or in other appropriate court action to recover from the property owner all fees associated with the response, including attorney fees and court costs.

SECTION 8. A NEW SECTION OF KRS CHAPTER 75 IS CREATED TO READ AS FOLLOWS:

Nothing in Sections 1 to 7 of this Act shall be construed to conflict with or supersede the authority of the Natural Resources and the Environmental Protection Cabinet, pursuant to the provisions of KRS Chapter 149, over management of forestry areas, and KRS Chapter 224, over management of hazardous wastes, nor the authority of the Division of Disaster and Emergency Services, pursuant to KRS Chapter 39, over response to disasters and emergencies.

Section 9. KRS 95A.262 is amended to read as follows:

(1) The Commission on Fire Protection Personnel Standards and Education shall, in cooperation with the Cabinet for Human Resources, develop and implement a continuing program to inoculate every paid and volunteer firefighter in Kentucky against hepatitis B. The program shall be funded from revenues allocated to the Firefighters Foundation Program fund pursuant to KRS 136.392 and 42.190. Any fire department which has inoculated its personnel during the period of July 1, 1991 to July 14, 1992, shall be reimbursed from these revenues for its costs incurred up to the amount allowed by the Cabinet for Human Resources for hepatitis B inoculations.

(2) Except as provided in subsection (3) of this section and KRS 61.316, the Commission on Fire Protection Personnel Standards and Education shall allot on an annual basis a share of the funds accruing to and appropriated for volunteer fire department aid to volunteer fire departments in cities of all classes, fire protection districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083, and ***volunteer fire departments created as nonprofit corporations pursuant to KRS Chapter 273***[~~all other organized volunteer fire departments recognized by the Department of Housing, Buildings and Construction as fire departments operated and maintained on a nonprofit basis in the interest of the health, safety, prosperity, and security of the inhabitants of the Commonwealth~~]. The commission shall allot five thousand dollars ($5,000) annually to each qualifying department. Any qualifying department which fails to participate satisfactorily in the Kentucky fire incident reporting system as described in KRS 304.13-380 shall forfeit annually five hundred dollars ($500) of its allotment. The commission shall recommend to the commissioner of the Department of Housing, Buildings and Construction the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A to define satisfactory participation in the Kentucky fire incident reporting system. Administrative regulations for determining qualifications shall be based on the number of both paid firefighters and volunteer firemen within a volunteer fire department, the amount of equipment, housing facilities available, and such other matters or standards as will best effect the purposes of the volunteer fire department aid law. A qualifying department shall include at least twelve (12) firefighters, a chief, and at least one (1) operational fire apparatus or one (1) on order. Fifty percent (50%) of the firefighters shall have completed at least one half (1/2) of one hundred fifty (150) training hours toward certification within the first six (6) months of the first year of the department's application for certification, and there shall be a plan to complete the one hundred fifty (150) training hours within the second year. These personnel, equipment, and training requirements shall not be made more stringent by the promulgation of administrative regulations. No allotment shall exceed the total value of the funds, equipment, lands, and buildings made available to the local fire units from any source whatever for the year in which the allotment is made. A portion of the funds provided for above may be used to purchase group or blanket health insurance and shall be used to workers' compensation insurance, and the remaining funds shall be distributed as set forth in this section.

(3) There shall be allotted two hundred thousand dollars ($200,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund that shall be allocated each fiscal year of the biennium to the firefighters training center fund, which is hereby created and established, for the purposes of constructing new or upgrading existing training centers for firefighters. If any moneys in the training center fund remain uncommitted, unobligated, or unexpended at the close of the first fiscal year of the biennium, then such moneys shall be carried forward to the second fiscal year of the biennium, and shall be reallocated to and for the use of the training center fund, in addition to the second fiscal year's allocation of two hundred thousand dollars ($200,000). Prior to funding any project pursuant to this subsection, a proposed project shall be approved by the Commission on Fire Protection Personnel Standards and Education as provided in subsection (4) of this section and shall comply with state laws applicable to capital construction projects.

(4) Applications for funding low-interest loans and firefighters training centers shall be submitted to the Commission on Fire Protection Personnel Standards and Education for their recommendation, approval, disapproval, or modification. The commission shall review applications periodically, and shall, subject to funds available, recommend which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.

(5) Any department or entity eligible for and receiving funding pursuant to this section shall have a minimum of fifty percent (50%) of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.

(6) Upon the written request of any department, the Commission on Fire Protection Personnel Standards and Education shall make available a certified training program in a county of which such department is located.

(7) The amount of reimbursement for any given year for costs incurred by the department for administering these funds, including, but not limited to the expenses and costs of commission operations, shall be determined by the commission and shall not exceed five percent (5%) of the total amount of moneys accruing to the Firefighters Foundation Program fund which are allotted for the purposes specified in this section during any fiscal year.

(8) The commission shall withhold from the general distribution of funds under subsection (2) of this section an amount

which it deems sufficient to reimburse volunteer fire departments for equipment lost or damaged beyond repair due to hazardous material incidents.

(9) Moneys withheld pursuant to subsection (8) of this section shall be distributed only under the following terms and conditions:

(a) A volunteer fire department has lost or damaged beyond repair items of personal protective clothing or equipment due to that equipment having been lost or damaged as a result of an incident in which a hazardous material (as defined in any state or federal statute or regulation) was the causative agent of the loss;

(b) The volunteer fire department has made application in writing to the commission for reimbursement in a manner approved by the commission and the loss and the circumstances thereof have been verified by the commission;

(c) The loss of or damage to the equipment has not been reimbursed by the person responsible for the hazardous materials incident or by any other person;

(d) The commission has determined that the volunteer fire department does not have the fiscal resources to replace the equipment;

(e) The commission has determined that the equipment sought to be replaced is immediately necessary to protect the lives of the volunteer firefighters of the fire department;

(f) The fire department has agreed in writing to subrogate all claims for and rights to reimbursement for the lost or damaged equipment to the Commonwealth to the extent that the Commonwealth provides reimbursement to the department; and

(g) The department has shown to the satisfaction of the commission that it has made reasonable attempts to secure reimbursement for its losses from the person responsible for the hazardous materials incident and has been unsuccessful in the effort.

(10) ***If***[~~In the event that~~] a volunteer fire department has met all of the requirements of subsection (9) of this section***,*** the commission may authorize a reimbursement of equipment losses not exceeding ten thousand dollars ($10,000) or the actual amount of the loss, whichever is less.

(11) Moneys which have been withheld during any fiscal year which remain unexpended at the end of the fiscal year shall be distributed in the normal manner required by subsection (2) of this section during the following fiscal year.

(12) No volunteer fire department may receive funding for equipment losses more than once during any fiscal year.

(13) The commission shall make reasonable efforts to secure reimbursement from the responsible party for any moneys awarded to a fire department pursuant to this section.

(14) There shall be allotted each year of the 1992-93 biennium one million dollars ($1,000,000), and each year of the 1994-95, 1996-97, 1998-99, and 2000-01 bienniums one million dollars ($1,000,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund for the purpose of creating a revolving low-interest loan fund, which shall thereafter be self-sufficient and derive its operating revenues from principal and interest payments. The commission, in accordance with the procedures in subsection (4) of this section, may make low-interest loans, and the interest thereon shall not exceed three percent (3%) annually or the amount needed to sustain operating expenses of the loan fund, whichever is less, to volunteer fire departments for the purposes of major equipment purchases and facility construction. Loans shall be made to departments which achieve the training standards necessary to qualify for volunteer fire department aid allotted pursuant to subsection (2) of this section, and which do not have other sources of funds at rates which are favorable given their financial resources. The proceeds of loan payments shall be returned to the loan fund for the purpose of providing future loans. If a department does not make scheduled loan payments, the commission may withhold any grants payable to the department pursuant to subsection (2) of this section until the department is current on its payments. Money in the low-interest loan fund shall be used only for the purposes specified in this subsection. Any funds remaining in the fund at the end of a fiscal year shall be carried forward to the next fiscal year for the purposes of the fund.

Section 10. KRS 75.100 is amended to read as follows:

As used in KRS 75.100 to 75.260, unless the context requires otherwise:

(1) "Chairman" means the chairman of the board of trustees of a fire protection district organized under the provisions of KRS 75.010 to 75.080, or the chairman of the governing board of a volunteer fire department.

(2) "Fire protection district" means fire districts organized under KRS ***75.010 to 75.080***[~~Chapter 75~~].

(3) "Board" means the board of trustees of a fire protection district organized under KRS ***75.010 to 75.080***[~~Chapter 75~~] and the governing board of a volunteer fire department.

(4) "Fire department" means the officers, firefighters and clerical or maintenance employees, including the chief and assistant chief of the department.

(5) "Chief" means the chief of the fire department of a fire protection department organized under KRS ***75.010 to 75.080***[~~Chapter 75~~] and of a volunteer fire department.

(6) "Employees" means all persons employed by the board of trustees of a fire protection district organized under KRS

75.010 to 75.080[~~Chapter 75~~] and of a volunteer fire department.

(7) "Member" shall include the chief and all officers and employees of a fire department, a fire protection district or of a volunteer fire department.

(8) "Salary" means any compensation received for services.

(9) "Suspension" means the separation of an employee from the service for a temporary or fixed period of time, by his appointing authority, as a disciplinary measure.

(10) "Dismissal" means the discharge of an employee by lawful authority.

(11) "Trustees" means the board of trustees of a fire protection district and of a volunteer fire department.

Senate Floor Amendment No. 2 to the Senate Committee Substitute to **HB 4** is as follows:

On page 6, line 1, by deleting "***310.1 and 311.1***" and inserting in lieu thereof the following: "***311.1 and 312.1***".

Representative Bentley moved that the House concur in the Senate Committee Substitute to **HB 4**. Agreed.

Representative Bentley moved that the House concur in Senate Amendment No. 2 to the Senate Committee Substitute to **HB 4**. Agreed.

Representative Bentley moved that **HB 4**, by way of Senate Committee Substitute as amended by the Senate, be passed.

On the roll call the vote was: Yeas 97, Nays 0. (See February 24, 1994 roll call on **HB 4** - Appendix)

HB 4, by way of Senate Committee Substitute as amended by the Senate, was passed and the title agreed to.

Representative Bentley moved that the vote by which **HB 4**, by way of Senate Committee Substitute as amended by the Senate, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 154, with Senate Committee Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Committee Amendment No. 1 to **HB 154** is as follows:

On page 2, line 15, by inserting after the word "***shall***", "***be any full-time staff member excluding the president, vice presidents, academic deans, and academic department chairpersons. He shall***".

Representative Curd moved that the House concur in Senate Committee Amendment No. 1 to **HB 154**. Agreed.

Representative Curd moved that **HB 154**, as amended by the Senate, be passed.

On the roll call the vote was: Yeas 93, Nays 3. (See February 24, 1994 roll call on **HB 154** - Appendix)

HB 154, as amended by the Senate, was passed and the title agreed to.

Representative Curd moved that the vote by which **HB 154**, as amended by the Senate, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 208, with Senate Floor Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Floor Amendment No. 1 to **HB 208** is as follows:

On page 11, line 2, after the word "and" and before the word "twelve" insert "***sixteen (16)***" and place an opening bracket "[" before the word "twelve", place a closing bracket "]" after the number twelve "(12)" and strike through the intervening material; and

On page 11, line 12, after the word "or" insert "***sixteen (16)***" and place an opening bracket "[" before the word "fourteen", place a closing bracket "]" after the number fourteen "(14)" and strike through the intervening material; and

On page 11, line 16, before the word "twelve" insert "***sixteen (16)***" and place an opening bracket "[" before the word "twelve", place a closing bracket "]" after the number twelve "(12)" and strike through the intervening material.

Representative Ridley moved that the House concur in Senate Floor Amendment No. 1 to **HB 208**. Agreed.

Representative Ridley moved that **HB 208**, as amended by the Senate, be passed.

On the roll call the vote was: Yeas 97, Nays 0. (See February 24, 1994 roll call on **HB 208** - Appendix)

HB 208, as amended by the Senate, was passed and the title agreed to.

Representative Ridley moved that the vote by which **HB 208**, as amended by the Senate, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 678, by Representative Rasche: AN ACT relating to insurance.

HB 679, by Representative Burch: AN ACT relating to the control of children's access to tobacco products.

HB 680, by Representative Burch: AN ACT relating to administrative regulations.

HB 681, by Representative Brown: AN ACT relating to environmental audits.

HB 682, by Representatives Moberly and Graham: AN ACT relating to candidates in a regular election.

HB 683, by Representative R. Smith: AN ACT relating to oil and gas production reporting, and making an appropriation therefor.

HB 684, by Representative R. Smith: AN ACT relating to definitions of oil and gas.

HB 685, by Representatives Curd, Barrows, Richards, Maricle and Coleman: AN ACT relating to retirement and declaring an emergency.

HB 686, by Representative Zimmerman: AN ACT relating to sales and use tax.

HB 687, by Representatives Arnold, Turner, Buis, Allen and Scott: AN ACT relating to compensation of elected officials.

HB 688, by Representatives Morris and Bruce: AN ACT relating to the Interstate Rail Passenger Network Compact.

HB 689, by Representative Stengel: AN ACT relating to privileged communications.

HB 690, by Representatives French, Bentley, L. Clark, Farrow, Adams, Treesh, Bondurant, Gedling, Sanders, Nesler, Simpson, McElroy and Arnold: AN ACT relating to fire protection.

HB 691, by Representatives Yates, Gedling, Shacklette, Marzian, Sanders, P. Clark, Northup, Ackerson, Worthington and Butler: AN ACT relating to taxation.

HB 692, by Representative Hancock: AN ACT relating to crimes and punishments.

HB 693, by Representatives Riggs and Geveden: AN ACT denying parents who owe child support certain entitlements.

HB 694, by Representatives Callahan, Donnermeyer, Simpson, Kerr, Harper, Adams, Walton, French, Reinhardt and Coleman: AN ACT relating to the management of high school athletics.

HB 695, by Representatives Simpson, Callahan and Donnermeyer: AN ACT relating to the Kentucky Unified Juvenile Code.

HB 696, by Representative Stacy: AN ACT relating to the Department of Corrections.

HB 697, by Representative Stacy: AN ACT relating to the Department of Corrections.

HB 698, by Representative Stacy: AN ACT relating to crimes and punishments.

HB 699, by Representative Stacy: AN ACT relating to employees and former employees of the Department of Corrections.

HB 700, by Representative Riner: AN ACT relating to economic development.

HB 701, by Representative Riner: AN ACT relating to open meetings of public agencies.

HB 702, by Representative Stacy: AN ACT proposing an amendment to Sections 253 and 254 of the Constitution of Kentucky relating to penitentiary prisoners.

HB 703, by Representatives Farley, Cyrus, Noland and Adkins: AN ACT relating to job training.

HB 704, by Representatives Mason and Marzian: AN ACT relating to the donation of blood.

HCR 54, by Representative Zimmerman: A CONCURRENT RESOLUTION directing a study of the need for school districts to impose development impact fees for school construction.

Report of Committees (Continued)

The Committee on State Government reported **HB 257, HB 258,** with Committee Substitute attached thereto, **HB 259, HB 260, HB 261, HB 262, HB 263, HB 464,** with Committee Substitute attached thereto, **HB 573,** with Committee Amendment attached thereto, **HCR 36, HCR 37, HCR 43,** with Committee Substitute and Committee Amendment attached thereto, and **HR 45** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 257, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 11A.060 is amended to read as follows:

(1) The Executive Branch Ethics Commission is hereby established.

(2) The commission shall be composed of five (5) members appointed by the Governor.

(3) Members of the commission shall serve staggered terms of four (4) years. Of the initial members appointed as provided in this section, one (1) member shall serve a term of one (1) year, one (1) member shall serve a term of two (2) years, one (1) member shall serve a term of three (3) years, and two (2) members shall be appointed for terms of four (4) years. Thereafter, all appointments shall be for four (4) years.

(4) The commission shall elect from its membership a chairman and vice chairman. In the absence of the chairman or in the event of a vacancy in that position, the vice chairman shall serve as chairman.

(5) A member of the commission shall receive one hundred dollars ($100) per day for attending meetings and shall be reimbursed for actual and necessary expenses incurred in the performance of duties.

(6) All members shall be registered voters of the state.

(7) Members of the commission shall be removed by the Governor for cause only, including substantial neglect of duty, inability to discharge the powers and duties of office, and violation of KRS 11A.040(5) or (6).

(8) A quorum shall consist of three (3) or more members. An affirmative vote of three (3) or more members shall be necessary for commission action.

(9) The commission shall meet at the call of the chairman or a majority of its members.

(10) The commission shall be attached to the office of the Governor for administrative purposes only.

Section 2. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of such department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

  1. The Governor.
  2. Lieutenant Governor.
  3. Department of State.
     (a) Secretary of State.
     (b) Board of Elections.
     (c) Registry of Election Finance.
  4. Department of Law.
     (a) Attorney General.
  5. Department of the Treasury.
     (a) Treasurer.
  6. Department of Agriculture.

        (a) Commissioner of Agriculture.
        (b) Kentucky Council on Agriculture.
    7. Superintendent of Public Instruction.
    8. Auditor of Public Accounts.
    9. Railroad Commission.

II. Program cabinets headed by appointed officers:
    1. Justice Cabinet:
        (a) Department of State Police.
        (b) Department of Criminal Justice Training.
        (c) Office of Administration.
        (d) Department of Corrections.
        (e) Parole Board.
        (f) Kentucky State Corrections Commission.
    2. Education and Humanities Cabinet:
        (a) Department of Education.
            (1) State Board for Elementary and Secondary Education.
            (2) Education Professional Standards Board.
        (b) Department for Libraries and Archives.
        (c) Kentucky Arts Council.
        (d) Kentucky Educational Television.
        (e) Kentucky Historical Society.
        (f) Kentucky Teachers' Retirement System Board of Trustees.
    3. Natural Resources and Environmental Protection Cabinet:
        (a) Environmental Quality Commission.
        (b) Kentucky Nature Preserves Commission.
        (c) Department for Environmental Protection.
        (d) Department for Natural Resources.
        (e) Department for Surface Mining Reclamation and Enforcement.
        (f) Department of Law.
        (g) Office of Communications and Community Affairs.
    4. Transportation Cabinet:
        (a) Department of Highways.
        (b) Department of Vehicle Regulation.
        (c) Department of Administrative Services.
        (d) Department of Fiscal Management.
        (e) Department of Rural and Municipal Aid.
        (f) Office of Aeronautics.
        (g) Office of General Counsel.
        (h) Office of Public Relations.
        (i) Office of Personnel Management.
        (j) Office of Minority Affairs.
    5. Cabinet for Economic Development:
        (a) Department for Existing Business and Industry.
        (b) Tobacco Research Board.
        (c) Kentucky Development Finance Authority.
        (d) Office of Business and Technology.
        (e) Office of Industrial Development.
    6. Public Protection and Regulation Cabinet:

(a) Public Service Commission.
(b) Department of Insurance.
(c) Department of Housing, Buildings and Construction.
(d) Department of Financial Institutions.
(e) Department of Mines and Minerals.
(f) Department of Public Advocacy.
(g) Department of Alcoholic Beverage Control.
(h) Kentucky Racing Commission.
(i) Board of Claims.
(j) Crime Victims Compensation Board.
(k) Kentucky Board of Tax Appeals.
(l) Backside Improvement Commission.

7. Cabinet for Human Resources:

(a) Department for Health Services.
(b) Department for Employment Services.
(c) Department for Social Insurance.
(d) Department for Social Services.
(e) Department for Medicaid Services.
(f) Department for Mental Health and Mental Retardation Services.
(g) Unemployment Insurance Commission.
(h) Commission for Handicapped Children.
(i) Public Assistance Appeals Board.
(j) Office of Administrative Services.
(k) Office of Communications.
(l) Office of General Counsel.
(m) Office of Inspector General.
(n) Office of Policy and Budget.
(o) Office of the Ombudsman.

8. Finance and Administration Cabinet:

(a) Office of Legal and Legislative Services.
(b) Office of Management and Fiscal Affairs.
(c) Office of Historic Properties.
(d) Office of Financial Management and Economic Analysis.
(e) Office of Risk Management.
(f) Department for Administration.
(g) Department of Facilities Management.
(h) Department of Information Systems.
(i) State Property and Buildings Commission.
(j) Kentucky Pollution Abatement Authority.
(k) Kentucky Savings Bond Authority.
(l) Deferred Compensation Systems.
(m) Office of Equal Employment Opportunity Contract Compliance.
(n) Capital Plaza Authority.
(o) County Officials Compensation Board.
(p) ~~[Financial Disclosure Review Commission.~~
~~(q)~~] Kentucky Employees Retirement Systems.
(q)[~~(r)~~] Commonwealth Credit Union.
(r)[~~(s)~~] State Investment Commission.

(s)[~~(t)~~] Kentucky Housing Corporation.
(t)[~~(u)~~] Governmental Services Center.
(u)[~~(v)~~] Kentucky Local Correctional Facilities Construction Authority.
(v)[~~(w)~~] Kentucky Turnpike Authority.
(w)[~~(x)~~] Historic Properties Advisory Commission.

9. Labor Cabinet:
    (a) Department of Workplace Standards.
    (b) Department of Workers' Claims.
    (c) Kentucky Labor-Management Advisory Council.
    (d) Occupational Safety and Health Standards Board.
    (e) Prevailing Wage Review Board.
    (f) Workers' Compensation Board.
    (g) Kentucky Employees Insurance Association.
    (h) Apprenticeship and Training Council.
    (i) State Labor Relations Board.
    (j) Kentucky Occupational Safety and Health Review Commission.
    (k) Office of Administrative Services.
    (l) Office of Labor Management Relations.
    (m) Office of General Counsel.
10. Revenue Cabinet:
    (a) Department of Property Taxation.
    (b) Department of Tax Compliance.
    (c) Department of Administrative Services.
11. Tourism Cabinet:
    (a) Department of Travel Development.
    (b) Department of Parks.
    (c) Department of Fish and Wildlife Resources.
    (d) Kentucky Horse Park Commission.
    (e) State Fair Board.
    (f) Office of Administrative Services.
    (g) Office of Film Promotion.
    (h) Office of General Counsel.
12. Cabinet for Workforce Development:
    (a) Department for Adult and Technical Education.
    (b) Department of Vocational Rehabilitation.
    (c) Department for the Blind.
    (d) State Board for Adult and Technical Education.
    (e) Governor's Council on Vocational Education.
    (f) Governor's Commission on Literacy.
    (g) The State Board for Proprietary Education.
    (h) The GED Foundation.
    (i) The Kentucky Occupational Information Coordinating Committee.
    (j) The Kentucky Job Training Coordinating Council.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.
2. Department of Personnel.
3. Council on Higher Education.
4. Department of Local Government.

5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.

Section 3. KRS 42.016 is amended to read as follows:

The following corporate bodies and instrumentalities of the Commonwealth shall be attached to the Office of the Secretary for administrative purposes and staff services:

(1) [~~Financial Disclosure Review Commission;~~
~~(2)~~] State Property and Buildings Commission;
(2)[~~(3)~~] Kentucky Pollution Abatement Authority;
(3)[~~(4)~~] Capital Plaza Authority;
(4)[~~(5)~~] Kentucky Savings Bond Authority;
(5)[~~(6)~~] County Officials Compensation Board;
(6)[~~(7)~~] Kentucky Turnpike Authority;
(7)[~~(8)~~] State Investment Commission;
(8)[~~(9)~~] Kentucky Housing Corporation; and
(9)[~~(10)~~] Governmental Services Center.

Section 4. Executive Order 92-601 is confirmed to the extent that it is not otherwise confirmed by this Act.

HB 258, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of such department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:
    1. The Governor.
    2. Lieutenant Governor.
    3. Department of State.
        (a) Secretary of State.
        (b) Board of Elections.
        (c) Registry of Election Finance.
    4. Department of Law.
        (a) Attorney General.
    5. Department of the Treasury.
        (a) Treasurer.
    6. Department of Agriculture.
        (a) Commissioner of Agriculture.
        (b) Kentucky Council on Agriculture.
    7. Superintendent of Public Instruction.
    8. Auditor of Public Accounts.
    9. Railroad Commission.

II. Program cabinets headed by appointed officers:
    1. Justice Cabinet:
        (a) Department of State Police.
        (b) Department of Criminal Justice Training.

- (c) Office of Administration.
- (d) Department of Corrections.
- (e) Parole Board.
- (f) Kentucky State Corrections Commission.

2. Education*, Arts,* and Humanities Cabinet:
   - (a) Department of Education.
     - (1) State Board for Elementary and Secondary Education.
     - (2) Education Professional Standards Board.
   - (b) Department for Libraries and Archives.
   - (c) Kentucky Arts Council.
   - (d) Kentucky Educational Television.
   - (e) Kentucky Historical Society.
   - (f) Kentucky Teachers' Retirement System Board of Trustees.
3. Natural Resources and Environmental Protection Cabinet:
   - (a) Environmental Quality Commission.
   - (b) Kentucky Nature Preserves Commission.
   - (c) Department for Environmental Protection.
   - (d) Department for Natural Resources.
   - (e) Department for Surface Mining Reclamation and Enforcement.
   - (f) Department of Law.
   - (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
   - (a) Department of Highways.
   - (b) Department of Vehicle Regulation.
   - (c) Department of Administrative Services.
   - (d) Department of Fiscal Management.
   - (e) Department of Rural and Municipal Aid.
   - (f) Office of Aeronautics.
   - (g) Office of General Counsel.
   - (h) Office of Public Relations.
   - (i) Office of Personnel Management.
   - (j) Office of Minority Affairs.
5. Cabinet for Economic Development:
   - (a) Department for Existing Business and Industry.
   - (b) Tobacco Research Board.
   - (c) Kentucky Development Finance Authority.
   - (d) Office of Business and Technology.
   - (e) Office of Industrial Development.
6. Public Protection and Regulation Cabinet:
   - (a) Public Service Commission.
   - (b) Department of Insurance.
   - (c) Department of Housing, Buildings and Construction.
   - (d) Department of Financial Institutions.
   - (e) Department of Mines and Minerals.
   - (f) Department of Public Advocacy.
   - (g) Department of Alcoholic Beverage Control.
   - (h) Kentucky Racing Commission.
   - (i) Board of Claims.

(j) Crime Victims Compensation Board.
(k) Kentucky Board of Tax Appeals.
(l) Backside Improvement Commission.

7. Cabinet for Human Resources:
(a) Department for Health Services.
(b) Department for Employment Services.
(c) Department for Social Insurance.
(d) Department for Social Services.
(e) Department for Medicaid Services.
(f) Department for Mental Health and Mental Retardation Services.
(g) Unemployment Insurance Commission.
(h) Commission for Handicapped Children.
(i) Public Assistance Appeals Board.
(j) Office of Administrative Services.
(k) Office of Communications.
(l) Office of General Counsel.
(m) Office of Inspector General.
(n) Office of Policy and Budget.
(o) Office of the Ombudsman.

8. Finance and Administration Cabinet:
(a) Office of Legal and Legislative Services.
(b) Office of Management and Fiscal Affairs.
(c) Office of Historic Properties.
(d) Office of Financial Management and Economic Analysis.
(e) Office of Risk Management.
(f) Department for Administration.
(g) Department of Facilities Management.
(h) Department of Information Systems.
(i) State Property and Buildings Commission.
(j) Kentucky Pollution Abatement Authority.
(k) Kentucky Savings Bond Authority.
(l) Deferred Compensation Systems.
(m) Office of Equal Employment Opportunity Contract Compliance.
(n) Capital Plaza Authority.
(o) County Officials Compensation Board.
(p) Financial Disclosure Review Commission.
(q) Kentucky Employees Retirement Systems.
(r) Commonwealth Credit Union.
(s) State Investment Commission.
(t) Kentucky Housing Corporation.
(u) Governmental Services Center.
(v) Kentucky Local Correctional Facilities Construction Authority.
(w) Kentucky Turnpike Authority.
(x) Historic Properties Advisory Commission.

9. Labor Cabinet:
(a) Department of Workplace Standards.
(b) Department of Workers' Claims.
(c) Kentucky Labor-Management Advisory Council.

(d) Occupational Safety and Health Standards Board.

(e) Prevailing Wage Review Board.

(f) Workers' Compensation Board.

(g) Kentucky Employees Insurance Association.

(h) Apprenticeship and Training Council.

(i) State Labor Relations Board.

(j) Kentucky Occupational Safety and Health Review Commission.

(k) Office of Administrative Services.

(l) Office of Labor Management Relations.

(m) Office of General Counsel.

10. Revenue Cabinet:

(a) Department of Property Taxation.

(b) Department of Tax Compliance.

(c) Department of Administrative Services.

11. Tourism Cabinet:

(a) Department of Travel Development.

(b) Department of Parks.

(c) Department of Fish and Wildlife Resources.

(d) Kentucky Horse Park Commission.

(e) State Fair Board.

(f) Office of Administrative Services.

(g) Office of Film Promotion.

(h) Office of General Counsel.

12. Cabinet for Workforce Development:

(a) Department for Adult and Technical Education.

(b) Department of Vocational Rehabilitation.

(c) Department for the Blind.

(d) State Board for Adult and Technical Education.

(e) Governor's Council on Vocational Education.

(f) Governor's Commission on Literacy.

(g) The State Board for Proprietary Education.

(h) The GED Foundation.

(i) The Kentucky Occupational Information Coordinating Committee.

(j) The Kentucky Job Training Coordinating Council.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.

2. Department of Personnel.

3. Council on Higher Education.

4. Department of Local Government.

5. Kentucky Commission on Human Rights.

6. Kentucky Commission on Women.

Section 2. KRS 12.250 is amended to read as follows:

There are established within state government the following program cabinets:

(1) Justice Cabinet.

(2) Education*, Arts,* and Humanities Cabinet.

(3) Natural Resources and Environmental Protection Cabinet.

(4) Transportation Cabinet.

(5) Cabinet for Economic Development.

(6) Public Protection and Regulation Cabinet.

(7) Cabinet for Human Resources.

(8) Finance and Administration Cabinet.

(9) Tourism Cabinet.

(10) Revenue Cabinet.

(11) Labor Cabinet.

(12) Cabinet for Workforce Development.

Section 3. KRS 153.380 is amended to read as follows:

(1) There is established the Kentucky Oral History Commission, hereinafter referred to as "the commission," ***which shall be attached to the Kentucky Historical Society as a branch of the Oral History and Educational Outreach Division*** [~~as a separate administrative body of state government within the meaning of KRS Chapter 12~~].

(2) The commission, through funds made available from the State Treasury and from public or private foundations or other sources, shall coordinate, promote and assist in the development of oral history programs across the state and shall otherwise implement programs which result in the accumulation of taped interviews and other supporting data which preserve the multifaceted history of the Commonwealth.

(3) The commission shall consist of twelve (12) voting members, ten (10) appointed by the Governor. The commissioner of the Department for Libraries and Archives and the director of the Kentucky Historical Society shall serve as ex officio members. Commission members shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(4) After initial appointments, commission members shall be appointed for a four (4) year term. Upon the expiration of terms or in case of vacancies, terms shall be filled by the Governor.

(5) The commission shall, upon the appointment of its members, organize and elect officers from its membership. The commission shall choose, by a majority vote, a chairperson and a vice chairperson annually. The commission shall meet upon call of the chairman or by a majority of the members of the commission, but no less than twice each year. A majority of the voting members of the commission shall constitute a quorum for the purpose of conducting the business of the commission.

(6) The commission shall have policy approval authority and shall have the authority to hire staff, expend funds, establish funding and program priorities, and operate the normal business activities of the commission. It shall be the final grant approval authority for all funds collected by or appropriated to the commission.

(7) The commission may, upon such terms as may be mutually agreed upon, contract with another agency of state government, for:

(a) Office space;

(b) Secretarial support;

(c) Programmatic support;

(d) Telephone and other utilities;

(e) Bookkeeping support;

(f) Storage or processing of oral history tapes; and

(g) Other activities of a support nature not involving the actual management of the commission.

Section 4. KRS 153.410 is amended to read as follows:

(1) The Kentucky Center for the Arts Corporation is hereby established, and shall consist of fifteen (15) members representing metropolitan Louisville and Kentucky to be appointed by the Governor, who shall also designate a chairman. Initial terms shall be staggered; thereafter, members shall be appointed to four (4) year terms..

(2) Members may be removed by the Governor only for cause after being afforded notice, a hearing with counsel before the Governor or his designee, and a finding of fact by the Governor. A copy of charges, transcript of the record of the hearings, and findings of fact shall be filed with the Secretary of State.

(3) The Kentucky Center for the Arts Corporation shall be a body corporate with full corporate powers. A quorum of the corporation shall consist of eight (8) members, with a majority of members present authorized to act upon any matter legally before the corporation. Full minutes and records shall be kept of all meetings of the corporation and all official actions shall be recorded.

(4) The corporation may enact bylaws concerning the election of other officers, the creation of an executive committee with full authority to act between regular meetings, and the designation of alternates for members with full voting authority.

(5) The corporation shall be attached to the Education, Arts, and Humanities Cabinet for administrative purposes.

Section 5. KRS 171.312 is amended to read as follows:

In order to better facilitate the operation and management, the Kentucky Historical Society shall be organized into four (4) separate divisions. These divisions shall include: Research and Publications; ***Oral History and Educational Outreach*** [~~Society Services~~]; Administration; and Museums. The divisions shall be headed by a director appointed by the Executive Committee of the Kentucky Historical Society of the Education***, Arts,*** and Humanities Cabinet pursuant to KRS 171.311.

SECTION 6. A NEW SECTION OF KRS 158.700 TO 158.799 IS CREATED TO READ AS FOLLOWS:

The Governor's Scholars Program is established in the office of the Secretary of the Education, Arts, and Humanities Cabinet and shall be headed by an executive director appointed by the Secretary of the Education, Arts, and Humanities Cabinet with approval by the Governor. This program shall be responsible for implementing an enrichment program for academically gifted students.

Section 7. KRS 11.065 is amended to read as follows:

(1) The secretaries of the Justice Cabinet, the Education***, Arts,*** and Humanities Cabinet, the Natural Resources and Environmental Protection Cabinet, the Transportation Cabinet, the Cabinet for Economic Development, the Public Protection and Regulation Cabinet, the Cabinet for Human Resources, the Finance and Administration Cabinet, the Revenue Cabinet, the Tourism Cabinet, the Labor Cabinet, the secretary of the Governor's Executive Cabinet, and the Lieutenant Governor shall constitute the Governor's Executive Cabinet. There shall be a vice chairman appointed by the Governor who shall serve in an advisory capacity to the Executive Cabinet. The Governor shall be the chairman and the secretary of the Finance and Administration Cabinet shall be a second vice chairman of the Executive Cabinet. The Governor may designate others to serve as vice chairman.

(2) The cabinet shall meet not less than once every two (2) months and at other times on call of the Governor. The Executive Cabinet shall be a part of the Office of the Governor and shall not constitute a separate department or agency of the state. Members of the cabinet shall be the major assistants to the Governor in the administration of the state government and shall assist the Governor in the proper operation of his office and perform other duties the Governor may require of them.

(3) The cabinet shall consider matters involving policies and procedures the Governor or any member may place before it. The cabinet shall advise and consult with the Governor on all matters affecting the welfare of the state.

Section 8. KRS 45A.470 is amended to read as follows:

(1) All governmental bodies and political subdivisions of this state shall, when purchasing commodities or services, give first preference to the products made by the Department of Corrections, Division of Prison Industries, as required by KRS 197.210. Second preference shall be given to the Kentucky industries for the blind as described in KRS 163.450 to 163.470 and agencies of the severely handicapped as described in KRS 45A.465.

(2) The Finance and Administration Cabinet shall make a list of commodities and services provided by these agencies and organizations available to all governmental bodies and political subdivisions. The list shall identify in detail the commodity or service the agency or organization may supply and the price.

(3) The Finance and Administration Cabinet shall annually determine the current price range for the commodities and services offered from its experience in purchasing these commodities or services on the open market. The prices quoted by these agencies or organizations shall not exceed the current price range.

(4) The Department for the Blind within the Education***, Arts,*** and the Humanities Cabinet and qualified agencies for the severely handicapped shall annually cause to be made available to the Finance and Administration Cabinet, lists of the products or services available.

(5) If two (2) or more of the agencies or qualified nonprofit organizations wish to supply identical commodities or services, the Finance and Administration Cabinet shall conduct negotiations with the parties to determine which shall be awarded the contract. The decision of the Finance and Administration Cabinet shall be based upon quality of the commodity or service and the ability of the respective agencies to supply the commodity or service within the requested delivery time.

Section 9. KRS 153.220 is amended to read as follows:

The duties and functions of the arts council shall be to:

(1) Stimulate and encourage throughout the state the study and presentation of the arts, and foster public interest and participation therein;

(2) Encourage public interest in the cultural heritage of our state and expand the state's cultural resources;

(3) Encourage and assist freedom of artistic expression essential for the well-being of the arts;

(4) Serve as the sole agency in the Commonwealth for administration of a state arts plan developed in coordination with the Education***, Arts,*** and Humanities Cabinet;

(5) Establish standards and procedures and advisory committees as necessary to advise the Governor on the selection of the Kentucky poet laureate or writer laureate;

(6) Advise the Governor on matters pertaining to the arts;

(7) Adopt and promulgate regulations for the performance of its duties and functions provided in KRS 153.210 to 153.235;

(8) Receive federal grants, and other money and property of any nature whatsoever which may be given, donated, conveyed,

bequeathed, devised, or otherwise transferred, without condition or restriction, except that provided by law, other than that it be used for some purpose of the council as permitted by KRS 153.210 to 153.235;

(9) Contract from time to time, as appropriate, with experts and consultants who may be utilized as deemed necessary, and make other necessary purchases and expenditures, all in accordance with the state plan approved by the secretary of the Education***, Arts,*** and Humanities Cabinet and with the state purchasing provisions of KRS Chapters 45 and 45A;

(10) Hold public and private hearings for the purpose of furthering the objectives of the council's programs; and

(11) Make and sign any agreements, subject to the provisions of KRS Chapters 45 and 45A, and do and perform any acts that may be necessary to carry out the purposes of KRS 153.210 to 153.235.

Section 10. KRS 153.620 is amended to read as follows:

(1) April 24 of each year is declared to be "Kentucky Writers' Day."

(2) The Education***, Arts,*** and Humanities Cabinet may plan and direct a yearly event on April 24 honoring Kentucky writers. These plans may include designing programs for schools and civic or business organizations.

Section 11. KRS 156.120 is amended to read as follows:

The duties of the Superintendent of Public Instruction shall be to act as a citizen advocate for elementary and secondary education and to perform other duties as may be assigned to him by the secretary of the Education***, Arts,*** and Humanities Cabinet. The office of Superintendent of Public Instruction shall not require any administrative support for the office including space or staff. He shall receive a salary of three thousand dollars ($3,000) per annum and shall be reimbursed for all actual and necessary expenses and disbursements incurred or made by him in the performance of his duties as assigned by the secretary of the Education***, Arts,*** and Humanities Cabinet, but the amount spent shall not exceed the amount appropriated in the biennial budget.

Section 12. KRS 156.666 is amended to read as follows:

(1) There is established the Council for Education Technology which shall be an advisory group attached to the State Board for Elementary and Secondary Education. The council shall develop a master plan for education technology.

(2) The council shall consist of the Commissioner of the Department of Information Systems, the Secretary of the Education***, Arts,*** and Humanities Cabinet, and the Executive Director of the Council on Higher Education who shall serve as ex officio voting members and eight (8) voting members appointed by the Governor within thirty (30) days after April 3, 1992. The members shall be as follows:

  (a) One (1) member of the State Board for Elementary and Secondary Education;

  (b) One (1) member of the House of Representatives;

  (c) One (1) member of the Senate; and

  (d) Five (5) citizens of the Commonwealth.

A majority of the membership present at any meeting shall constitute a quorum for the official conduct of business.

(3) Members shall be appointed for four (4) year terms and may be reappointed. The initial members of the board shall be appointed as follows: two (2) members shall be appointed for terms of two (2) years; two (2) members shall be appointed for terms of three (3) years; and four (4) members shall be appointed for terms of four (4) years. Members shall receive no compensation but may be reimbursed for actual and necessary expenses in accordance with state laws and regulations.

(4) Terms of members serving pursuant to KRS 156.665 shall terminate on April 3, 1992.

(5) Immediately upon receiving notice of the appointment of all members, the chief state school officer shall call an organizational meeting. At this meeting the chief state school officer shall preside as temporary chairman, and the council shall elect from among the members a chairman and any other officers it deems necessary, and define the duties of the officers.

(6) Meetings shall be held at least two (2) times per year at a time and place designated by the chairman. The Department of Education shall provide staff support for the council.

(7) The duties and responsibilities of the council shall include, but not be limited to, the following:

  (a) Developing a long-range master plan for the efficient and equitable use of technology at all levels from primary school through higher education, including vocational and adult education. The plan shall focus on the technology requirements of classroom instruction, literacy laboratories, student record management, financial and administrative management, distance learning, and communications as they relate to the Commonwealth's outcome goals for students as described in KRS 158.6451;

  (b) Creating, overseeing, and monitoring a well-planned and efficient statewide network of technology services designed to meet the educational and informational needs of the schools;

  (c) Working with private enterprise to encourage the development of technology products specifically designed to answer Kentucky's educational needs;

  (d) Encouraging an environment receptive to technological progress in education throughout the Commonwealth;

(e) Recommending a policy governing the granting of right of ways for the laying of fiber optic cable in a manner to insure that all of Kentucky's citizens are served equitably, that the fiber optic system is available for educational technology purposes, and that the private and public sectors are partners in the venture; and

(f) Receiving, holding, investing, and administering all funds received by the council for the purpose of carrying out its duties and responsibilities, as set out in this section. These funds shall be spent with the aim of achieving equality of education throughout the Commonwealth.

Section 13. KRS 157.910 is amended to read as follows:

(1) There is hereby established an Environmental Council, referred to hereafter as the council, to provide leadership and planning for environmental education for the population of Kentucky through the cooperative efforts of educators, government agencies, businesses, and public interests. The council shall be an independent agency and be attached to the Education***, Arts,*** and Humanities Cabinet for administrative purposes.

(2) The nine (9) member council shall be appointed to four (4) year terms by the Governor and be composed of a balance of education, government, industry, and environmental interests. Members appointed by the Governor shall have the authority to carry out the provisions of KRS 157.900 to 157.915.

(3) The council shall hire an executive director, environmental education specialists, and clerical staff to carry out the functions and duties of the council.

(4) The council members shall receive no compensation, but shall be reimbursed for actual expenses incurred in accordance with state procedures and policies.

(5) The council membership shall elect a chairperson to serve a one (1) year term.

Section 14. KRS 163.038 is amended to read as follows:

(1) There is hereby created a public corporation to be known as Computer Services for the Blind Corporation. This corporation shall have the power to sue and be sued, to contract and to be contracted with.

(2) The Computer Services for the Blind Corporation shall have a governing board of directors consisting of nine (9) members. These members shall be selected as follows: The executive director of the Department for the Blind, within the Education***, Arts,*** and Humanities Cabinet and one (1) member selected by him; the superintendent of the Kentucky School for the Blind and one (1) member selected by him; the director of Kentucky Industries for the Blind and the director of the Rehabilitation Center for the Blind; three (3) additional members shall be appointed by the Governor from a list of nine (9) nominees made by the other six (6) board members. These nominees must either represent higher education or have expertise in the field of computer services. The three (3) members selected by the superintendent and the directors must be legally blind.

(3) On July 1, 1972, the board of directors is authorized to organize as follows: The three (3) members of the board selected by the superintendent and the directors shall have terms of two (2) years, three (3) years and four (4) years each, to be determined by lot. After the Governor has appointed the three (3) other members to the board, their terms shall likewise be for two (2) years, three (3) years and four (4) years as determined by lot. After the expiration of the original terms, all subsequent terms shall be for four (4) years. After the initial appointment by the Governor from the list of nine (9) nominees, all subsequent appointments for one (1) membership shall be made from a list of three (3) nominees.

(a) It shall be necessary for five (5) members of the board to be present to constitute a quorum.

(b) The board shall provide for the keeping of minutes of all board meetings and shall otherwise keep records of all actions taken by the board or by any other of the board's employees or agents.

(c) Each board member shall receive his necessary traveling and other expenses in attending board meetings or otherwise conducting the board's business.

(d) The board shall meet at least two (2) times per year, but the chairman or any three (3) members of the board may call a meeting in writing with at least five (5) days' notice.

(4) The purpose of the Computer Services for the Blind Corporation shall be to make available computer services to the blind of Kentucky.

(5) The board of directors may employ such persons as may be necessary to carry out the purposes of this section.

(6) The board of directors shall have the power to purchase, lease, rent, or sell any personal or real property as may be necessary in carrying out the functions of this section. The board shall also have the power to accept gifts and donations.

(7) The board of directors may provide that recipients of services provided by the corporation must pay a portion of all of the costs of providing the services. The board may adopt regulations establishing internal procedures without holding a public hearing.

(8) The services provided by Computer Services for the Blind Corporation shall be available to any blind person whether directly paid for by him or by any corporation, business, governmental agency, or charitable organization.

(9) For the purpose of this section, "blind" means a visual acuity of twenty/two hundred (20/200) in the better eye with correction or a restriction in the visual field so that vision does not subtend an angle greater than twenty (20) in the better

eye with correction.

Section 15. KRS 163.506 is amended to read as follows:

(1) The Commission on the Deaf and Hard of Hearing shall consist of:

(a) Seven (7) members appointed by the Governor as follows:

1. One (1) audiologist chosen from a list of three (3) names submitted by the Kentucky Speech and Hearing Association;

2. Three (3) hard of hearing or deaf persons chosen from a list of six (6) names submitted by the Kentucky Association of the Deaf;

3. One (1) deaf or hard of hearing person chosen from a list of three (3) names submitted by the Kentucky Chapter of the Alexander Graham Bell Association for the Deaf, the initial appointment to be for a one (1) year term;

4. One (1) person chosen from a list of three (3) names submitted by the Kentucky members of Self Help for Hard of Hearing People, the initial appointment to be for a two (2) year term;

5. One (1) deaf or hard of hearing person chosen from a list of three (3) names submitted by the American Association of Retired Persons, the initial appointment to be for a two (2) year term;

(b) One (1) representative of the Cabinet for Human Resources appointed by the secretary;

(c) The secretary of the Education***, Arts,*** and Humanities Cabinet or his designee;

(d) The president of the Kentucky Association for the Deaf or his designee;

(e) The president of the Kentucky Registry of Interpreters for the Deaf or his designee; and

(f) Three (3) persons appointed by the Commission on the Deaf and Hard of Hearing as constituted in subsections (1)(a) through (1)(e) of this section, appointed as follows:

1. One (1) parent of a hard of hearing or deaf child;

2. One (1) representative of a private organization providing consistent services to the deaf and hard of hearing; and

3. One (1) member at large.

(2) All members shall serve three (3) year terms except state officials or their designees who shall serve during their terms of office. Of the members appointed pursuant to subsections (1)(a)2. through (1)(a)5. and subsection (1)(f) of this section, no more than three (3) of those members shall have terms beginning in the same year. Any person who is a member of the commission on July 13, 1990, shall serve until he resigns or until his term expires.

(3) Each member of the commission shall be reimbursed for his necessary travel and other expenses actually incurred in the discharge of his duties.

Section 16. KRS 171.3801 is amended to read as follows:

(1) There is established the Kentucky Heritage Council (hereinafter referred to as "the council") which shall perform the functions specified in KRS 171.381.

(2) The membership of the council shall consist of not more than sixteen (16) members who have an interest in the preservation and protection of Kentucky's heritage. On or before September 15, 1982, the Governor shall appoint not more than four (4) members for a term of one (1) year, not more than four (4) members for a term of two (2) years, not more than four (4) members for a term of three (3) years, and not more than four (4) members for a term of four (4) years. Thereafter, the Governor shall make all appointments for a term of four (4) years.

(3) Council members shall receive no compensation for their services but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(4) From the council membership the Governor shall appoint a chairman and a vice chairman of the council. The council may elect by majority vote other officers deemed necessary.

(5) The council shall meet at the call of the chairman, but not less often than twice during each calendar year. A majority of the members appointed to the council shall constitute a quorum.

(6) The council shall be attached to the Education***, Arts,*** and Humanities Cabinet for administrative purposes.

(7) The Heritage Council shall include a heritage division, whose duties shall include providing staff services needed by the Heritage Council in order to perform its duties under KRS 171.381, including but not limited to preserving and protecting buildings, sites and other landmarks associated with the archaeological, cultural, economic, military, national, political and social aspects of Kentucky's history.

(8) The heritage division shall be headed by a director appointed by the Governor from a list of three (3) nominees submitted by the Heritage Council; and the Heritage Council and the heritage division shall not be subject to reorganization.

Section 17. KRS 171.381 is amended to read as follows:

(1) The heritage council shall be dedicated to the preservation and protection of all meaningful vestiges of Kentucky's heritage for succeeding generations, and in pursuit of this dedication it shall engage in and concern itself with worthy projects and other matters related to the conservation and continuing recognition of buildings, structures, sites, and other landmarks associated with the archaeological, cultural, economic, military, natural, political, or social aspects of Kentucky's history.

(2) The duties and functions of the council shall be to:

(a) Review and recommend appropriate projects and programs to insure the proper recognition, preservation, and protection of matters related to Kentucky's heritage, particularly those in the nature of or associated with real property;

(b) Advise, consult, and cooperate generally with state, local, and national officials and agencies to accomplish the purposes to which the council is dedicated, and specifically with the Kentucky Department of Parks and Historical Society in matters of common concern;

(c) Encourage, promote, and coordinate historic preservation programs being conducted in Kentucky by other agencies or groups, public and private; and

(d) Prepare and maintain an inventory or survey of Kentucky's resource of historic buildings, sites, structures, and other landmarks, and list in an official roll those such landmarks which possess statewide or national significance.

(3) The council may:

(a) Accept grants or other funds or property from any available source, public or private;

(b) Employ, with the approval of the Governor, such staff as may be necessary. Any member of such staff shall be entitled to compensation under KRS Chapter 18A, and may be reimbursed for necessary and actual expenses in accordance with the provisions of KRS Chapters 44 and 45;

(c) Enter into such contractual relationships as may be necessary;

(d) Acquire real property, by gift or devise or by purchase pursuant to the provisions of KRS 45A.045, and hold the same in the name of the Commonwealth for the use and benefit of the council;

(e) Initiate its own projects of an appropriate nature, and undertake or otherwise engage in joint projects with other agencies or groups, public or private; and

(f) Adopt such rules and regulations as may be necessary and incidental to the performance of the council's duties and functions.

(4) The receipt, control, and expenditure of funds shall be subject to the general provisions of the Kentucky Revised Statutes governing financial administration of all state agencies.

(5) No provision of this section shall be construed as repealing any of the laws of the Commonwealth relating to the preservation, protection, and recognition of historical matters, but shall be held and construed as ancillary and supplemental thereto.

(6) The council shall receive applications, interview and recommend to the Governor three (3) persons as nominees for appointment as the director of the Heritage Division, Education***, Arts,*** and Humanities Cabinet. The director of the Heritage Division shall be the state historic preservation officer.

(7) The responsibilities of the state historic preservation officer shall include:

(a) Development for the State Historic Preservation Program;

(b) Direction of a comprehensive statewide survey of historic properties;

(c) Nomination of historic properties to the National Register of Historic Places;

(d) Cooperation in the development of effective working relationships with federal, state, and local agencies that participate in the management of historic properties and in project planning that may affect historic properties;

(e) Cooperation in the integration of historic preservation planning with all levels of planning;

(f) Cooperation in the development and maintenance of a review procedure for publicly funded, assisted, and licensed undertakings that may affect historic properties within the state;

(g) Participation in the review of federal, federally assisted, and federally licensed undertakings that may affect historic properties included in or eligible for inclusion in the National Register under Section 106 of the National Historic Preservation Act and Executive Order 11593;

(h) Assisting federal agencies in fulfilling their historic preservation responsibilities under federal law and regulations;

(i) Liaison with organizations of professional archaeologists, historians, architects, architectural historians, planners, and others concerned with historic preservation;

(j) Development and operation of a program of public information and education concerning the preservation program;

(k) Administration of the grants program within the state; and

(l) Preparation and maintenance of a comprehensive statewide historic preservation plan.

Section 18. KRS 171.420 is amended to read as follows:

The State Archives and Records Commission, is hereby created and shall be a seventeen (17) member body constituted as follows: The state librarian or his designee, who shall be the chairman of the commission, secretary of the ~~[Cabinet for]~~ Education***, Arts,*** and Humanities ***Cabinet*** or his designee, the Auditor of Public Accounts or his designee, the Chief Justice of the Supreme Court or his designee, the director of the Legislative Research Commission or his designee, the Attorney General or his designee, the director of the Office for Policy and Management or his designee, the commissioner of the Department of Information Systems or his designee, one (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the University of Kentucky, one (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Historical Society, one (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Library Association, one (1) member appointed by the Governor from a list of seven (7) persons with one (1) name submitted by each of the presidents of the state universities and colleges, four (4) citizens-at-large, and one (1) member appointed by the Governor from a list of three (3) persons, with one (1) name submitted by each of the presidents of the Kentucky League of Cities, the Kentucky Association of Counties, and the Kentucky Association of School Administrators. Vacancies shall be filled by the Governor in the same manner as initial appointments are made. All members shall serve for a term of four (4) years, provided that one (1) of the initial appointments shall be for a term of four (4) years, one (1) for three (3) years, one (1) for two (2) years, and one (1) for one (1) year. The commission shall advise the Department for Library and Archives on matters relating to archives and records management. The commission shall have the authority to review and approve schedules for retention and destruction of records submitted by state and local agencies. In all cases, the commission shall determine questions which relate to destruction of public records, and their decision shall be binding on the parties concerned and final, except that the commission may reconsider or modify its actions upon the agreement of a simple majority of the membership present and voting.

Section 19. KRS 210.031 is amended to read as follows:

(1) The cabinet shall establish an advisory committee of sixteen (16) members to advise the Department for Mental Health and Mental Retardation Services of the need for particular services for persons who are deaf or hard-of-hearing.

(a) At least eight (8) members shall be deaf or hard-of-hearing and shall be appointed by the secretary. Four (4) deaf or hard-of-hearing members, representing one (1) of each of the following organizations, shall be appointed from a list of at least two (2) nominees submitted from each of the following organizations:

1. The Kentucky Association of the Deaf;
2. The A.G. Bell Association;
3. The Kentucky School for the Deaf Alumni Association; and
4. Self Help for the Hard of Hearing.

The remaining four (4) deaf or hard-of-hearing members shall be appointed by the secretary from a list of at least eight (8) nominees submitted by the Kentucky Commission on the Deaf and Hearing Impaired.

(b) One (1) member shall be a family member of a deaf or hard-of-hearing consumer of mental health services and shall be appointed by the secretary from a list of nominees accepted from any source.

(c) The head of each of the following entities shall appoint one (1) member to the advisory committee:

1. The Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services;
2. The Workforce Development Cabinet, Department of Vocational Rehabilitation;
3. The Cabinet for Human Resources, Department for Social Services, Division for Aging Services;
4. The Education***, Arts,*** and Humanities Cabinet, Commission on the Deaf and Hearing Impaired;
5. The Kentucky Registry of Interpreters for the Deaf; and
6. A Kentucky School for the Deaf staff person involved in education.

(d) The remaining member shall be a representative of a regional mental health/mental retardation board, appointed by the commissioner of the Department for Mental Health and Mental Retardation Services from a list composed of two (2) names submitted by each regional mental health/mental retardation board.

(2) Of the members defined in subsections (1)(a) and (b) of this section, three (3) shall be appointed for a one (1) year term, three (3) shall be appointed for a two (2) year term, and three (3) shall be appointed for a three (3) year term; thereafter, they shall be appointed for three (3) year terms. The members defined under subsections (1)(c) and (d) of this section shall serve with no fixed term of office.

(3) The members defined under subsections (1)(a) and (b) of this section shall serve without compensation but shall be reimbursed for actual and necessary expenses; the members defined under subsections (1)(c) and (d) shall serve without compensation or reimbursement of any kind.

(4) The Department for Mental Health and Mental Retardation Services shall make available personnel to serve as staff to the advisory committee.

(5) The advisory committee shall meet quarterly at a location determined by the committee chair.

(6) (a) The advisory committee shall prepare a biennial report which:

1. Describes the accommodations and the mental health, mental retardation, development disability, and substance abuse services made accessible to deaf and hard-of-hearing persons;

2. Reports the number of deaf or hard-of-hearing persons served;

3. Identifies additional service needs for the deaf and hard-of-hearing; and

4. Identifies a plan to address unmet service needs.

(b) The report shall be submitted to the secretary, the commissioner of the Department for Mental Health and Mental Retardation Services, and the Interim Joint Committee on Health and Welfare by July 1 of every odd-numbered year.

Section 20. KRS 347.040 is amended to read as follows:

(1) The secretaries of the Cabinet for Human Resources and the Education*, Arts,* and Humanities Cabinet and the chief state school officer shall jointly develop and implement a statewide plan, with adequate opportunity for public comment, to serve all persons with developmental disabilities not otherwise entitled to and receiving the same services under another state or federal act, which will include provisions for:

(a) Identification and prompt and adequate interdisciplinary assessment;

(b) Case management services; and

(c) Services and residential alternatives as defined by this chapter in the least restrictive, individually appropriate environment.

(2) The first plan and annual updates shall be presented to the Legislative Research Commission which shall refer it to an appropriate committee for review and comment.

(3) The plan shall include:

(a) The number of institution residents on waiting lists for placement in the community;

(b) The number of persons outside institutions on waiting lists for placement in the institution;

(c) The number of persons for whom no placement is made nor services provided because of a lack of community resources;

(d) The number, type, nature, and cost of services necessary for placement to occur;

(e) The status of compliance with the plan;

(f) The cabinets' specific efforts to increase residential and institutional services and documentation of the success of these efforts; and

(g) The specific plans for new efforts to enhance the opportunities for persons with developmental disabilities to move into less restrictive environments.

(4) The state health plan shall be developed consistently with the plan required under this chapter.

Section 21. KRS 347.050 is amended to read as follows:

The Cabinet for Human Resources, the Education*, Arts,* and Humanities Cabinet, and the Department of Education shall promulgate and implement rules and regulations for the:

(1) Enhancement and protection of the rights of persons receiving services and active treatment in both the public and private sectors under this chapter, including, but not limited to, the right to:

(a) Provision of services in the least restrictive, individually appropriate environment;

(b) An individualized service plan;

(c) Privacy and humane service;

(d) Confidentiality, access, referral and transfer of records;

(e) Monitored active treatment in the least restrictive, individually appropriate environment;

(f) Notice of rights under this chapter; and

(g) A fair, timely and impartial grievance procedure to resolve grievances concerning identification and evaluation, services and active treatment, residential alternatives and the protection of the rights of persons with developmental disabilities under this chapter.

(2) Implementation of this chapter providing for the orderly development of services and coordination among organizational units, administrative bodies and service providers to assure effective provision of services in both the public and private sectors to persons with developmental disabilities.

Section 22. KRS 347.060 is amended to read as follows:

The Cabinet for Human Resources, the Education, ***Arts,*** and Humanities Cabinet and the Department of Education may assess reasonable charges for services rendered under this chapter, based upon a sliding fee scale which takes into account the extensive services required as a result of, and the extraordinary expenses related to, a developmental disability; provided that no charges for services rendered under this chapter may be assessed for compliance with requirements and responsibilities mandated under any state or federal act as provided under subsection (5) of KRS 347.010.

Section 23. The General Assembly confirms Executive Order 92-1073 transferring the microfilm and paper conservation programs of the Libraries and Preservation Branch in the Research and Publication Division within the Kentucky Historical Society to the Public Records Division within the Department for Libraries and Archives.

Section 24. The General Assembly confirms Executive Order 92-1073 to the extent that it is not otherwise confirmed by this Act.

The Committee Substitute to **HB 258** is as follows:

HB 258, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of such department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
    - (a) Secretary of State.
    - (b) Board of Elections.
    - (c) Registry of Election Finance.
4. Department of Law.
    - (a) Attorney General.
5. Department of the Treasury.
    - (a) Treasurer.
6. Department of Agriculture.
    - (a) Commissioner of Agriculture.
    - (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
    - (a) Department of State Police.
    - (b) Department of Criminal Justice Training.
    - (c) Office of Administration.
    - (d) Department of Corrections.
    - (e) Parole Board.
    - (f) Kentucky State Corrections Commission.
2. Education, ***Arts,*** and Humanities Cabinet:
    - (a) Department of Education.

(1) State Board for Elementary and Secondary Education.
(2) Education Professional Standards Board.
(b) Department for Libraries and Archives.
(c) Kentucky Arts Council.
(d) Kentucky Educational Television.
(e) Kentucky Historical Society.
(f) Kentucky Teachers' Retirement System Board of Trustees.
(g) Kentucky Center for the Arts.
(h) Kentucky Craft Marketing Program.
(i) Kentucky Commission on the Deaf and Hard of Hearing.
(j) Governor's Scholars Program.
(k) Governor's School for the Arts.
(l) Office of Development.
3. Natural Resources and Environmental Protection Cabinet:
(a) Environmental Quality Commission.
(b) Kentucky Nature Preserves Commission.
(c) Department for Environmental Protection.
(d) Department for Natural Resources.
(e) Department for Surface Mining Reclamation and Enforcement.
(f) Department of Law.
(g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
(a) Department of Highways.
(b) Department of Vehicle Regulation.
(c) Department of Administrative Services.
(d) Department of Fiscal Management.
(e) Department of Rural and Municipal Aid.
(f) Office of Aeronautics.
(g) Office of General Counsel.
(h) Office of Public Relations.
(i) Office of Personnel Management.
(j) Office of Minority Affairs.
5. Cabinet for Economic Development:
(a) Department for Existing Business and Industry.
(b) Tobacco Research Board.
(c) Kentucky Development Finance Authority.
(d) Office of Business and Technology.
(e) Office of Industrial Development.
6. Public Protection and Regulation Cabinet:
(a) Public Service Commission.
(b) Department of Insurance.
(c) Department of Housing, Buildings and Construction.
(d) Department of Financial Institutions.
(e) Department of Mines and Minerals.
(f) Department of Public Advocacy.
(g) Department of Alcoholic Beverage Control.
(h) Kentucky Racing Commission.
(i) Board of Claims.

(j) Crime Victims Compensation Board.
(k) Kentucky Board of Tax Appeals.
(l) Backside Improvement Commission.

7. Cabinet for Human Resources:
(a) Department for Health Services.
(b) Department for Employment Services.
(c) Department for Social Insurance.
(d) Department for Social Services.
(e) Department for Medicaid Services.
(f) Department for Mental Health and Mental Retardation Services.
(g) Unemployment Insurance Commission.
(h) Commission for Handicapped Children.
(i) Public Assistance Appeals Board.
(j) Office of Administrative Services.
(k) Office of Communications.
(l) Office of General Counsel.
(m) Office of Inspector General.
(n) Office of Policy and Budget.
(o) Office of the Ombudsman.

8. Finance and Administration Cabinet:
(a) Office of Legal and Legislative Services.
(b) Office of Management and Fiscal Affairs.
(c) Office of Historic Properties.
(d) Office of Financial Management and Economic Analysis.
(e) Office of Risk Management.
(f) Department for Administration.
(g) Department of Facilities Management.
(h) Department of Information Systems.
(i) State Property and Buildings Commission.
(j) Kentucky Pollution Abatement Authority.
(k) Kentucky Savings Bond Authority.
(l) Deferred Compensation Systems.
(m) Office of Equal Employment Opportunity Contract Compliance.
(n) Capital Plaza Authority.
(o) County Officials Compensation Board.
(p) Financial Disclosure Review Commission.
(q) Kentucky Employees Retirement Systems.
(r) Commonwealth Credit Union.
(s) State Investment Commission.
(t) Kentucky Housing Corporation.
(u) Governmental Services Center.
(v) Kentucky Local Correctional Facilities Construction Authority.
(w) Kentucky Turnpike Authority.
(x) Historic Properties Advisory Commission.

9. Labor Cabinet:
(a) Department of Workplace Standards.
(b) Department of Workers' Claims.
(c) Kentucky Labor-Management Advisory Council.

    (d) Occupational Safety and Health Standards Board.
    (e) Prevailing Wage Review Board.
    (f) Workers' Compensation Board.
    (g) Kentucky Employees Insurance Association.
    (h) Apprenticeship and Training Council.
    (i) State Labor Relations Board.
    (j) Kentucky Occupational Safety and Health Review Commission.
    (k) Office of Administrative Services.
    (l) Office of Labor Management Relations.
    (m) Office of General Counsel.
10. Revenue Cabinet:
    (a) Department of Property Taxation.
    (b) Department of Tax Compliance.
    (c) Department of Administrative Services.
11. Tourism Cabinet:
    (a) Department of Travel Development.
    (b) Department of Parks.
    (c) Department of Fish and Wildlife Resources.
    (d) Kentucky Horse Park Commission.
    (e) State Fair Board.
    (f) Office of Administrative Services.
    (g) Office of Film Promotion.
    (h) Office of General Counsel.
12. Cabinet for Workforce Development:
    (a) Department for Adult and Technical Education.
    (b) Department of Vocational Rehabilitation.
    (c) Department for the Blind.
    (d) State Board for Adult and Technical Education.
    (e) Governor's Council on Vocational Education.
    (f) Governor's Commission on Literacy.
    (g) The State Board for Proprietary Education.
    (h) The GED Foundation.
    (i) The Kentucky Occupational Information Coordinating Committee.
    (j) The Kentucky Job Training Coordinating Council.

III. Other departments headed by appointed officers:
1. Department of Military Affairs.
2. Department of Personnel.
3. Council on Higher Education.
4. Department of Local Government.
5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.

Section 2. KRS 12.250 is amended to read as follows:

There are established within state government the following program cabinets:

(1) Justice Cabinet.
(2) Education, ***Arts,*** and Humanities Cabinet.
(3) Natural Resources and Environmental Protection Cabinet.
(4) Transportation Cabinet.
(5) Cabinet for Economic Development.

(6) Public Protection and Regulation Cabinet.

(7) Cabinet for Human Resources.

(8) Finance and Administration Cabinet.

(9) Tourism Cabinet.

(10) Revenue Cabinet.

(11) Labor Cabinet.

(12) Cabinet for Workforce Development.

Section 3. KRS 153.380 is amended to read as follows:

(1) There is established the Kentucky Oral History Commission, hereinafter referred to as "the commission," ***which shall be attached to the Kentucky Historical Society as a branch of the Oral History and Educational Outreach Division*** [~~as a separate administrative body of state government within the meaning of KRS Chapter 12~~].

(2) The commission, through funds made available from the State Treasury and from public or private foundations or other sources, shall coordinate, promote and assist in the development of oral history programs across the state and shall otherwise implement programs which result in the accumulation of taped interviews and other supporting data which preserve the multifaceted history of the Commonwealth.

(3) The commission shall consist of twelve (12) voting members, ten (10) appointed by the Governor. The commissioner of the Department for Libraries and Archives and the director of the Kentucky Historical Society shall serve as ex officio members. Commission members shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(4) After initial appointments, commission members shall be appointed for a four (4) year term. Upon the expiration of terms or in case of vacancies, terms shall be filled by the Governor.

(5) The commission shall, upon the appointment of its members, organize and elect officers from its membership. The commission shall choose, by a majority vote, a chairperson and a vice chairperson annually. The commission shall meet upon call of the chairman or by a majority of the members of the commission, but no less than twice each year. A majority of the voting members of the commission shall constitute a quorum for the purpose of conducting the business of the commission.

(6) The commission shall ***serve in an advisory capacity to oral history activities at the Kentucky Historical Society and*** [~~have policy approval authority and shall have the authority to hire staff, expend funds, establish funding and program priorities, and operate the normal business activities of the commission. It~~] shall be the final grant approval authority for all funds collected by or appropriated to the commission.

(7) The ***Kentucky Historical Society shall hire staff, expend funds, and operate the normal business activities required by the commission, which shall include the duty to provide*** [~~commission may, upon such terms as may be mutually agreed upon, contract with another agency of state government, for~~]:

(a) Office space;

(b) ***Administrative*** [~~Secretarial support;~~

~~(c) Programmatic~~] support;

(c)[~~(d)~~]Telephone and other utilities;

[~~(e) Bookkeeping support;~~]

(d)[~~(f)~~] Storage or processing of oral history tapes; and

(e)[~~(g)~~]Other activities of a support nature [~~not involving the actual management of the commission~~].

Section 4. KRS 153.410 is amended to read as follows:

(1) The Kentucky Center for the Arts Corporation is hereby established, and shall consist of fifteen (15) members representing metropolitan Louisville and Kentucky to be appointed by the Governor, who shall also designate a chairman. Initial terms shall be staggered; thereafter, members shall be appointed to four (4) year terms.

(2) Members may be removed by the Governor only for cause after being afforded notice, a hearing with counsel before the Governor or his designee, and a finding of fact by the Governor. A copy of charges, transcript of the record of the hearings, and findings of fact shall be filed with the Secretary of State.

(3) The Kentucky Center for the Arts Corporation shall be a body corporate with full corporate powers. A quorum of the corporation shall consist of eight (8) members, with a majority of members present authorized to act upon any matter legally before the corporation. Full minutes and records shall be kept of all meetings of the corporation and all official actions shall be recorded.

(4) The corporation may enact bylaws concerning the election of other officers, the creation of an executive committee with full authority to act between regular meetings, and the designation of alternates for members with full voting authority.

(5) The corporation shall be attached to the Education, Arts, and Humanities Cabinet for administrative purposes.

Section 5. KRS 171.312 is amended to read as follows:

In order to better facilitate the operation and management, the Kentucky Historical Society shall be organized into four (4) separate divisions. These divisions shall include: Research and Publications; ***Oral History and Educational Outreach*** [~~Society Services~~]; Administration; and Museums. The divisions shall be headed by a director appointed by the Executive Committee of the Kentucky Historical Society of the Education***, Arts,*** and Humanities Cabinet pursuant to KRS 171.311.

SECTION 6. A NEW SECTION OF KRS 158.700 TO 158.799 IS CREATED TO READ AS FOLLOWS:

The Governor's Scholars Program is established in the office of the Secretary of the Education, Arts, and Humanities Cabinet and shall be headed by an executive director appointed by the Secretary of the Education, Arts, and Humanities Cabinet with approval by the Governor. This program shall be responsible for implementing an enrichment program for academically gifted students.

Section 7. KRS 11.065 is amended to read as follows:

(1) The secretaries of the Justice Cabinet, the Education***, Arts,*** and Humanities Cabinet, the Natural Resources and Environmental Protection Cabinet, the Transportation Cabinet, the Cabinet for Economic Development, the Public Protection and Regulation Cabinet, the Cabinet for Human Resources, the Finance and Administration Cabinet, the Revenue Cabinet, the Tourism Cabinet, the Labor Cabinet, the secretary of the Governor's Executive Cabinet, and the Lieutenant Governor shall constitute the Governor's Executive Cabinet. There shall be a vice chairman appointed by the Governor who shall serve in an advisory capacity to the Executive Cabinet. The Governor shall be the chairman and the secretary of the Finance and Administration Cabinet shall be a second vice chairman of the Executive Cabinet. The Governor may designate others to serve as vice chairman.

(2) The cabinet shall meet not less than once every two (2) months and at other times on call of the Governor. The Executive Cabinet shall be a part of the Office of the Governor and shall not constitute a separate department or agency of the state. Members of the cabinet shall be the major assistants to the Governor in the administration of the state government and shall assist the Governor in the proper operation of his office and perform other duties the Governor may require of them.

(3) The cabinet shall consider matters involving policies and procedures the Governor or any member may place before it. The cabinet shall advise and consult with the Governor on all matters affecting the welfare of the state.

Section 8. KRS 45A.470 is amended to read as follows:

(1) All governmental bodies and political subdivisions of this state shall, when purchasing commodities or services, give first preference to the products made by the Department of Corrections, Division of Prison Industries, as required by KRS 197.210. Second preference shall be given to the Kentucky industries for the blind as described in KRS 163.450 to 163.470 and agencies of the severely handicapped as described in KRS 45A.465.

(2) The Finance and Administration Cabinet shall make a list of commodities and services provided by these agencies and organizations available to all governmental bodies and political subdivisions. The list shall identify in detail the commodity or service the agency or organization may supply and the price.

(3) The Finance and Administration Cabinet shall annually determine the current price range for the commodities and services offered from its experience in purchasing these commodities or services on the open market. The prices quoted by these agencies or organizations shall not exceed the current price range.

(4) The Department for the Blind within the ***Workforce Development*** [~~Education and the Humanities~~] Cabinet and qualified agencies for the severely handicapped shall annually cause to be made available to the Finance and Administration Cabinet, lists of the products or services available.

(5) If two (2) or more of the agencies or qualified nonprofit organizations wish to supply identical commodities or services, the Finance and Administration Cabinet shall conduct negotiations with the parties to determine which shall be awarded the contract. The decision of the Finance and Administration Cabinet shall be based upon quality of the commodity or service and the ability of the respective agencies to supply the commodity or service within the requested delivery time.

Section 9. KRS 153.220 is amended to read as follows:

The duties and functions of the arts council shall be to:

(1) Stimulate and encourage throughout the state the study and presentation of the arts, and foster public interest and participation therein;

(2) Encourage public interest in the cultural heritage of our state and expand the state's cultural resources;

(3) Encourage and assist freedom of artistic expression essential for the well-being of the arts;

(4) Serve as the sole agency in the Commonwealth for administration of a state arts plan developed in coordination with the Education***, Arts,*** and Humanities Cabinet;

(5) Establish standards and procedures and advisory committees as necessary to advise the Governor on the selection of the Kentucky poet laureate or writer laureate;

(6) Advise the Governor on matters pertaining to the arts;

(7) Adopt and promulgate regulations for the performance of its duties and functions provided in KRS 153.210 to 153.235;

(8) Receive federal grants, and other money and property of any nature whatsoever which may be given, donated, conveyed, bequeathed, devised, or otherwise transferred, without condition or restriction, except that provided by law, other than that it be used for some purpose of the council as permitted by KRS 153.210 to 153.235;

(9) Contract from time to time, as appropriate, with experts and consultants who may be utilized as deemed necessary, and make other necessary purchases and expenditures, all in accordance with the state plan approved by the secretary of the Education, ***Arts,*** and Humanities Cabinet and with the state purchasing provisions of KRS Chapters 45 and 45A;

(10) Hold public and private hearings for the purpose of furthering the objectives of the council's programs; and

(11) Make and sign any agreements, subject to the provisions of KRS Chapters 45 and 45A, and do and perform any acts that may be necessary to carry out the purposes of KRS 153.210 to 153.235.

Section 10. KRS 153.620 is amended to read as follows:

(1) April 24 of each year is declared to be "Kentucky Writers' Day."

(2) The Education, ***Arts,*** and Humanities Cabinet may plan and direct a yearly event on April 24 honoring Kentucky writers. These plans may include designing programs for schools and civic or business organizations.

Section 11. KRS 156.120 is amended to read as follows:

The duties of the Superintendent of Public Instruction shall be to act as a citizen advocate for elementary and secondary education and to perform other duties as may be assigned to him by the secretary of the Education, ***Arts,*** and Humanities Cabinet. The office of Superintendent of Public Instruction shall not require any administrative support for the office including space or staff. He shall receive a salary of three thousand dollars ($3,000) per annum and shall be reimbursed for all actual and necessary expenses and disbursements incurred or made by him in the performance of his duties as assigned by the secretary of the Education, ***Arts,*** and Humanities Cabinet, but the amount spent shall not exceed the amount appropriated in the biennial budget.

Section 12. KRS 156.666 is amended to read as follows:

(1) There is established the Council for Education Technology which shall be an advisory group attached to the State Board for Elementary and Secondary Education. The council shall develop a master plan for education technology.

(2) The council shall consist of the Commissioner of the Department of Information Systems, the Secretary of the Education, ***Arts,*** and Humanities Cabinet, and the Executive Director of the Council on Higher Education who shall serve as ex officio voting members and eight (8) voting members appointed by the Governor within thirty (30) days after April 3, 1992. The members shall be as follows:

    (a) One (1) member of the State Board for Elementary and Secondary Education;
    (b) One (1) member of the House of Representatives;
    (c) One (1) member of the Senate; and
    (d) Five (5) citizens of the Commonwealth.

A majority of the membership present at any meeting shall constitute a quorum for the official conduct of business.

(3) Members shall be appointed for four (4) year terms and may be reappointed. The initial members of the board shall be appointed as follows: two (2) members shall be appointed for terms of two (2) years; two (2) members shall be appointed for terms of three (3) years; and four (4) members shall be appointed for terms of four (4) years. Members shall receive no compensation but may be reimbursed for actual and necessary expenses in accordance with state laws and regulations.

(4) Terms of members serving pursuant to KRS 156.665 shall terminate on April 3, 1992.

(5) Immediately upon receiving notice of the appointment of all members, the chief state school officer shall call an organizational meeting. At this meeting the chief state school officer shall preside as temporary chairman, and the council shall elect from among the members a chairman and any other officers it deems necessary, and define the duties of the officers.

(6) Meetings shall be held at least two (2) times per year at a time and place designated by the chairman. The Department of Education shall provide staff support for the council.

(7) The duties and responsibilities of the council shall include, but not be limited to, the following:

    (a) Developing a long-range master plan for the efficient and equitable use of technology at all levels from primary school through higher education, including vocational and adult education. The plan shall focus on the technology requirements of classroom instruction, literacy laboratories, student record management, financial and administrative management, distance learning, and communications as they relate to the Commonwealth's outcome goals for students as described in KRS 158.6451;

    (b) Creating, overseeing, and monitoring a well-planned and efficient statewide network of technology services designed to meet the educational and informational needs of the schools;

    (c) Working with private enterprise to encourage the development of technology products specifically designed to answer Kentucky's educational needs;

(d) Encouraging an environment receptive to technological progress in education throughout the Commonwealth;

(e) Recommending a policy governing the granting of right of ways for the laying of fiber optic cable in a manner to insure that all of Kentucky's citizens are served equitably, that the fiber optic system is available for educational technology purposes, and that the private and public sectors are partners in the venture; and

(f) Receiving, holding, investing, and administering all funds received by the council for the purpose of carrying out its duties and responsibilities, as set out in this section. These funds shall be spent with the aim of achieving equality of education throughout the Commonwealth.

Section 13. KRS 157.910 is amended to read as follows:

(1) There is hereby established an Environmental Council, referred to hereafter as the council, to provide leadership and planning for environmental education for the population of Kentucky through the cooperative efforts of educators, government agencies, businesses, and public interests. The council shall be an independent agency and be attached to the Education***, Arts,*** and Humanities Cabinet for administrative purposes.

(2) The nine (9) member council shall be appointed to four (4) year terms by the Governor and be composed of a balance of education, government, industry, and environmental interests. Members appointed by the Governor shall have the authority to carry out the provisions of KRS 157.900 to 157.915.

(3) The council shall hire an executive director, environmental education specialists, and clerical staff to carry out the functions and duties of the council.

(4) The council members shall receive no compensation, but shall be reimbursed for actual expenses incurred in accordance with state procedures and policies.

(5) The council membership shall elect a chairperson to serve a one (1) year term.

Section 14. KRS 163.038 is amended to read as follows:

(1) There is hereby created a public corporation to be known as Computer Services for the Blind Corporation. This corporation shall have the power to sue and be sued, to contract and to be contracted with.

(2) The Computer Services for the Blind Corporation shall have a governing board of directors consisting of nine (9) members. These members shall be selected as follows: The executive director of the Department for the Blind, within the ***Workforce Development*** ~~[Education and Humanities]~~ Cabinet and one (1) member selected by him; the superintendent of the Kentucky School for the Blind and one (1) member selected by him; the director of Kentucky Industries for the Blind and the director of the Rehabilitation Center for the Blind; three (3) additional members shall be appointed by the Governor from a list of nine (9) nominees made by the other six (6) board members. These nominees must either represent higher education or have expertise in the field of computer services. The three (3) members selected by the superintendent and the directors must be legally blind.

(3) On July 1, 1972, the board of directors is authorized to organize as follows: The three (3) members of the board selected by the superintendent and the directors shall have terms of two (2) years, three (3) years and four (4) years each, to be determined by lot. After the Governor has appointed the three (3) other members to the board, their terms shall likewise be for two (2) years, three (3) years and four (4) years as determined by lot. After the expiration of the original terms, all subsequent terms shall be for four (4) years. After the initial appointment by the Governor from the list of nine (9) nominees, all subsequent appointments for one (1) membership shall be made from a list of three (3) nominees.

(a) It shall be necessary for five (5) members of the board to be present to constitute a quorum.

(b) The board shall provide for the keeping of minutes of all board meetings and shall otherwise keep records of all actions taken by the board or by any other of the board's employees or agents.

(c) Each board member shall receive his necessary traveling and other expenses in attending board meetings or otherwise conducting the board's business.

(d) The board shall meet at least two (2) times per year, but the chairman or any three (3) members of the board may call a meeting in writing with at least five (5) days' notice.

(4) The purpose of the Computer Services for the Blind Corporation shall be to make available computer services to the blind of Kentucky.

(5) The board of directors may employ such persons as may be necessary to carry out the purposes of this section.

(6) The board of directors shall have the power to purchase, lease, rent, or sell any personal or real property as may be necessary in carrying out the functions of this section. The board shall also have the power to accept gifts and donations.

(7) The board of directors may provide that recipients of services provided by the corporation must pay a portion of all of the costs of providing the services. The board may adopt regulations establishing internal procedures without holding a public hearing.

(8) The services provided by Computer Services for the Blind Corporation shall be available to any blind person whether directly paid for by him or by any corporation, business, governmental agency, or charitable organization.

(9) For the purpose of this section, "blind" means a visual acuity of twenty/two hundred (20/200) in the better eye with

correction or a restriction in the visual field so that vision does not subtend an angle greater than twenty (20) in the better eye with correction.

Section 15. KRS 163.506 is amended to read as follows:

(1) The Commission on the Deaf and Hard of Hearing shall consist of:

(a) Seven (7) members appointed by the Governor as follows:

1. One (1) audiologist chosen from a list of three (3) names submitted by the Kentucky Speech and Hearing Association;
2. Three (3) hard of hearing or deaf persons chosen from a list of six (6) names submitted by the Kentucky Association of the Deaf;
3. One (1) deaf or hard of hearing person chosen from a list of three (3) names submitted by the Kentucky Chapter of the Alexander Graham Bell Association for the Deaf, the initial appointment to be for a one (1) year term;
4. One (1) person chosen from a list of three (3) names submitted by the Kentucky members of Self Help for Hard of Hearing People, the initial appointment to be for a two (2) year term;
5. One (1) deaf or hard of hearing person chosen from a list of three (3) names submitted by the American Association of Retired Persons, the initial appointment to be for a two (2) year term;

(b) One (1) representative of the Cabinet for Human Resources appointed by the secretary;

(c) The secretary of the Education***, Arts,*** and Humanities Cabinet or his designee;

(d) The president of the Kentucky Association for the Deaf or his designee;

(e) The president of the Kentucky Registry of Interpreters for the Deaf or his designee; and

(f) Three (3) persons appointed by the Commission on the Deaf and Hard of Hearing as constituted in subsections (1)(a) through (1)(e) of this section, appointed as follows:

1. One (1) parent of a hard of hearing or deaf child;
2. One (1) representative of a private organization providing consistent services to the deaf and hard of hearing; and
3. One (1) member at large.

(2) All members shall serve three (3) year terms except state officials or their designees who shall serve during their terms of office. Of the members appointed pursuant to subsections (1)(a)2. through (1)(a)5. and subsection (1)(f) of this section, no more than three (3) of those members shall have terms beginning in the same year. Any person who is a member of the commission on July 13, 1990, shall serve until he resigns or until his term expires.

(3) Each member of the commission shall be reimbursed for his necessary travel and other expenses actually incurred in the discharge of his duties.

Section 16. KRS 171.3801 is amended to read as follows:

(1) There is established the Kentucky Heritage Council (hereinafter referred to as "the council") which shall perform the functions specified in KRS 171.381.

(2) The membership of the council shall consist of not more than sixteen (16) members who have an interest in the preservation and protection of Kentucky's heritage. On or before September 15, 1982, the Governor shall appoint not more than four (4) members for a term of one (1) year, not more than four (4) members for a term of two (2) years, not more than four (4) members for a term of three (3) years, and not more than four (4) members for a term of four (4) years. Thereafter, the Governor shall make all appointments for a term of four (4) years.

(3) Council members shall receive no compensation for their services but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(4) From the council membership the Governor shall appoint a chairman and a vice chairman of the council. The council may elect by majority vote other officers deemed necessary.

(5) The council shall meet at the call of the chairman, but not less often than twice during each calendar year. A majority of the members appointed to the council shall constitute a quorum.

(6) The council shall be attached to the Education***, Arts,*** and Humanities Cabinet for administrative purposes.

(7) The Heritage Council shall include a heritage division, whose duties shall include providing staff services needed by the Heritage Council in order to perform its duties under KRS 171.381, including but not limited to preserving and protecting buildings, sites and other landmarks associated with the archaeological, cultural, economic, military, national, political and social aspects of Kentucky's history.

(8) The heritage division shall be headed by a director appointed by the Governor from a list of three (3) nominees submitted by the Heritage Council; and the Heritage Council and the heritage division shall not be subject to reorganization.

Section 17. KRS 171.381 is amended to read as follows:

(1) The heritage council shall be dedicated to the preservation and protection of all meaningful vestiges of Kentucky's heritage for succeeding generations, and in pursuit of this dedication it shall engage in and concern itself with worthy projects and other matters related to the conservation and continuing recognition of buildings, structures, sites, and other landmarks associated with the archaeological, cultural, economic, military, natural, political, or social aspects of Kentucky's history.

(2) The duties and functions of the council shall be to:

- (a) Review and recommend appropriate projects and programs to insure the proper recognition, preservation, and protection of matters related to Kentucky's heritage, particularly those in the nature of or associated with real property;
- (b) Advise, consult, and cooperate generally with state, local, and national officials and agencies to accomplish the purposes to which the council is dedicated, and specifically with the Kentucky Department of Parks and Historical Society in matters of common concern;
- (c) Encourage, promote, and coordinate historic preservation programs being conducted in Kentucky by other agencies or groups, public and private; and
- (d) Prepare and maintain an inventory or survey of Kentucky's resource of historic buildings, sites, structures, and other landmarks, and list in an official roll those such landmarks which possess statewide or national significance.

(3) The council may:

- (a) Accept grants or other funds or property from any available source, public or private;
- (b) Employ, with the approval of the Governor, such staff as may be necessary. Any member of such staff shall be entitled to compensation under KRS Chapter 18A, and may be reimbursed for necessary and actual expenses in accordance with the provisions of KRS Chapters 44 and 45;
- (c) Enter into such contractual relationships as may be necessary;
- (d) Acquire real property, by gift or devise or by purchase pursuant to the provisions of KRS 45A.045, and hold the same in the name of the Commonwealth for the use and benefit of the council;
- (e) Initiate its own projects of an appropriate nature, and undertake or otherwise engage in joint projects with other agencies or groups, public or private; and
- (f) Adopt such rules and regulations as may be necessary and incidental to the performance of the council's duties and functions.

(4) The receipt, control, and expenditure of funds shall be subject to the general provisions of the Kentucky Revised Statutes governing financial administration of all state agencies.

(5) No provision of this section shall be construed as repealing any of the laws of the Commonwealth relating to the preservation, protection, and recognition of historical matters, but shall be held and construed as ancillary and supplemental thereto.

(6) The council shall receive applications, interview and recommend to the Governor three (3) persons as nominees for appointment as the director of the Heritage Division, Education***, Arts,*** and Humanities Cabinet. The director of the Heritage Division shall be the state historic preservation officer.

(7) The responsibilities of the state historic preservation officer shall include:

- (a) Development for the State Historic Preservation Program;
- (b) Direction of a comprehensive statewide survey of historic properties;
- (c) Nomination of historic properties to the National Register of Historic Places;
- (d) Cooperation in the development of effective working relationships with federal, state, and local agencies that participate in the management of historic properties and in project planning that may affect historic properties;
- (e) Cooperation in the integration of historic preservation planning with all levels of planning;
- (f) Cooperation in the development and maintenance of a review procedure for publicly funded, assisted, and licensed undertakings that may affect historic properties within the state;
- (g) Participation in the review of federal, federally assisted, and federally licensed undertakings that may affect historic properties included in or eligible for inclusion in the National Register under Section 106 of the National Historic Preservation Act and Executive Order 11593;
- (h) Assisting federal agencies in fulfilling their historic preservation responsibilities under federal law and regulations;
- (i) Liaison with organizations of professional archaeologists, historians, architects, architectural historians, planners, and others concerned with historic preservation;
- (j) Development and operation of a program of public information and education concerning the preservation

program;

(k) Administration of the grants program within the state; and

(l) Preparation and maintenance of a comprehensive statewide historic preservation plan.

Section 18. KRS 171.420 is amended to read as follows:

The State Archives and Records Commission, is hereby created and shall be a seventeen (17) member body constituted as follows: The state librarian or his designee, who shall be the chairman of the commission, secretary of the ~~[Cabinet for]~~ Education***, Arts,*** and Humanities ***Cabinet*** or his designee, the Auditor of Public Accounts or his designee, the Chief Justice of the Supreme Court or his designee, the director of the Legislative Research Commission or his designee, the Attorney General or his designee, the director of the Office for Policy and Management or his designee, the commissioner of the Department of Information Systems or his designee, one (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the University of Kentucky, one (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Historical Society, one (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Library Association, one (1) member appointed by the Governor from a list of seven (7) persons with one (1) name submitted by each of the presidents of the state universities and colleges, four (4) citizens-at-large, and one (1) member appointed by the Governor from a list of three (3) persons, with one (1) name submitted by each of the presidents of the Kentucky League of Cities, the Kentucky Association of Counties, and the Kentucky Association of School Administrators. Vacancies shall be filled by the Governor in the same manner as initial appointments are made. All members shall serve for a term of four (4) years, provided that one (1) of the initial appointments shall be for a term of four (4) years, one (1) for three (3) years, one (1) for two (2) years, and one (1) for one (1) year. The commission shall advise the Department for Library and Archives on matters relating to archives and records management. The commission shall have the authority to review and approve schedules for retention and destruction of records submitted by state and local agencies. In all cases, the commission shall determine questions which relate to destruction of public records, and their decision shall be binding on the parties concerned and final, except that the commission may reconsider or modify its actions upon the agreement of a simple majority of the membership present and voting.

Section 19. KRS 210.031 is amended to read as follows:

(1) The cabinet shall establish an advisory committee of sixteen (16) members to advise the Department for Mental Health and Mental Retardation Services of the need for particular services for persons who are deaf or hard-of-hearing.

(a) At least eight (8) members shall be deaf or hard-of-hearing and shall be appointed by the secretary. Four (4) deaf or hard-of-hearing members, representing one (1) of each of the following organizations, shall be appointed from a list of at least two (2) nominees submitted from each of the following organizations:

1. The Kentucky Association of the Deaf;
2. The A.G. Bell Association;
3. The Kentucky School for the Deaf Alumni Association; and
4. Self Help for the Hard of Hearing.

The remaining four (4) deaf or hard-of-hearing members shall be appointed by the secretary from a list of at least eight (8) nominees submitted by the Kentucky Commission on the Deaf and ***Hard of*** Hearing ~~[Impaired]~~.

(b) One (1) member shall be a family member of a deaf or hard-of-hearing consumer of mental health services and shall be appointed by the secretary from a list of nominees accepted from any source.

(c) The head of each of the following entities shall appoint one (1) member to the advisory committee:

1. The Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services;
2. The Workforce Development Cabinet, Department of Vocational Rehabilitation;
3. The Cabinet for Human Resources, Department for Social Services, Division for Aging Services;
4. The Education***, Arts,*** and Humanities Cabinet, Commission on the Deaf and ***Hard of*** Hearing ~~[Impaired]~~;
5. The Kentucky Registry of Interpreters for the Deaf; and
6. A Kentucky School for the Deaf staff person involved in education.

(d) The remaining member shall be a representative of a regional mental health/mental retardation board, appointed by the commissioner of the Department for Mental Health and Mental Retardation Services from a list composed of two (2) names submitted by each regional mental health/mental retardation board.

(2) Of the members defined in subsections (1)(a) and (b) of this section, three (3) shall be appointed for a one (1) year term, three (3) shall be appointed for a two (2) year term, and three (3) shall be appointed for a three (3) year term; thereafter, they shall be appointed for three (3) year terms. The members defined under subsections (1)(c) and (d) of this section shall serve with no fixed term of office.

(3) The members defined under subsections (1)(a) and (b) of this section shall serve without compensation but shall be reimbursed for actual and necessary expenses; the members defined under subsections (1)(c) and (d) shall serve without compensation or reimbursement of any kind.

(4) The Department for Mental Health and Mental Retardation Services shall make available personnel to serve as staff to the advisory committee.

(5) The advisory committee shall meet quarterly at a location determined by the committee chair.

(6) (a) The advisory committee shall prepare a biennial report which:

1. Describes the accommodations and the mental health, mental retardation, development disability, and substance abuse services made accessible to deaf and hard-of-hearing persons;
2. Reports the number of deaf or hard-of-hearing persons served;
3. Identifies additional service needs for the deaf and hard-of-hearing; and
4. Identifies a plan to address unmet service needs.

(b) The report shall be submitted to the secretary, the commissioner of the Department for Mental Health and Mental Retardation Services, and the Interim Joint Committee on Health and Welfare by July 1 of every odd-numbered year.

Section 20. KRS 347.040 is amended to read as follows:

(1) The secretaries of the Cabinet for Human Resources and the Education*, Arts,* and Humanities Cabinet and the chief state school officer shall jointly develop and implement a statewide plan, with adequate opportunity for public comment, to serve all persons with developmental disabilities not otherwise entitled to and receiving the same services under another state or federal act, which will include provisions for:

(a) Identification and prompt and adequate interdisciplinary assessment;

(b) Case management services; and

(c) Services and residential alternatives as defined by this chapter in the least restrictive, individually appropriate environment.

(2) The first plan and annual updates shall be presented to the Legislative Research Commission which shall refer it to an appropriate committee for review and comment.

(3) The plan shall include:

(a) The number of institution residents on waiting lists for placement in the community;

(b) The number of persons outside institutions on waiting lists for placement in the institution;

(c) The number of persons for whom no placement is made nor services provided because of a lack of community resources;

(d) The number, type, nature, and cost of services necessary for placement to occur;

(e) The status of compliance with the plan;

(f) The cabinets' specific efforts to increase residential and institutional services and documentation of the success of these efforts; and

(g) The specific plans for new efforts to enhance the opportunities for persons with developmental disabilities to move into less restrictive environments.

(4) The state health plan shall be developed consistently with the plan required under this chapter.

Section 21. KRS 347.050 is amended to read as follows:

The Cabinet for Human Resources, the Education*, Arts,* and Humanities Cabinet, and the Department of Education shall promulgate and implement rules and regulations for the:

(1) Enhancement and protection of the rights of persons receiving services and active treatment in both the public and private sectors under this chapter, including, but not limited to, the right to:

(a) Provision of services in the least restrictive, individually appropriate environment;

(b) An individualized service plan;

(c) Privacy and humane service;

(d) Confidentiality, access, referral and transfer of records;

(e) Monitored active treatment in the least restrictive, individually appropriate environment;

(f) Notice of rights under this chapter; and

(g) A fair, timely and impartial grievance procedure to resolve grievances concerning identification and evaluation, services and active treatment, residential alternatives and the protection of the rights of persons with developmental disabilities under this chapter.

(2) Implementation of this chapter providing for the orderly development of services and coordination among organizational units, administrative bodies and service providers to assure effective provision of services in both the public and private sectors to persons with developmental disabilities.

Section 22. KRS 347.060 is amended to read as follows:

The Cabinet for Human Resources, the Education***, Arts,*** and Humanities Cabinet and the Department of Education may assess reasonable charges for services rendered under this chapter, based upon a sliding fee scale which takes into account the extensive services required as a result of, and the extraordinary expenses related to, a developmental disability; provided that no charges for services rendered under this chapter may be assessed for compliance with requirements and responsibilities mandated under any state or federal act as provided under subsection (5) of KRS 347.010.

Section 23. The General Assembly confirms Executive Order 92-1073 transferring the microfilm and paper conservation programs of the Libraries and Preservation Branch in the Research and Publication Division within the Kentucky Historical Society to the Public Records Division within the Department for Libraries and Archives.

Section 24. The General Assembly confirms Executive Order 92-1073 to the extent that it is not otherwise confirmed by this Act.

HB 259, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly confirms Executive Order 93-29, issued on January 12, 1993, to create a Division of Public Financing and Administration and a Division of Compliance and Audits within the Kentucky Registry of Election Finance, and to set forth the responsibilities of the divisions.

HB 260, AN ACT relating to the reorganization of the Economic Development Cabinet.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) There is created within the Cabinet for Economic Development the Department of Administration and Support. The department shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. The department shall provide cabinet-wide support in fiscal management, information resources, personnel support, budgetary implementation and control, and research development.

(2) The Department of Administration and Support shall include an Information Resources Section and the following divisions, each of which shall be headed by a director appointed by the secretary pursuant to KRS 12.050:

(a) The Division of Administrative Services, which shall be responsible for fiscal management, personnel, and payroll functions; and

(b) The Division of Research, which shall be responsible for general research , economic development library, map sales, and community brochures activities.

SECTION 2. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) There is created within the Cabinet for Economic Development the Department of Community Development, which shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. The department shall work with each Kentucky county in:

(a) Determining a long-range plan for economic development which best meets the individual county's needs; and

(b) Developing cooperative interaction with existing industries and small and minority businesses and assisting export development.

(2) The Department of Community Development shall include the following divisions, each of which shall be headed by a director appointed by the secretary pursuant to KRS 12.050:

(a) The Division of Business and Entrepreneurship Development, which shall be responsible for procurement assistance, business information clearinghouse services, and business and technology functions of the cabinet, including, without being limited to:

1. Providing comprehensive information on all state business licenses and requirements;

2. Developing and administering a master application and licensure program for grocery stores;

3. Coordinating and monitoring the various activities being carried out by state agencies that relate to adapting advanced technologies to the workplace; and

4. Reviewing and analyzing the possibility of establishing research and technology centers in the Commonwealth;

(b) The Small and Minority Business Division, which shall be responsible for the cabinet's functions relating to

small and minority business enterprise, as provided in KRS 154.12-215. The Small Business Advisory Council established by KRS 154.12-218 shall advise the division;

(c) The Division of Recycling Brokerage, which shall act as a state broker for local governments and commercial recycling businesses seeking to sell recyclable material, pursuant to KRS 154.12-202;

(d) The Western Kentucky Economic Development Division;

(e) The Eastern Kentucky Economic Development Division; and

(f) The Central Kentucky Economic Development Division.

(3) The following programs and commission shall be attached to the Department of Community Development:

(a) The Kentucky port and river development program created by KRS 65.510 to 65.530, KRS 139.483, and KRS 154.80-100 to 154.80-130;

(b) The Waterway Marina Development Program established by KRS 154.80-310; and

(c) The Kentucky Military Affairs Commission established by KRS 154.12-203.

SECTION 3. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) There is created in the Cabinet for Economic Development the Department of Financial Incentives. The department shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. The department shall coordinate all financial assistance, tax credit, and related programs available for business and industry.

(2) The department shall include the following divisions, each of which shall be headed by a director appointed by the secretary pursuant to KRS 12.050:

(a) The Rural Development Division, which shall retain for administrative purposes the name, title, official seal, and programmatic abbreviation of the Kentucky Rural Economic Development Authority; and

(b) The Development Finance Division, which shall include the Kentucky Economic Development Finance Authority established by KRS 154.20-010.

(3) The department shall also include the following entities:

(a) The Commonwealth Venture Capital Fund, established by KRS 154.20-300 to 154.20-390, which shall be attached to the department for administrative purposes and staff support;

(b) The Bluegrass State Skills Corporation, established by KRS 154.12-204 to 154,12-208, which shall be attached to the department; and

(c) The Enterprise Zone Authority, established in subchapter 45 of KRS Chapter 154, which shall be attached to the department for administrative purposes.

SECTION 4. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) There is created within the Cabinet for Economic Development the Department of Job Development. The department shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. The department shall coordinate the recruitment of industries that will enhance the overall viability of Kentucky's economy.

(2) The Department of Job Development shall include the following divisions, each of which shall be headed by a director appointed by the secretary pursuant to KRS 12.050:

(a) The Industrial Development Division; and

(b) The Site Evaluation Division.

(3) Kentucky's representative development offices located in other states and countries shall be assigned to the Department of Job Development.

Section 5. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of such department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.

3. Department of State.
    (a) Secretary of State.
    (b) Board of Elections.
    (c) Registry of Election Finance.
4. Department of Law.
    (a) Attorney General.
5. Department of the Treasury.
    (a) Treasurer.
6. Department of Agriculture.
    (a) Commissioner of Agriculture.
    (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
    (a) Department of State Police.
    (b) Department of Criminal Justice Training.
    (c) Office of Administration.
    (d) Department of Corrections.
    (e) Parole Board.
    (f) Kentucky State Corrections Commission.
2. Education and Humanities Cabinet:
    (a) Department of Education.
        (1) State Board for Elementary and Secondary Education.
        (2) Education Professional Standards Board.
    (b) Department for Libraries and Archives.
    (c) Kentucky Arts Council.
    (d) Kentucky Educational Television.
    (e) Kentucky Historical Society.
    (f) Kentucky Teachers' Retirement System Board of Trustees.
3. Natural Resources and Environmental Protection Cabinet:
    (a) Environmental Quality Commission.
    (b) Kentucky Nature Preserves Commission.
    (c) Department for Environmental Protection.
    (d) Department for Natural Resources.
    (e) Department for Surface Mining Reclamation and Enforcement.
    (f) Department of Law.
    (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
    (a) Department of Highways.
    (b) Department of Vehicle Regulation.
    (c) Department of Administrative Services.
    (d) Department of Fiscal Management.
    (e) Department of Rural and Municipal Aid.
    (f) Office of Aeronautics.
    (g) Office of General Counsel.
    (h) Office of Public Relations.

(i) Office of Personnel Management.
(j) Office of Minority Affairs.
5. Cabinet for Economic Development:
(a) Department ***of Administration and Support*** [~~for Existing Business and Industry~~].
(b) ***Department of Job Development.***
(c) Department of Financial Incentives.
(d) Department of Community Development.
(e) Tobacco Research Board.
(f)[~~(c)~~] Kentucky ***Economic*** Development Finance Authority.
[~~(d) Office of Business and Technology.~~
~~(e) Office of Industrial Development.~~]
6. Public Protection and Regulation Cabinet:
(a) Public Service Commission.
(b) Department of Insurance.
(c) Department of Housing, Buildings and Construction.
(d) Department of Financial Institutions.
(e) Department of Mines and Minerals.
(f) Department of Public Advocacy.
(g) Department of Alcoholic Beverage Control.
(h) Kentucky Racing Commission.
(i) Board of Claims.
(j) Crime Victims Compensation Board.
(k) Kentucky Board of Tax Appeals.
(l) Backside Improvement Commission.
7. Cabinet for Human Resources:
(a) Department for Health Services.
(b) Department for Employment Services.
(c) Department for Social Insurance.
(d) Department for Social Services.
(e) Department for Medicaid Services.
(f) Department for Mental Health and Mental Retardation Services.
(g) Unemployment Insurance Commission.
(h) Commission for Handicapped Children.
(i) Public Assistance Appeals Board.
(j) Office of Administrative Services.
(k) Office of Communications.
(l) Office of General Counsel.
(m) Office of Inspector General.
(n) Office of Policy and Budget.
(o) Office of the Ombudsman.
8. Finance and Administration Cabinet:
(a) Office of Legal and Legislative Services.
(b) Office of Management and Fiscal Affairs.
(c) Office of Historic Properties.
(d) Office of Financial Management and Economic Analysis.
(e) Office of Risk Management.
(f) Department for Administration.
(g) Department of Facilities Management.

  - (h) Department of Information Systems.
  - (i) State Property and Buildings Commission.
  - (j) Kentucky Pollution Abatement Authority.
  - (k) Kentucky Savings Bond Authority.
  - (l) Deferred Compensation Systems.
  - (m) Office of Equal Employment Opportunity Contract Compliance.
  - (n) Capital Plaza Authority.
  - (o) County Officials Compensation Board.
  - (p) Financial Disclosure Review Commission.
  - (q) Kentucky Employees Retirement Systems.
  - (r) Commonwealth Credit Union.
  - (s) State Investment Commission.
  - (t) Kentucky Housing Corporation.
  - (u) Governmental Services Center.
  - (v) Kentucky Local Correctional Facilities Construction Authority.
  - (w) Kentucky Turnpike Authority.
  - (x) Historic Properties Advisory Commission.

9. Labor Cabinet:
   - (a) Department of Workplace Standards.
   - (b) Department of Workers' Claims.
   - (c) Kentucky Labor-Management Advisory Council.
   - (d) Occupational Safety and Health Standards Board.
   - (e) Prevailing Wage Review Board.
   - (f) Workers' Compensation Board.
   - (g) Kentucky Employees Insurance Association.
   - (h) Apprenticeship and Training Council.
   - (i) State Labor Relations Board.
   - (j) Kentucky Occupational Safety and Health Review Commission.
   - (k) Office of Administrative Services.
   - (l) Office of Labor Management Relations.
   - (m) Office of General Counsel.
10. Revenue Cabinet:
    - (a) Department of Property Taxation.
    - (b) Department of Tax Compliance.
    - (c) Department of Administrative Services.
11. Tourism Cabinet:
    - (a) Department of Travel Development.
    - (b) Department of Parks.
    - (c) Department of Fish and Wildlife Resources.
    - (d) Kentucky Horse Park Commission.
    - (e) State Fair Board.
    - (f) Office of Administrative Services.
    - (g) Office of Film Promotion.
    - (h) Office of General Counsel.
12. Cabinet for Workforce Development:
    - (a) Department for Adult and Technical Education.
    - (b) Department of Vocational Rehabilitation.
    - (c) Department for the Blind.

(d) State Board for Adult and Technical Education.
(e) Governor's Council on Vocational Education.
(f) Governor's Commission on Literacy.
(g) The State Board for Proprietary Education.
(h) The GED Foundation.
(i) The Kentucky Occupational Information Coordinating Committee.
(j) The Kentucky Job Training Coordinating Council.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.
2. Department of Personnel.
3. Council on Higher Education.
4. Department of Local Government.
5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.

Section 6. KRS 42.4588 is amended to read as follows:

(1) There is established within the Kentucky ***Economic*** Development Finance Authority a local government economic development program to consist of a system of grants to counties to attract new industry.

(2) Grants obtained under this program shall be used for:

(a) Industrial development projects if an industrial firm has agreed with the local government, to the satisfaction of the Kentucky ***Economic*** Development Finance Authority, to develop, in conjunction with the industrial development project, manufacturing, processing, assembling, or other facilities approved by the secretary of the Cabinet for Economic Development; and

(b) Industrial development projects if the secretary of the Cabinet for Economic Development finds that the project is necessary for the creation of an environment for new industry in order to obtain an agreement from an industrial firm to develop manufacturing, processing, assembling, or other facilities approved by the secretary of the Cabinet for Economic Development.

(c) Debt service on bonds issued under the provisions of KRS 65.270 or KRS 103.200 to 103.285 for industrial development projects, as defined in subsection (2)(a) and (b) of this section, or for facilities approved by the secretary of the Cabinet for Economic Development under the provisions of subsection (3) of this section.

(3) The secretary of the Cabinet for Economic Development may approve facilities, other than manufacturing, processing, or assembling facilities, for industrial development projects when the secretary finds that the facility will add value to a product. Value-added facilities shall include data processing, telecommunication, and distribution facilities, but shall not include retail facilities or coal mining, coal processing, or coal transportation facilities. The secretary may also approve privately-owned facilities for transient lodging and recreation where the secretary finds that the cost of the recreation component of the facility is equal to, or greater than, the cost of the lodging component of the facility. The criteria for approval of applications for grants provided for in paragraphs (a), (b), and (c) of subsection (9) of this section shall be paramount in the case of lodging and recreational facilities.

(4) Applications for grants from funds provided for in KRS 42.4592(1)(a) and (b) shall be made by the legislative bodies of one (1) or more counties with accounts in the Local Government Economic Development Fund. Applications for grants from funds provided for in KRS 42.4592(1)(c) shall be made by the legislative bodies of two (2) or more counties with accounts in the Local Government Economic Development Fund. No grant shall be awarded without application for a grant.

(5) A grant may be awarded for an industrial development project located in a county that does not have an account in the Local Government Economic Development Fund, if the secretary of the Cabinet for Economic Development finds that the industrial development project may be reasonably expected to create jobs for residents of the local unit or units of government applying for the grant. Application for the grant shall be made by the legislative bodies of one (1) or more counties with accounts in the Local Government Economic Development Fund.

(6) With the exception of grants awarded to service debt on bonds, as provided for in subsection (2)(c) of this section, grants awarded from funds provided for in KRS 42.4592(1)(a) and (b) shall not exceed the total balance of the accounts of the applicant counties at the time of the award of the grant.

(7) Grants awarded under the provisions of subsection (2)(c) of this section may be for a period not to exceed thirty (30) years, and shall be limited to an annual amount not to exceed twenty-five percent (25%) of the amount estimated to be allocated to the applicant county or counties for the current fiscal year under the provisions of KRS 42.4592(1)(a) and (b).

(8) Approval of grant applications shall be by the secretary of the Cabinet for Economic Development. Award of grants shall

be by the Kentucky ***Economic*** Development Finance Authority.

(9) Criteria for approval of applications and the award of grants shall be based upon the following:

(a) The number of jobs to be created or preserved, directly or indirectly, by the industrial development project;

(b) Payrolls, and the taxes generated, both at the state and local levels, by the industrial development project and taxes generated by the employment created or preserved by the industrial development project;

(c) The size, nature, and cost of the industrial development project, including the prospect of the industrial development project providing long-term jobs in enterprises consistent with the changing economies of the affected local units of government;

(d) The needs, and degree of needs, of the local units of government which will be affected by the industrial development project;

(e) The needs of any industrial firm benefiting from the industrial development project;

(f) The amount and kind of assistance, if any, available to an industrial firm from other government agencies through tax exemption or abatement, financing assistance through industrial development bonds, and otherwise, with respect to the industrial development project;

(g) The amount of capital made available to the facility by lenders and by the industrial firm; and

(h) The economic feasibility of the facility.

(10) For purposes of this section:

(a) "Industrial development project" ~~[means and]~~ includes the acquisition of any real estate and the construction, acquisition, and installation thereon and with respect thereto of improvements and facilities necessary and useful for the improvement of the real estate for conveyance to or lease to industrial firms to be used for manufacturing, processing, or assembling purposes, including surveys; site tests and inspections; subsurface site work; excavation, removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage; storm water retention; installation of utilities, such as water, sewer, sewage treatment, gas electricity, communication, and other similar facilities; off-site construction of utility extensions to the boundaries of the real estate; construction and installation of buildings, including buildings to be used for worker training and education; rail facilities; roads; sidewalks; curbs; and other improvements to the real estate necessary to its manufacturing, processing, assembling, or other approved use by industrial entities; and

(b) "Industrial firm" means any corporation, partnership, person, or other legal entity, whether domestic or foreign, which will itself or through its subsidiaries and affiliates construct and develop a manufacturing, processing, assembling, or other approved facility on the site of an industrial development project financed pursuant to this section.

(11) Findings by the secretary of the Cabinet for Economic Development, provided for in subsections (2)(b), (3) and (5) of this section, shall be made in writing to the affected counties, the Governor, and the Legislative Research Commission.

(12) By October 1 of each odd-numbered year, the secretary of the Cabinet for Economic Development shall provide, in writing, to the Governor and the Legislative Research Commission a listing of all applications for grants received pursuant to this section subsequent to the last report, indicating which applications were approved or disapproved, with the reason for disapproval when the decision was to disapprove, and a listing of all grants awarded, with the amount of the award, the recipient county, and the related industrial development project.

Section 7. KRS 42.4595 is amended to read as follows:

The Department of Local Government may promulgate administrative regulations to implement the provisions of KRS 42.4582, 42.4585, or 42.4592. The Cabinet for Economic Development or the Kentucky ***Economic*** Development Finance Authority may promulgate administrative regulations to implement the provisions of KRS 42.4588.

Section 8. KRS 42.460 is amended to read as follows:

Except as provided in subsection (4)(b) of KRS 91A.040, any assistance granted under KRS 42.450 to 42.495 shall include an agreement that an independent annual audit shall be conducted and that the audit report shall include a certification that the funds were expended for the purpose intended. A copy of the audit and certification of compliance shall be forwarded to the Department of Local Government, in the case of assistance granted from the local government economic assistance fund, or to the Cabinet for Economic Development and the Kentucky ***Economic*** Development Finance Authority, in the case of assistance granted from the local government economic development fund, within eighteen (18) months after the end of the fiscal year.

Section 9. KRS 42.480 is amended to read as follows:

(1) On or before July 1, 1992, and each year thereafter, the commissioner of the Department of Local Government, shall provide the Cabinet for Economic Development, the Kentucky ***Economic*** Development Finance Authority, and the legislative body of each local government eligible for funds under the provisions of KRS 42.450 to 42.495, an estimate of the funds that will be allocated to the local government for fiscal year 1992-93, and each year thereafter.

(2) On or before the fifteenth of the first month of a quarter, the commissioner of the Department of Local Government, shall cause to be remitted to the legislative bodies of the local governments eligible for funds from the local government

economic assistance fund, the funds allocated to the respective local governments for the prior quarter; except that the remittance for the last quarter of a fiscal year shall be made after the close of the fiscal year accounting records, and shall be adjusted to provide the balance of the annual allocation due the local government.

Section 10. KRS 65.520 is amended to read as follows:

(1) Any governmental unit by act of its legislative body, or any two or more governmental units acting jointly by acts of their legislative bodies, and with the approval of the ***Cabinet for Economic Development*** ~~[Kentucky Port and River Development Commission]~~, may establish a developmental riverport authority to be composed of six (6) members.

(2) The authority shall be a body politic and corporate with the usual corporate attributes, and in its corporate name may sue and be sued, contract and be contracted with and do all things reasonable or necessary to effectively carry out the powers and duties prescribed by KRS 65.510 to 65.650. The authority may exercise all powers granted to governmental agencies by KRS 58.010 to 58.140. The authority may exercise all powers, consistent with its powers and duties stated in this chapter, granted by KRS 273.171 to corporations governed by KRS 273.161 to 273.390.

Section 11. KRS 65.530 is amended to read as follows:

(1) The purposes of the authority shall be to establish, maintain, operate and expand necessary and proper riverport and river navigation facilities, and to acquire and develop property, or rights therein within the economic environs of the riverport or proposed riverport to attract directly or indirectly river-oriented industry. It shall have the duty and such powers as may be necessary or desirable to promote and develop navigation, river transportation, riverports, and riverport facilities, and to attract industrial or commercial operations to the property held as industrial parks.

(2) The authority shall establish and fix reasonable rates, charges and fees for the use of the riverport facilities which shall be published in a newspaper of general circulation in the county in which the riverport is located. In fixing ~~[such]~~ rates, charges or fees the authority may take into consideration, among other factors, the total capital investment of the authority, the revenue needed properly to maintain such facilities, the revenue needed properly to expand the riverport and its facilities, the portion of the facilities utilized by the licensee or contracting party and its customers and the volume and type of business conducted. Any party aggrieved by the rates, charges or fees may appeal from the action of the authority to the Circuit Court of the county within which the authority operates, within ninety (90) days from the date that the authority finally publishes ***the*** ~~[such]~~ rates, charges or fees and gives notice of same to the contracting party or licensee. The Circuit Court may hear evidence and determine whether or not the rates, charges or fees are, or are not, reasonable in amount. Appeal from the judgment of the Circuit Court may be prosecuted as any other civil appeal.

(3) The authority shall also have power, from time to time, to fix rates, charges or fees by contract, or by publishing general rates, charges or fees for commercial vendors, concessionaires or other persons for the use or occupancy of riverport facilities under ***the*** ~~[such]~~ terms and conditions ~~[as]~~ it ***deems*** ~~[may deem]~~ to be in the best interest of maintaining, operating or expanding necessary riverport facilities, and the public use thereof.

(4) The authority may acquire by contract, lease, purchase, option, gift, condemnation or otherwise any real or personal property, or rights therein, necessary or suitable for establishing, developing, operating or expanding riverports, riverport facilities, water navigation facilities, including spoilage areas for the disposal of materials dredged from river bottoms in an effort to improve the navigability of rivers, reserve storage areas and reserves of bulk materials utilized by the authority or any person acting as the authority's agent or licensee, and industrial parks or sites within the economic environs of the riverport or proposed riverport. The authority may erect, equip, operate and maintain on ***the*** ~~[such]~~ property buildings and equipment necessary and proper for riverport and water navigation facilities. The authority may dispose of any real or personal property, or rights therein, which in the opinion of the authority is not needed for use as riverport or water navigation facilities, or use as industrial parks or sites. The authority may lease, sell, convey, or assign its interest in land owned, optioned, or otherwise held by it to any person for the purpose of constructing and/or operating any industrial or commercial facility or for the purpose of acting as the authority's agent or licensee in effectively carrying out any of its powers and duties.

(5) With the consent of the legislative body of the governmental unit in which the property to be condemned is located, the authority may by resolution, reciting that the property cannot be acquired by purchase or agreement and is needed for riverport, water navigation, or industrial purposes in accordance with the powers set forth in subsection (4) of this section, direct the condemnation of any property. The procedure for condemnation shall conform to the procedure set out in the Eminent Domain Act of Kentucky.

(6) The authority may apply for, receive authorization for, establish and operate a foreign trade zone, as permitted by 19 U.S.C. Section 81, provided approval is obtained from the ***Cabinet for Economic Development*** ~~[Kentucky Port and River Development Commission]~~.

Section 12. KRS 154.12-202 is amended to read as follows:

(1) ~~[The Kentucky Recycling Brokerage Authority, referred to in this section as the "authority," is created by this section to further local governments' efforts to develop reliable markets for their recyclables. The authority shall be composed of seventeen (17) members as follows:~~

~~(a) The secretary of the Cabinet for Economic Development, who shall serve as chairman;~~

~~(b) The secretaries of the Finance and Administration and Natural Resources and Environmental Protection Cabinets;~~

~~and the commissioner of the Department of Local Government; and~~

~~(c) Thirteen (13) members appointed by the Governor including representatives of municipal and county governments; legislators; citizens representing environmental interests; and industry representatives.~~

~~(2) These seventeen (17) persons and their successors in office shall constitute the Kentucky Recycling Brokerage Authority, a public corporation, with perpetual succession and with power in that name to contract and be contracted with, to convey property, to sue and be sued, and to exercise, in addition to the powers and functions conferred by this section, all of the usual powers of corporations not inconsistent with specifically enumerated powers.~~

~~(3) The members of the authority shall receive no compensation for their services, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and function as members.~~

~~(4) Nine (9) members of the authority shall constitute a quorum for the transaction of business. The Cabinet for Economic Development shall provide staff services to the authority. The authority shall establish and maintain complete records of the authority's action and proceedings, which shall be public records open to inspection.~~

~~(5) On or before July 1, 1991, the Governor shall appoint thirteen (13) members of the authority as follows: five (5) shall serve terms ending July 1, 1995; four (4) shall serve terms ending July 1, 1994; and four (4) shall serve terms ending July 1, 1993. As the terms of each group of members expire, the Governor shall appoint successors for terms of four (4) years and until their successors are appointed.~~

~~(6)~~] The ***Division of Recycling Brokerage in the Department of Community Development*** [~~authority, with staff assistance from the Cabinet for Economic Development,~~] shall act as a state broker for local governments and commercial recycling businesses seeking to sell recyclable materials. The ***division*** [~~authority~~] shall:

(a) Identify local, state, and interstate markets for recyclables;

(b) Issue requests for proposals as well as directly contact potential buyers;

(c) Negotiate contracts with potential buyers on behalf of participating local governments, commercial recycling businesses, or local groups;

(d) Arrange details of contracts including price collection schedules, reimbursements, and quality assurance provisions;

(e) Conduct workshops and seminars throughout the state to train recycling center and solid waste facility operators on how to prepare and process materials that will be marketed through the brokerage office;

(f) Issue routine market bulletins containing pricing information and other program details to all local governments, and commercial recycling businesses, both those participating as well as nonparticipants; and

(g) Handle all paperwork for the brokering service including contracts, invoices, weigh slips, and records of collections and issue revenue checks to participants.

(2)[~~(7)~~] Local governments and commercial recycling businesses participating in the Kentucky Recycling Brokerage ***program*** [~~Authority~~] shall be assessed a brokerage fee of fifteen percent (15%) of the sale revenue or two dollars ($2) per ton of recyclables sold, whichever is greater.

(3)[~~(8)~~] In addition to any brokerage fees received, the ***cabinet*** [~~authority~~] may receive and accept from any governmental agency, nonprofit organization, or from private enterprise appropriations, grants or contributions of money, property, labor, or other things of value, to be used to carry out the functions of the ***division*** [~~authority~~].

(4)[~~(9)~~] The ***division*** [~~authority~~] shall annually issue financial and informational reports to the General Assembly which shall contain full descriptions of tonnage volumes handled, revenues generated, contracts entered into, market summaries and reviews, and other information under which a full review of the brokerage program is possible. The report shall be due on July 1 of each year.

(5)[~~(10)~~] The ***division*** [~~authority~~] shall also include in its July 1, 1993 annual report to the General Assembly the following:

(a) A description and analysis of the Commonwealth's existing recycling industry, the types, and estimated amounts of recovered material being separated or reprocessed;

(b) An analysis of the projected long-term capacity of existing markets to absorb materials generated by materials recovery or recycling programs;

(c) An analysis of potential markets in the Commonwealth, in other states, or in foreign countries for recovered material or products manufactured using recovered material from this Commonwealth;

(d) An analysis of institutional, economic, and technical barriers to the use of recovered material or products manufactured using recovered materials;

(e) Recommendations for actions which may be taken to increase demand for recovered materials or products;

(f) Recommendations for actions which may be taken to increase the incentives for private individuals and for business and industry to recover materials;

(g) Recommendations on categories of materials which should be recovered in this Commonwealth, given existing and potential markets for ***those*** [~~such~~] materials;

(h) Recommendations for a public education program to be implemented by the Natural Resources and Environmental Protection Cabinet and the Environmental Council to provide information to the public and to business and industry on the benefits of materials recovery and recycling and on the availability of those materials or products; and

(i) A review of state and local government procurement policies and recommendations for actions which might be taken to encourage waste reduction and recycling.

(6)[~~(11)~~] In subsequent years the ***division*** [~~authority~~] shall include in its annual report the following:

(a) Any revisions which the ***division*** [~~authority~~] determines are necessary to its initial report;

(b) An analysis of changes that have occurred with markets for recovered material and products manufactured using recovered material since the last report; and

(c) Any other recommendations to facilitate the development of markets for recovered material and products manufactured using recovered material in this Commonwealth.

Section 13. KRS 154.12-210 is amended to read as follows:

(1) The ***cabinet*** [~~Department for Existing Business and Industry~~] shall assemble and keep in the offices of the ***cabinet*** [~~department such~~] information relating to natural resources, industrial sites, labor supply, water, fuel, power, wage rates, taxation and assessments, transportation and communication facilities, and ***any*** [~~such~~] other information ***that*** [~~as~~] may be useful in executing the provisions of KRS ***154.12-210***[~~154.12-201 and 154.12-209~~] to 154.12-212. ***This*** [~~Such~~] information shall be made available to any enterprise which, in the discretion of the secretary, is legitimate and which contemplates location or operation within the Commonwealth. ***The*** [~~Such~~] information shall, in the discretion of the secretary, be made available to any governmental or private agency interested in securing the location or operation of any [~~such~~] legitimate enterprise within the Commonwealth.

(2) The ***cabinet*** [~~department~~] shall obtain from enterprises interested in locating and operating within the Commonwealth information relating to the nature of the enterprise, its financial responsibility, manpower requirements, probable consumption of raw materials, and ***any*** [~~such~~] other information ***that*** [~~as~~] may be useful in securing the location of such enterprise in the Commonwealth.

(3) The ***cabinet*** [~~department~~] shall be the primary industrial and commercial development agency of the Commonwealth of Kentucky in matters relating to the private sector of the state's economy. The ***cabinet*** [~~department~~] shall carry out programs relating to industrial and commercial development, research and planning, community and industrial services, marketing development, small and minority business enterprise, international trade and reverse investment, and other programs designated by the board.

Section 14. KRS 154.12-212 is amended to read as follows:

The ***cabinet*** [~~Department for Existing Business and Industry~~] shall be responsible for energy resource information. The secretary of the Cabinet for Economic Development may enter into a contractual agreement between the ***cabinet*** [~~department~~] and the Kentucky Geological Survey and ***any*** [~~such~~] other organizations deemed necessary in order to perform this function.

Section 15. KRS 154.12-213 is amended to read as follows:

The ***cabinet*** [~~Department for Existing Business and Industry~~], as it deems necessary and advisable, ***may*** [~~is authorized to~~]:

(1) Consult with agencies of the state, federal, and local government in order to coordinate development programs and plans and to articulate agriculture, industry, and commerce in the light of the needs of particular localities;

(2) Make studies of land utilization so as to determine areas suitable for industrial and commercial development;

(3) Make studies and projections and publish information relating to the economic development of the Commonwealth and make appropriate recommendations to the board and the General Assembly;

(4) Establish and maintain development offices in out-of-state centers of industrial and commercial management;

(5) Place advertising in appropriate media promoting Kentucky's resources and locational advantages for industrial and commercial enterprises.

Section 16. KRS 154.12-214 is amended to read as follows:

As used in KRS 154.12-215 to 154.12-220, unless the context otherwise requires:

(1) [~~"Division" means the division of small business assistance;~~

~~(2) "Director" means the director of the division;~~

~~(3)~~] "Council" means the Small Business Advisory Council as established in KRS 154.12-218;

(2)[~~(4)~~] "Small business" means a business entity organized for profit, including but not limited to any individual partnership, corporation, joint venture, association or cooperative, which entity:

(a) Is not an affiliate or subsidiary of a business dominant in its field of operation; and

(b) Has twenty (20) or fewer full-time employees or no more than the equivalent of one million dollars ($1,000,000) in annual gross revenues in the preceding fiscal year;

(3)[~~(5)~~] "Clearinghouse" means the business information clearinghouse ***program of the division of business and entrepreneurship development in the Department of Community Development***;

(4)[~~(6)~~] "Manager" means the ***administrator*** [~~manager~~] of the clearinghouse ***program***;

(5)[~~(7)~~] "Master application" means the document designed by the clearinghouse for public use in supplying all information necessary for individual state agency approval for licenses the Commonwealth requires for any person subject to the provisions of KRS 154.12-215 to 154.12-220;

(6)[~~(8)~~] "Master license" means the document designed for public display issued by the clearinghouse which authorizes individual state agency approval for licenses the state requires for any person subject to the provisions of KRS 154.12-215 to 154.12-220;

(7)[~~(9)~~] "License" means any agency permit, license, certificate, approval, registration, charter, or any form of permission required by law, including agency rule, to engage in any business activity;

(8)[~~(10)~~] "Issuing agency" means any organizational unit of state government legally authorized to issue, suspend, continue in effect, revoke or enforce any license;

(9)[~~(11)~~] "Grocery store" means any retail business that derives fifty percent (50%) or more of its gross receipts from the sale of food products, beverages and common household goods except those businesses selling exclusively fully prepared foodstuffs;

(10)[~~(12)~~] "Business" means any operation required to have a sales and use tax permit pursuant to KRS Chapter 139; and

(11)[~~(13)~~] "Work team" means a group of individuals assembled to study and make recommendations on the administration of a license and shall include representation from the issuing agency, the regulated industry, and representatives that have experience in the administration of licenses, but no vested interest in the particular license that is being considered.

Section 17. KRS 154.12-215 is amended to read as follows:

(1) [~~There is established within the department a Division of Small Business Assistance.~~

~~(2)~~] The duties of the ***Department of Community Development*** [~~division~~] shall ***include but not be limited to*** [~~be~~]:

(a) ***Collecting, summarizing, and disseminating*** [~~To collect, summarize and disseminate~~] information helpful to minority businesses, including information on:

1. Market research;
2. New business opportunities;
3. Federal, state and local minority business programs; and
4. The availability of managerial assistance programs within the state educational system;

(b) ***Assisting*** [~~To assist~~] minority businesses with federal, state and local government agencies, regulations and procurement programs.

(c) ***Providing*** [~~Provide~~] staff assistance to the council;

(d) ***Providing*** [~~Provide~~] information on federal, state and local small business programs and regulations; and

(e) ***Making*** [~~Make~~] referrals to managerial assistance programs within the state educational system.

(2)[~~(3)~~] The ***commissioner*** [~~director~~] is designated a small business ombudsman and shall:

(a) Receive and refer complaints of small business to the council and the appropriate administrative bodies;

(b) Coordinate the activities of all administrative bodies performing functions affecting the operation of small business in the Commonwealth;

(c) Represent the interests of the council and small businesses in the Commonwealth before federal, state and local administration and regulatory agencies; and

(d) Prepare an annual report of the activities and recommendations of the council and submit the report to the Governor and the appropriate legislative committee having jurisdiction over small business matters.

Section 18. KRS 154.12-216 is amended to read as follows:

(1) There is established in the ***Division of Business and Entrepreneurship Development in the Department of Community Development*** [~~department~~] a Business Information Clearinghouse ***program***.

(2) By January 1, 1985, the clearinghouse shall develop and maintain a current list of all licenses arranged by the Standard Industrial Classification (SIC) developed by the U.S. Department of Labor or similar classification system as may be developed by the clearinghouse.

(3) The clearinghouse shall, to the extent possible, develop and distribute informational packets for each business classification. The informational packet for each business classification shall include applications, fee schedules, and

informational bulletins for the licenses most commonly required of businesses within that classification.

(4) The clearinghouse shall provide a toll-free telephone and referral service for the entire Commonwealth to aid new and continuing businesses with the licensing process.

(5) The clearinghouse shall maintain current information on other agencies' programs that provide business financing and management assistance and shall serve as a referral service to those programs.

(6) The manager shall encourage federal and local governments to participate by submitting copies of application forms for licenses applicable to businesses in the Commonwealth.

(7) Work teams may be assembled at the request of the issuing agency, the regulated industry, the Governor, or the General Assembly. The clearinghouse and issuing agency shall coordinate the activities of and provide staff assistance to any work teams. Members of the work teams shall serve without compensation.

(8) The clearinghouse shall prepare an annual report summarizing its work for the Governor and the General Assembly. In addition to other information specifically required to be in this report by KRS 154.12-221, the report shall include a list of all licenses arranged by business classification and agency, the reports of any work teams, and may include recommendations on necessary statute or regulation changes to enable agencies to simplify or consolidate regulatory activities.

Section 19. KRS 154.12-218 is amended to read as follows:

(1) There is established a Small Business Advisory Council which shall serve in an advisory capacity to the ***Department of Community Development*** [~~division~~].

(2) The council shall be composed of ten (10) members who are officers or representatives of small businesses. The members of the council shall be appointed by the Governor for four (4) year terms, except that five (5) of the initial members shall be appointed for two (2) year terms. Members may be reappointed.

(3) Members of the council shall serve without compensation, but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the council.

(4) The council shall meet as soon as practicable after the initial ten (10) members are appointed, and thereafter shall meet at least twice a year and at the call of the director. The council shall annually elect one (1) of its members to serve as chairman.

(5) The council shall:

(a) Serve as a source of expertise and information on small businesses to the ***department*** [~~division~~];

(b) Keep the ***department*** [~~division~~] informed with respect to problems of, and matters affecting, small businesses;

(c) Advise the ***department*** [~~division~~], upon request of the ***department*** [~~division~~], with respect to any matters relating to small businesses.

Section 20. KRS 154.20-160 is amended to read as follows:

(1) The Kentucky ***Economic*** Development Finance Authority, or its successor, shall develop, pursuant to KRS 154.20-030 to 154.20-150, criteria which may be used by the authority in considering the requests by industrial entities for financial assistance for proposed industrial development projects. The authority, or its successor, may develop criteria which shall include, but not be limited to, potential productivity gains due to the funding of the proposed technological investment.

(2) In developing criteria as prescribed in subsection (1) of this section, the authority shall consider the following:

(a) For existing firms, past productivity trends and potential productivity gains due to the funding of technological investments; and

(b) For new firms, the degree to which the proposed technological investment will be expected to cause the firm's productivity to be higher than the average for firms in the industry it represents.

(3) When considering productivity gains, the authority shall consider the following:

(a) 1. Total real value of output defined as the total sales in real dollars in the calendar year adjusted by the producer price index for the standard industrial classification of that business; or

2. Potential total real value of output defined as the forecasted total sales in real dollars as measured in the current period; and

(b) 1. Productivity measure defined as the total real value of output for a calendar year divided by total employment for that calendar year; or

2. Potential productivity measure defined as the potential total real value of output divided by the total forecasted employment.

(4) Productivity trends of a business shall be evaluated by comparing the annual rate of change in the productivity measure for an individual business to the annual rate of change in productivity measure for businesses engaged in a similar economic activity. The recommended source for industry productivity measures is the rate of change in industry labor productivity indexes published by the United States Bureau of Labor Statistics.

Section 21. KRS 154.24-010 is amended to read as follows:

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings in KRS 154.24-010 to 154.24-150:

(1) "Agreement" means any agreement made pursuant to KRS 154.24-120, between the authority and an approved company with respect to an economic development project.

(2) "Approved company" means any eligible company seeking to locate an economic development project from outside the Commonwealth into the Commonwealth, or undertaking an economic development project in the Commonwealth for which it is approved pursuant to KRS 154.24-090.

(3) "Approved costs" means fifty percent (50%) of the total of the start-up costs, plus the annual rent for each elapsed year of the service and technology agreement;

(4) "Assessment" means the "service and technology job creation assessment fee" authorized by KRS 154.24-110;

(5) "Authority" means the ***Kentucky Economic Development Finance Authority created in KRS 154.20-010*** [~~"Kentucky Jobs Development Authority" created and established under KRS 154.24-030~~];

(6) "Commonwealth" means the Commonwealth of Kentucky;

(7) "Economic development project" or "project" means a service or technology activity conducted by an approved company;

(8) "Eligible company" means any corporation, partnership, sole proprietorship, or business trust engaged in service or technology and meeting the standards promulgated by the authority in accordance with KRS Chapter 13A;

(9) "Inducements" means the income tax credits allowed and the assessment authorized by KRS 154.24-110, which are intended to induce companies engaged in service and technology industries to locate or expand in the Commonwealth;

(10) "Person" means an individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity or government, whether federal, state, county, city, or otherwise, including without limitation, any instrumentality, division, political subdivision, district, court, agency, or department thereof;

(11) "Relocation costs" means the identified expenditures by the company for moving costs, separation costs, and any other expenditures substantiated by the company which directly related to the move from an existing location outside of Kentucky to locations approved by the authority;

(12) "Rent" means:

(a) The actual annual rent or leasing fee paid by an approved company to a bona fide entity negotiated at arms length for the use of a building by the approved company to conduct the approved activity for which the inducement has been granted; or

(b) The fair rental value on an annual basis in a building owned by the approved company of the space used by the approved company to conduct the approved activity for which the inducement has been granted as determined by the authority using criteria which is customary in the real estate industry for the type of building being used;

(c) Rent shall include the cost of amortizing the cost of land and building over the period of time customary in the real estate industry for the type of building and for grounds being utilized, plus the customary cost of occupancy including, but not limited to, property taxes, heating and air-conditioning, electricity, water, sewer, and insurance;

(13) "Service or technology" means any activity involving the performance of work not otherwise classified by division, including [~~such~~] successor divisions ***of*** [~~as~~] agriculture, forestry and fishing, mining, construction, and manufacturing, in accordance with the "Standard Industrial Classification Manual", as revised by the United States Office of Management and Budget from time to time, or any successor publication. Notwithstanding the excluded classifications by divisions, those service and technology activities of a company engaged in an ineligible activity may be operated as a separate division and, with the approval of the authority and subject to the record keeping requirements established by the authority, may be deemed an eligible activity; and

(14) "Start-up costs" means the cost of furnishing and equipping the building for ordinary business functions, including computers, nonrecurring costs of fixed telecommunication equipment, furnishings, office equipment, and relocation costs as verified and approved by the authority in accordance with KRS 154.24-130.

Section 22. KRS 154.24-040 is amended to read as follows:

The authority, or its successor, shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of KRS 154.24-010 to 154.24-150, including, but not limited to, power and authority to:

(1) Provide and assist economic development projects pursuant to the provisions of KRS 154.24-010 to 154.24-150, and cooperate with eligible companies in order to promote, foster, and support economic development within the Commonwealth;

(2) Conduct hearings and inquiries, in the manner and by the methods as it deems desirable, including without limitation, appointment of special committees for the purpose of gathering information with respect to eligible companies and economic development projects for the purpose of making any determinations necessary or desirable in the furtherance of

the purposes of KRS 154.24-010 to 154.24-150;

(3) Negotiate the terms of and enter into service and technology agreements with approved companies;

(4) ***Designate*** ~~[Appoint an executive director, who shall be]~~ an officer of the authority~~[,]~~ to administer the business of the authority as provided in KRS 154.24-010 to 154.24-150, and ~~[to]~~ delegate to the ***officer*** ~~[executive director]~~ the rights and powers of the authority required for the proper and desirable execution of the purpose of the authority;

(5) Modify the terms of any service and technology agreement of any kind to which it is a party;

(6) Include in any service and technology agreement the amounts deemed necessary by the authority to pay consultation, advisory, and legal fees, and other expenses necessary or incident to the preparation, adoption, implementation, and enforcement of the terms of the service and technology agreement; however, all fees and expenses incident thereto shall be the responsibility of the approved company;

(7) Promulgate administrative regulations in accordance with KRS Chapter 13A, respecting its programs, duties, and responsibilities as prescribed under the provisions of KRS 154.24-010 to 154.24-150.

(8) Make, execute, and effectuate any agreement or other document with any person, necessary or appropriate to accomplish the purposes of KRS 154.24-010 to 154.24-150;

(9) Accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source, and to agree to, and to comply with, conditions incidental thereto;

(10) Sue and be sued in its own name, plead and be impleaded;

(11) Maintain an office in the city of Frankfort and at any other place or places as it may determine;

(12) Adopt an official seal and alter the same at pleasure;

(13) Adopt bylaws for the regulation of its affairs and the conduct of its business;

(14) Employ fiscal consultants, attorneys, appraisers, investments advisors and other consultants, agents, and employees required in the judgment of the authority, and to fix and pay their compensation from funds available to the authority;

(15) Invest any funds held by the authority or its agents, or any moneys not required for immediate disbursement, including investment income, in obligations authorized by KRS 386.020; and

(16) Exercise any or all of the general corporate powers of a nonprofit corporation organized under and not inconsistent with the laws of the Commonwealth.

Section 23. KRS 154.26-010 is amended to read as follows:

As used in KRS 154.26-015 to 154.26-100, unless the context clearly indicates otherwise:

(1) "Agreement" means an agreement entered into, pursuant to KRS 154.26-090, on behalf of the authority and an approved company with respect to an economic revitalization project;

(2) "Approved company" means any eligible company approved by the authority pursuant to KRS 154.26-080 requiring an economic revitalization project;

(3) "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

(c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(e) All costs required for the installation of utilities, including, but not limited to, water, sewer, sewer treatment, gas, electricity, communications, and railroads, and including off-site construction of the facilities paid for by the approved company; and

(f) All other costs comparable with those described above;

(4) "Assessment" means the job revitalization assessment fee authorized by KRS 154.26-100;

(5) "Authority" means the Kentucky ***Economic Development Finance*** ~~[Industrial Revitalization]~~ Authority created by KRS ***154.20-010***~~[154.26-020]~~;

(6) ~~["Board" means the board of directors of the Kentucky Rural Economic Development Authority, or its successor;~~

[~~(7)~~] "Commonwealth" means the Commonwealth of Kentucky;

(7)[~~(8)~~] "Economic revitalization project" or "project" means the acquisition, construction, equipping, and rehabilitation of machinery and equipment, constituting fixtures or otherwise, and with respect thereto, the construction, rehabilitation, and installation of improvements of facilities necessary or desirable for the acquisition, construction, installation, and rehabilitation of the machinery and equipment, including surveys; installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are utilized to improve the economic situation of the approved company to allow the approved company to remain in operation and retain or create jobs;

(8)[~~(9)~~] "Eligible company" means any corporation, partnership, sole proprietorship, or business trust, employing or intending to employ a minimum of twenty-five (25) persons engaged in manufacturing at the same facility, whether owned or leased, located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval by the authority of an economic revitalization project, including facilities where manufacturing has been temporarily suspended and which meets the standards promulgated by the authority pursuant to KRS 154.26-080;

(9)[~~(10)~~] "Inducements" means the Kentucky income tax credit and the job revitalization assessment fee as prescribed in KRS 154.26-090 and 154.26-100;

(10)[~~(11)~~] "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing that results in a change in the condition of the property and any related activity or function, together with the storage, warehousing, distribution, and related office facilities; and

(11)[~~(12)~~] "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.010, or any board, commission, institution, or division exercising any function of the state which is not an independent municipal corporation or political subdivision.

Section 24. KRS 154.26-030 is amended to read as follows:

The authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of KRS 154.26-015 to 154.26-100, including, but without limiting the generality of the foregoing to:

(1) Provide for projects pursuant to [~~the provisions of~~] KRS 154.26-015 to 154.26-100, and to cooperate with eligible companies in order to promote, foster, and support economic revitalization and development within the Commonwealth;

(2) Conduct hearings and inquiries, in the manner and by methods it deems desirable, including, but not limited to, the appointing of special committees to gather information with respect to eligible companies and projects for the purpose of making any determinations necessary or desirable in the furtherance of KRS 154.26-015 to 154.26-100;

(3) ***Designate*** [~~Appoint an executive director, who shall be~~] an officer of the authority[~~,~~] to administer the business of the authority as provided in KRS 154.26-015 to 154.26-100, and [~~to~~] delegate to the ***officer*** [~~executive director~~] the rights and powers of the authority required for the proper and desirable execution of the purposes of the authority;

(4) Consent, if it deems necessary or desirable in the fulfillment of its purposes, to the modification of the terms of an agreement of any kind to which the authority is a party;

(5) Promulgate administrative regulations in accordance with KRS Chapter 13A, respecting its programs and authority;

(6) Make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, or other organization or entity, necessary or appropriate to accomplish the purposes of KRS 154.26-015 to 154.26-100;

(7) Accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source and to agree to, and to comply with, conditions attached thereto;

(8) Sue and be sued in its own name, plead and be impleaded;

(9) Maintain an office in the city of Frankfort and at any other place or places as it may determine;

(10) Adopt an official seal and alter it at its pleasure;

(11) Adopt bylaws for the regulation of its affairs and the conduct of its business;

(12) Employ fiscal consultants, attorneys, appraisers, investment advisors, trustees, other consultants, agents and employees, and to fix and pay their compensation from funds available to the authority;

(13) Exercise any or all of the general corporate powers of a nonprofit corporation organized under KRS Chapter 273, and not inconsistent with [~~the provisions of~~] KRS 154.26-015 to 154.26-100; and

(14) Include in any revitalization agreement the amounts deemed necessary by the authority to pay consultant, advisory, and legal fees, and other expenses necessary or incident to the preparation, adoption, implementation, and enforcement of the terms of the revitalization agreements. All the fees and expenses shall be the responsibility of the approved company.

Section 25. KRS 154.26-080 is amended to read as follows:

(1) The authority shall establish standards for the determination and approval of eligible companies and their projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.

(2) These standards shall give greatest weight to the need for the project; the new capital investment in the project that will result in financial stability for the manufacturing facility; and the retention or expansion of the greatest number of employees at the manufacturing facility.

(3) With respect to each eligible company making an application to the authority for inducements, and with respect to the project described in the application, the authority shall make inquiries and request materials of the applicant, including, but not limited to, written evidence that except a substantial investment in the project, assisted by the inducements authorized by KRS 154.26-015 to 154.26-100, the eligible company will close its manufacturing facility, permanently lay off its employees, and cease operations.

(4) The eligible company shall, in a manner acceptable to the authority, detail the condition of the facility, including, but not limited to, financial, efficiency, and productivity matters; explain in detail why the company intends to close the facility; and set out alternatives that are available to the company.

(5) The authority shall engage the services of a competent consulting firm or technical resource to analyze the data made available by the company, and to collect and analyze additional information necessary to determine that, in its independent judgment, the company will close the facility absent intervention by the authority. The company shall pay the cost of this evaluation.

(6) The company shall cooperate with the consultant and provide all of the data which could reasonably be required by the consultant to make a fair assessment of the company's intentions to close the facility.

(7) The authority shall review the report of the consultant and other information which has been made available to it to determine whether the company intends to close the facility for valid reasons. The authority shall determine the potential of the proposed revitalization project to make the facility stable, productive, and competitive in its market.

(8) The authority shall hold a public hearing to solicit public comment from any person, group, or interested party regarding the proposed project.

(9) After the public hearing, the authority, by resolution ~~[of its board of directors]~~, may declare the jobs then existing at the facility to be lost; may approve the eligible company's application for a project; and may grant to the eligible company the status of an approved company. The decision reached by the authority shall be final and no appeal shall be granted.

(10) All meetings of the ~~[board of directors of the]~~ authority shall be held in accordance with KRS 61.805 to 61.850. The ~~[board of directors of the]~~ authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

Section 26. KRS 154.28-010 is amended to read as follows:

As used in KRS 154.28-010 to 154.28-090 and 141.400, unless the context clearly indicates otherwise:

(1) "Agreement" means an agreement entered into, pursuant to KRS 154.28-090, on behalf of the authority and an approved company with respect to an economic development project;

(2) "Approved company" means any eligible company, approved by the authority pursuant to KRS 154.28-080, requiring an economic development project;

(3) "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, rehabilitation, and installation of an economic development project;

(b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, rehabilitation, and installation of an economic project which is not paid by the vendor, supplier, deliverymen, contractors, or otherwise ~~[else]~~ provided;

(c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation, and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, rehabilitation, and installation of an economic development project;

(d) All costs which shall be required to be paid under the terms of any contract for the acquisition, construction, rehabilitation, and installation of an economic development project;

(e) All costs which shall be required for the installation of utilities such as water, sewer, sewer treatment, gas, electricity, communications, railroads, and similar facilities, and including offsite construction of the facilities paid for by the approved company; and

(f) All other costs comparable to those described above;

(4) "Authority" means the Kentucky ***Economic Development Finance*** ~~[Industrial Development]~~ Authority created by KRS ***154.20-010***~~[154.28-020]~~;

(5) "Commonwealth" means the Commonwealth of Kentucky;

(6) "Economic development project" or "project" means and includes the acquisition of any real estate and the construction

and installation of improvements and facilities necessary or desirable for improvement of the real estate, including: surveys, site tests, and inspections; subsurface site work and excavation; removal of structures, roadways, cemeteries, and other site obstructions; filling, grading, provision of drainage, and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; offsite construction of utility extensions to the boundaries of the real estate; and the acquisition and installation of manufacturing facilities on the real estate for the use of the approved company or its affiliates for manufacturing purposes;

(7) "Eligible company" means any corporation, partnership, sole proprietorship, or trust engaged in manufacturing which meets the standards promulgated by the authority pursuant to KRS Chapter 13A;

(8) "Inducement" means the Kentucky income tax credit as set forth in KRS 154.28-090;

(9) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property, and any activity functionally related to it, together with storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals; and

(10) "State agency" shall have the meaning assigned to the term in KRS 56.440(8).

Section 27. KRS 154.28-030 is amended to read as follows:

The authority shall have all the powers necessary or convenient to carry out the purposes and provisions of KRS 154.28-015 to 154.28-090 and 141.400, including, but not limited to:

(1) Provide for economic development projects pursuant to ~~[the provisions of]~~ KRS 154.28-015 to 154.28-090 and 141.400, and to cooperate with eligible companies in order to promote, foster, and support economic development within the Commonwealth;

(2) Conduct hearings and inquiries, in the manner and by methods as it deems desirable, including, but not limited to, the appointing of special committees to gather information with respect to eligible companies and economic projects for the purpose of making any determinations necessary or desirable in the furtherance of KRS 154.28-015 to 154.28-090 and 141.400;

(3) ***Designate*** ~~[Appoint an executive director, who shall be]~~ an officer of the authority~~[,]~~ to administer the business of the authority as provided in KRS 154.28-015 to 154.28-090 and 141.400, and ~~[to]~~ delegate to him the rights and powers of the authority required for the proper and desirable execution of the purposes of the authority;

(4) Consent, if it deems necessary or desirable in the fulfillment of its purposes, to the modification of the terms of an agreement of any kind to which the authority is a party;

(5) Promulgate administrative regulations in accordance with KRS Chapter 13A, respecting its programs and purposes;

(6) Make, execute, and give effect to any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, organization, or entity, necessary or appropriate to accomplish the purposes of KRS 154.28-015 to 154.28-090 and 141.400;

(7) Accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source and to agree to, and to comply with, conditions attached thereto;

(8) Sue and be sued in its own name, plead and be impleaded;

(9) Maintain an office in the city of Frankfort and at any other place or places as it may determine;

(10) Adopt an official seal and alter it at its pleasure;

(11) Adopt bylaws for the regulation of its affairs and the conduct of its business;

(12) Employ fiscal consultants, attorneys, appraisers, investment advisors, trustees, other consultants, agents, and employees, and to fix and pay their compensation from funds available to the authority;

(13) Exercise any or all of the general corporate powers of a nonprofit corporation organized under KRS Chapter 273, and not inconsistent with the provisions of KRS 154.28-015 to 154.28-090 and 141.400; and

(14) Include in any agreement the amounts deemed necessary by the authority to pay consultant, advisory, and legal fees, and other expenses necessary or incident to the preparation, adoption, implementation, and enforcement of the terms of those agreements, all fees and expenses to be the responsibility of the approved company.

Section 28. The following KRS sections are repealed:

154.12-201 Office of Business and Technology -- Office of Industrial Development.

154.12-209 Department for Existing Business and Industry -- Divisions -- Business Information Clearinghouse.

154.24-030 Kentucky Jobs Development Authority.

154.26-020 Kentucky Industrial Revitalization Authority.

154.28-020 Kentucky Industrial Development Authority.

Section 29. The General Assembly confirms Executive Order 92-559, as amended by Executive Order 92-626, relating to the reorganization of the Cabinet for Economic Development, to the extent that they are not otherwise confirmed by this Act.

The confirmation shall include, without being limited to, the transfer of all functions performed by the Export and Trade Assistance Program in the Office of International Marketing to the Coal Marketing and Export Council created by Executive Order 92-387, as amended by Executive Order 92-1147.

HB 261, AN ACT relating to the reorganization of the Natural Resources and Environmental Protection Cabinet.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly confirms Executive Order 93-721, issued July 27, 1993, which establishes the Office of Administrative Hearings in the Office of the Secretary, Natural Resources and Environmental Protection Cabinet. The Office of Administrative Hearings shall:

(1) Be managed by the Chief Hearing Officer, who shall be an ungraded executive director appointed by the Secretary of Natural Resources and Environmental Protection, subject to the approval of the Governor as provided in KRS 12.050; and

(2) Be divided into the following two sections, each managed by a section head:

1. The Hearings Section, which shall be responsible for, without being limited to:
    a. Conducting all administrative hearings, conferences, and related proceedings required to be held by applicable law;
    b. Preparing reports and recommendations for the secretary's consideration; and
    c. Ensuring that all hearings and conferences are conducted in an effective and judicious manner.
2. The Docket Coordination Section, which shall be responsible for, without being limited to:
    a. Scheduling, filing, and coordinating all requests for administrative hearings and conferences;
    b. Serving as support staff for the Hearings Section; and
    c. Performing administrative and logistical duties required by the Chief Hearing Officer.

The secretary shall appoint the additional personnel and provide the additional equipment and services needed to staff the Office of Administrative hearings, commensurate with available financial resources.

Section 2. The General Assembly does not confirm Executive Order 92-510, which was superseded and replaced by Executive Order 93-721.

HB 262, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly confirms Executive Order 93-606, dated June 23, 1993, which establishes the Division of Law Operations and abolishes the Divisions of Administrative Services and Defense Services within the Department of Public Advocacy.

HB 263, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly hereby confirms Executive Order 92-576, dated June 12, 1992, which creates the Division of Information Systems Management within the Department of Administrative Services of the Revenue Cabinet. The personnel, funds, equipment, facilities, and records maintained by the Revenue Cabinet which are affected by the creation of the Division of Information Systems Management shall be transferred to the Division of Information Systems Management.

HB 464, AN ACT relating to a lien information system.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

(1) It is the intent of the General Assembly that a statewide automated lien information system be created to accumulate and disseminate information to the public relative to lien notations on certificates of title to property issued by the Commonwealth, financing statements, continuation statements, lien releases, amendments and assignments of liens, and other information and lien documents filed pursuant to KRS Chapters 134, 186, 186A, and 355.

(2) There is hereby created and established within the office of the Secretary of State an independent agency of state government known as the Kentucky Lien Information System. The Secretary of State shall govern and administer the system, and he shall develop and implement the system and coordinate, on a statewide level, the strategic planning relating to the system's creation, operation, sale of data, and maintenance.

(3) The Secretary of State shall make the system operational by July 1, 1995. By November 1, 1994, he shall promulgate

all administrative regulations required pursuant to this Act. By May 1, 1995, the Secretary of State shall disseminate to the county clerks all administrative regulations in effect.

(4) The system shall permit information from the filings made in the offices of the county clerks or Secretary of State pursuant to KRS Chapters 134, 186, 186A, and 355 to be entered into and retrieved by automated means from the system and the master index created under the system by county clerks, the Secretary of State, and other persons designated by administrative regulations promulgated by the Secretary of State.

(5) The system shall require county clerks and the Secretary of State to automatically enter information relative to title lien notation filings, security interests, financing statements, continuation statements, releases, amendments and assignments thereof, and other Uniform Commercial Code and lien documents filed in their offices on or after July 1, 1995, pursuant to KRS Chapters 134, 186, 186A, and 355, into the system and the master index utilizing telecommunication terminals and associated devices pursuant to administrative regulations promulgated by the Secretary of State.

(6) The system shall include the public's right, at no charge, to search for and inspect, at the offices of each county clerk and the Secretary of State, public records, or reasonable summaries of public records, included in the master index created under the system. Design of the system for public access shall include consideration of the volume of public usage of the system, and all practicable steps shall be taken to assure that members of the public are not unreasonably delayed in their ability to search for and inspect public records included in the master index.

(7) The automated system established pursuant to KRS Chapter 186A shall be used by and integrated into the system where possible, and all cabinets, the Department of Information Systems, and other agencies of state government shall cooperate and assist the Secretary of State in the orderly development and implementation of the system.

(8) The Secretary of State shall employ staff necessary to operate and maintain the system and may transfer funds from the trust account established pursuant to Section 3 of this Act to reimburse the cabinets, departments, and other agencies of state government for the staff time and other resources devoted to assisting the Secretary of State in carrying out his duties as administrator of the system.

SECTION 2. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

(1) As administrator of the Kentucky Lien Information System, the Secretary of State shall:

(a) Create within the system a master index for all information relating to liens and security interests filed pursuant to KRS Chapters 134, 186, 186A, and 355 at the offices of county clerks and the Secretary of State;

(b) Permit the offices of all filing officers, county clerks, and the Secretary of State to add, modify, and delete information in the system and its master index as required in KRS Chapters 134, 186, 186A, and 355;

(c) Permit the offices of all filing officers, county clerks, and the Secretary of State to have access to the master index for review and search capabilities;

(d) Maintain the system and the master index;

(e) Provide security and protection of all information in the system and monitor the system to prevent unauthorized entry;

(f) Require standardized information for entry into the system and its master index;

(g) Approve all forms used in connection with the system;

(h) Promulgate administrative regulations for the sale of data in a machine-readable form or by electronic transmission;

(i) Promulgate administrative regulations by which all users and purchasers of information are advised of the disclaimer stated in subsection (3) of Section 14 of this Act; and

(j) Promulgate administrative regulations pursuant to KRS Chapter 13A to implement the system.

(2) If requested by a secured party of record or other lienholder and upon payment of a fee prescribed by administrative regulations promulgated by the Secretary of State, the Secretary of State shall send written notice confirming receipt of information in the system, and reflecting all information received and included in the master index as required in KRS Chapters 134, 186, 186A, and 355, to that secured party of record or other lienholder no later than 3:00 p.m., Frankfort time, on the next business day following receipt of the information.

(3) The Secretary of State shall recommend procedures and legislation to improve the record keeping function of county clerks' offices.

SECTION 3. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

There is hereby established a trust fund in the Treasury of the Commonwealth for use by the Secretary of State. The Secretary of State shall use the trust fund solely for the establishment, operation, and maintenance of the Kentucky Lien Information System. The trust fund shall be credited with three dollars ($3) of the fees charged by county clerks and the Secretary of State for the filing of an original financing statement, an assignment of, or amendment to, a financing statement, continuation statement, or other document pursuant to KRS Chapter 355; and for the notation, discharge, or

assignment of a lien on the certificate of title to property issued by the Commonwealth of Kentucky under KRS Chapter 186 or 186A. The funds shall be controlled by the Secretary of State for the system. The Secretary of State may request, and the request shall be honored, that the funds be invested and reinvested for the benefit of the system, and he shall use the funds to develop the system and pay for the necessary software, hardware, maintenance, and other costs of developing and operating the system. Income from the investments shall be credited to the funds available to the system.

Section 4. KRS 64.012 is amended to read as follows:

The county clerk shall receive for the following services the following fees ***and shall transmit, at least monthly, a portion thereof as provided in Section 3 of this Act to the Treasury of the Commonwealth for credit to the trust fund established pursuant to Section 3 of this Act***:

Recording deed of trust or assignment for the benefit of creditors, ***if*** [~~provided~~] the entire thereof does not exceed three (3) pages	$ 5.00
Exceeding three (3) pages, [~~for~~] each ***additional*** page	1.50
Copy and certification of same when ordered ***if the record does not exceed three (3) pages***	3.50
Exceeding three (3) pages, each additional page	***.50***
Each bond required to be taken or prepared by the clerk	2.00
Copy of any bond when ordered	1.50
Recording a bond, each bond	5.00
Receiving the acknowledgment or proof of any deed, mortgage***,*** or agreement, power of attorney, or other written instrument required by law to be done and certifying same	1.25
Taking the acknowledgment or proof of a deed of real estate, certifying and recording the same and recording his own certificate, ***if*** [~~provided~~] the entire record thereof does not exceed three (3) pages	7.00
Exceeding three (3) pages, [~~for~~] each ***additional*** page	1.50
Certified copy of deed ***if the entire record does not exceed three (3) pages***	3.50
Exceeding three (3) pages, each additional page	***.50***
Recording a mortgage of real estate, certificates, and all services connected with the same, ***if*** [~~provided~~] the entire record thereof does not exceed three (3) page	7.00
Exceeding three (3) pages, for each page	1.50
Certified copy of real estate mortgage ***if the entire record does not exceed three (3) pages***	3.50
Exceeding three (3) pages, each additional page	***.50***
Recording deed of assignment of real estate mortgage	5.00
Noting release of any lien, mortgage***,*** or redemption other than a deed of release	2.50
Receiving the acknowledgment, recording***,*** and certifying each deed of release of a mortgage or lien under KRS 382.360	5.00
Each additional marginal notation relating to same instrument	2.50
Making a record for the establishment of a city, recording the plan or plat thereof, and all other services incident	10.00
Recording survey of a city, or any part thereof, or any addition to or extensions of the boundary of a city	10.00
Every order concerning the establishment, changing, closing***,*** or discontinuing of roads, to be paid out of the county levy when the road is established, changed, closed***,*** or discontinued, and by the applicant when it is not	1.00

Administering an oath and certificate thereof	1.00
Issuing license for which no other fee is fixed by law	1.50
Marriage license, bond, certificate, and recording	14.00
For filing and indexing an original ***financing*** or continuation [~~financing~~] statement, and noting the security interest on the ***certificate of title*** [~~required receipt~~] for one ***(1)*** motor vehicle ***and entering it into the automated vehicle information system and into the Kentucky Lien Information System, established pursuant to Section 1 of this Act, if the entire record does not exceed three (3) pages***	***10.00***[~~6.00~~]
Exceeding three (3) pages, each additional page	***1.50***
For filing and indexing an assignment of ***rights under*** a financing statement ***or title lien statement and entering the assignment into the automated vehicle information system pursuant to KRS 186.045 and into the Kentucky Lien Information System established pursuant to Section 1 of this Act***	***10.00***[~~6.00~~]
For filing and indexing an amendment to a financing statement and entering same into the automated vehicle information system and into the Kentucky Lien Information System established pursuant to Section 1 of this Act, if the entire record does not exceed three (3) pages	***10.00***
Exceeding three (3) pages, each additional page	***1.50***
For filing and noting a statement of release of collateral under a financing statement ***or title lien statement and entering the statement of release into the automated vehicle information system and into the Kentucky Lien Information System established pursuant to Section 1 of this Act***	***5.00***[~~1.00~~]
Issuance of a certification as provided in KRS 355.9-407	***7.50***[~~3.50~~]
Certified copy of financing statement or statement of assignment as provided in KRS 355.9-407 ***if the entire record does not exceed three (3) pages***	***5.00***[~~3.50~~]
Exceeding three (3) pages, each additional page	***.50***
Recording real estate options, ***if*** [~~provided~~] the entire record [~~thereof~~] does not exceed three (3) pages	5.00
Exceeding three (3) pages, [~~for~~] each ***additional*** page	1.50
Recording power of attorney or revocation of power of attorney, ***if*** [~~provided~~] the entire record [~~thereof~~] does not exceed three (3) pages	5.00
Exceeding three (3) pages, [~~for~~] each ***additional*** page	1.50
Recording plats, maps and surveys, not exceeding 24 inches by 36 inches, per page	10.00
Recording all leases which are recordable by law, ***if*** [~~provided~~] the entire record [~~thereof~~] does not exceed three (3) pages	5.00
Exceeding three (3) pages, for each page	1.50
Marginal notation to same instrument	2.50
Filing or recording of certification of intention to operate a business under an assumed name	5.00
Filing a lien on a delinquent motor vehicle or trailer bill	6.00

Releasing a lien on a delinquent motor vehicle or trailer bill	1.50
Filing or recording of mechanic's and artisan's liens under KRS Chapter 376	5.00
Filing or recording of notice of lien issued by the Internal Revenue Service	5.00
Filing or recording of notice of lien discharges issued by the Internal Revenue Service	5.00
Filing or recording of lis pendens notice concerning proceedings in bankruptcy and other lis pendens notices, ***if*** ~~[provided]~~ the entire record ~~[thereof]~~ does not exceed three (3) pages	5.00
Exceeding three (3) pages, ~~[for]~~ each ***additional*** page	1.50
Filing or recording United States liens, ***if*** ~~[provided]~~ the entire record per lien does not exceed three (3) pages	5.00
Exceeding three (3) pages, ~~[for]~~ each ***additional*** page	1.50
Filing or recording release of a United States lien, ***if*** ~~[provided]~~ the entire record per lien does not exceed three (3) pages	5.00
Exceeding three (3) pages, ~~[for]~~ each ***additional*** page	1.50
Filing or recording state tax or other state liens, other than liens on delinquent motor vehicles or trailers	5.00
Filing release of a state tax or other state lien, other than a lien on a delinquent motor vehicle or trailer	5.00
Filing notification and declaration and petition of candidates for Commonwealth's attorney, District Court, and Circuit Court	200.00
Filing notification and declaration and petition of candidates for office in cities of the fifth or sixth class and candidates for county and independent boards of education	20.00
Filing notification and declaration and petition of candidates for other offices	50.00
Recording wills or other probate documents under KRS 394.300	5.00
Issuance of fish and game licenses or tags costing more than $1.00 each	.75
Registration of licenses for professional persons required to register with the county clerk	5.00
Recording and issuing articles, statements, or reports of corporations pursuant to KRS Chapters 271B, 272 and 273, including articles of incorporation, amendment, restatement of incorporation, merger, consolidation, or dissolution and statements of establishment of a series of shares, cancellation of a series of shares, reduction of capital, intent to dissolve, revocation of voluntary dissolution, or any other statement or report of a foreign or domestic corporation, ***if*** ~~[provided]~~ the entire record thereof does not exceed three (3) pages	5.00
Exceeding three (3) pages, ~~[for]~~ each ***additional*** page	1.50
Miscellaneous recordings for which no specific fee is set, ***if*** ~~[provided]~~ the entire record thereof does not exceed three (3) pages (except military discharges)	5.00
Exceeding three (3) pages, each additional page	1.50
Filing miscellaneous documents for which no specific fee is set, ***if*** ~~[provided]~~ the entire record thereof does not exceed three (3) pages	5.00
Exceeding three (3) pages, each additional page	1.50
Filing certification required by KRS 65.070(1)(a)	2.00

Certification of franchise tax assessment	2.50
Electronic fax transmission of copies, per page	***2.50***
Certified copy of any record if the record does not exceed three (3) pages	***3.50***
Exceeding three (3) pages, each additional page	***.50***

Section 5. KRS 186.045 is amended to read as follows:

(1) ***When*** [~~Whenever~~] a perfected security interest is assigned, the assignor ***may*** [~~shall~~] immediately give a statement of assignment to the assignee and at the same time deliver another copy of the statement to the debtor. The assignee ***may*** [~~shall~~], within thirty (30) days thereafter, present a copy of the statement of assignment to the county clerk in whose office the security interest was noted on the certificate of title. ***The failure of the assignor to give a statement of assignment to the assignee or the debtor or the assignee's failure to present a copy to the county clerk shall not affect the validity of the lien or its perfected status, but any person without notice of the assignment is protected in dealing with the assignor as the holder of the security interest. The assignor shall remain liable for any obligations as lienholder until the statement of assignment is provided to the assignee and the debtor and a copy is presented to the county clerk and entered in the automated vehicle information system.*** Upon receipt of the assignment, the county clerk shall mark the same as provided in subsection (2) of KRS 355.9-405 and attach it to the motor vehicle lien statement. The county clerk shall enter ***any*** [~~the~~] assignment of ***a*** [~~the~~] perfected security interest ***presented to the clerk*** into the automated vehicle information system ***and the Kentucky Lien Information System established pursuant to Section 1 of this Act***. For this service the county clerk shall collect a fee pursuant to KRS 64.012.

(2) ***When*** [~~Whenever~~] a security interest has been discharged, other than by proceedings under KRS 355.9-501 to 355.9-507 or similar proceedings, the secured party shall, within ten (10) days thereafter, deliver a termination statement in the manner required by KRS 355.9-404 to the county clerk of the county in which the motor vehicle lien statement was submitted. The secured party shall also deliver a copy of the termination statement to the debtor or the debtor's transferee. For failure to file the termination statement within the allowable time, the secured party shall be subject to the penalty provided in KRS 186.990(1). Within five (5) days after the receipt of ***the*** [~~such~~] documents, the county clerk shall note the filing in the index, in language prescribed by the cabinet, that the termination statement has been filed ***and shall promptly transmit the note of the filing to the office of the Secretary of State for inclusion in the master index created under the Kentucky Lien Information System established pursuant to Section 1 of this Act, within the time and in the manner prescribed by administrative regulations promulgated by the Secretary of State***. Upon presentation of the owner's title showing ***the*** [~~such~~] security interest to the county clerk where the termination statement was submitted, and with the copy of the termination statement submitted by the secured party, the clerk shall discharge the security interest by noting on ***the*** [~~such~~] title that the termination statement has been filed and place the seal of the county clerk thereon. The clerk shall return the owner's title to the owner. The county clerk shall then file the termination statement in the place from which the motor vehicle lien statement was removed. ***A*** termination ***statement shall*** [~~statements must~~] be retained in the clerk's files for a period of two (2) years subsequent to the date of filing ***the*** [~~such~~] statement, at which time ***it*** [~~they~~] may be destroyed. The fee for these services ***is*** [~~are~~] included in the ***fee for noting the original security interest on the certificate of title for one (1) motor vehicle pursuant to KRS 64.012*** [~~provisions of KRS 186A.190~~].

(3) Upon presentation of the owner's title showing ***the*** [~~such~~] security interest to the county clerk of a county where the termination statement was not delivered, the county clerk of that county shall access the automated system to determine whether a record of termination of the security interest has been entered into the automated system by the county clerk where the termination statement was delivered by the secured party as provided in KRS 186A.210. If ***the*** [~~such~~] record of termination has been entered into the automated system, the county clerk of the county where the termination statement was not delivered[~~,~~] shall note the discharge of the security interest on the certificate of title by noting that the termination statement has been delivered, the county where it was delivered, and placing the seal of the county clerk thereon and may rely on the automated system to do so. If ***the*** [~~such~~] record of termination has not been entered into the automated system, [~~in no case shall~~] the county clerk of the county other than where the termination statement was delivered ***shall not***[~~,~~] make any notation upon the certificate of title that the security interest has been discharged or that a termination statement has been delivered to the county where the motor vehicle lien statement was submitted.

(4) ***When*** [~~Whenever~~] any secured party repossesses a vehicle titled in this state, for which a security interest is in existence at the time of repossession, and disposes of ***the*** [~~such~~] vehicle pursuant to the provisions of KRS Chapter 355, he ***shall*** [~~must~~] present, within fifteen (15) days after ***the*** [~~such~~] disposition, an affidavit in form prescribed by the department***, a copy of the security agreement,*** and***, if the security agreement is noted on the title,*** a termination statement or proof that ***the*** [~~such~~] termination statement has been filed. The new owner shall pay all applicable fees for titling and transferring the vehicle to the county clerk. Upon receipt of ***the*** [~~such~~] documents, the county clerk who issued the lien***, if shown on the title,*** shall then omit from the title he makes application for any information relating to the security interest under which the vehicle was repossessed or any security interest subordinate thereto. However, any security interest, as shown by ***the*** [~~such~~] title which is superior to the one under which the vehicle was repossessed, ***shall*** [~~must~~] be shown on

the title issued by the clerk unless the prior secured party has discharged ***the*** [~~such~~] security interest in ***the*** [~~such~~] clerk's office or proof of termination is submitted in case ***the*** [~~such~~] prior security interest was discharged in another clerk's office.

(5) ***When*** [~~Whenever~~] any vehicle brought into this state is required to be titled in this state and ***the*** [~~such~~] vehicle is [~~then~~] subject to a security interest in another state as shown by the out-of-state documents presented to the clerk, the county clerk ***shall be*** [~~is~~] prohibited from processing the application for title on the vehicle unless the owner obtains from the secured party a financing statement or motor vehicle lien statement and presents ***it*** [~~same~~] to the clerk along with the fees required in KRS ***64.012*** [~~186A.190~~]. The clerk shall note the out-of-state security interest on the certificate of title. This provision ***shall*** [~~does~~] not apply to vehicles required to be registered in Kentucky under forced registration provisions under KRS 186.145.

(6) The fees provided for in this section ***shall be*** [~~are~~] in addition to any state fee provided for by law.

(7) Any person violating any provision of this section or any person refusing to surrender a certificate of title registration and ownership or transfer certificate upon request of any person entitled thereto, is subject to the penalties provided in subsection (1) of KRS 186.990.

(8) The county clerk ***shall be*** [~~is~~] prohibited from noting any security interest on a certificate of title on any vehicle subject to the provisions of KRS Chapter 186A if a certificate of title therefor is presented to him which has all the spaces provided thereon for noting security interests fully exhausted. The owner ***shall*** [~~must~~] see to it that a discharge is noted on the certificate of title for each security interest and then a duplicate title as provided for in KRS 186A.180 ***shall*** [~~must~~] be obtained from the clerk by the owner of the vehicle.

(9) Security interests in vehicles sold to or owned by residents of other states ***shall*** [~~must~~] be perfected in the state of ***the*** [~~such~~] nonresident and repossession of the vehicle ***shall*** [~~must~~] be taken pursuant to the laws of ***that*** [~~such~~] state, unless the vehicle is principally operated in Kentucky and is properly titled [~~herein~~] under KRS Chapter 186A and the security interest is authorized to be noted on the certificate of title by the county clerk under KRS Chapter 186A.

Section 6. KRS 186A.190 is amended to read as follows:

(1) The perfection and discharge of a security interest in any property for which has been issued a Kentucky certificate of title shall be by notation on the certificate of title. The notation of the security interest on the certificate of title shall be in accordance with this chapter and remain effective until discharged under this chapter and KRS Chapter 186. The perfection of an assignment of a security interest which has been noted on the certificate of title shall be in accordance with the provisions of KRS 186.045(1).

(2) The notation of security interests relating to property required to be titled in Kentucky through the county clerk shall be done in the office of the county clerk of the county in which the debtor resides. If the debtor is other than a natural person, the provisions of KRS 355.9-401(5)(b) through (k) shall govern the determination of the county of the debtor's residence. If the debtor does not reside in the Commonwealth, the notation of the security interest shall be done in the office of the county clerk in which the property is principally situated or operated. Notwithstanding the existence of any filed financing statement under the provisions of KRS Chapter 355 relating to any property registered or titled in Kentucky, the sole means of perfecting and discharging a security interest in property for which a certificate of title is required by this chapter ***shall be*** [~~is~~] by notation on ***the*** [~~such~~] property's certificate of title. In other respects***,*** the security interest ***shall be*** [~~is~~] governed by the provisions of KRS Chapter 355.

(3) Before ownership of property subject to a lien evidenced by notation on the certificate of title may be transferred, the transferor shall obtain the release of the prior liens in his name against the property being transferred. Once a security interest has been noted on the owner's title, no subsequent title ***shall*** [~~may~~] be issued by any county clerk free of ***the*** [~~such~~] notation unless the owner's title is presented to the clerk and it has been noted thereon[~~,~~] that the security interest has been discharged. If this requirement is met, information relating to any security interest shown on the title as having been discharged may be omitted from the title to be issued by the clerk.

(4) No more than two (2) active security interests ***shall*** [~~may~~] be noted upon a certificate of title.

(5) In noting a security interest upon a certificate of title, the county clerk shall ensure that the certificate of title bears the lienholder's name, mailing address and zip code, the date the lien was noted, the notation number and the county in which the security interest was noted. The clerk shall obtain the information required by this subsection for notation upon the certificate of title from the title lien statement described in KRS 186A.195 to be provided to the county clerk by the secured party.

(6) [~~In lieu of any and all fees prescribed by statute and~~] For all the costs incurred in the notation and discharge of a security interest on the certificate of title, the county clerk shall receive ***the fees prescribed in KRS 64.012. The fees*** [~~ten dollars and fifty cents ($10.50) of which seven dollars and fifty cents ($7.50) shall be retained by the clerk and three dollars ($3) transmitted to the State Treasurer. The fee prescribed by this subsection~~] shall be paid at the time of submittal of the title lien statement described in KRS 186A.195.

(7) A copy of the application, certified by the county clerk, indicating the lien will be noted on the certificate of title shall be forwarded to the lienholder.

(8) At the same time that the security interest is noted on the certificate of title, the county clerk shall promptly transmit, within the time and in the manner prescribed by administrative regulations promulgated by the Secretary of State, the information required by this chapter to the office of the Secretary of State for inclusion in the master index created under the Kentucky Lien Information System established pursuant to Section 1 of this Act.

Section 7. KRS 142.010 is amended to read as follows:

(1) The following taxes shall be paid:

- (a) A tax of three dollars and fifty cents ($3.50) on each marriage license;
- (b) A tax of three dollars ($3) on each power of attorney to convey real or personal property;
- (c) A tax of three dollars ($3) on each mortgage, financing statement, ~~[or]~~ security agreement***, or notation of a lien or security interest on a certificate of title***;
- (d) A tax of three dollars ($3) on each conveyance of real property; and
- (e) A tax of three dollars ($3) on each lien or conveyance of coal, oil, gas, or other mineral right or privilege.

(2) The tax imposed by this section shall be collected by each county clerk as a prerequisite to the issuance of a marriage license or the original filing of an instrument subject to the tax. Subsequent assignment of the original instrument shall not be cause for additional taxation under this section. This section shall not be construed to require any tax upon a deed of release of a lien retained in a deed or mortgage.

(3) Taxes imposed under this section shall be reported and paid to the Revenue Cabinet by each county clerk within ten (10) days following the end of the calendar month in which instruments subject to tax are filed or marriage licenses issued. Each remittance shall be accompanied by a summary report on a form prescribed by the cabinet.

(4) Any county clerk who violates any of the provisions of this section shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180. In every case, any tax not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the date due until the date of payment.

Section 8. KRS 355.9-105 is amended to read as follows:

(1) In this article unless the context otherwise requires:

- (a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;
- (b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;
- (c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;
- (d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;
- (e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;
- (f) "Document" means document of title as defined in the general definitions of Article 1 (KRS 355.1-201) and a receipt of the kind described in subsection (2) of KRS 355.7-201;
- (g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;
- (h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (KRS 355.9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops;
- (i) "Instrument" means a negotiable instrument (defined in KRS 355.3-104), or a certificated security (defined in KRS 355.8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;
- (j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;
- (k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party***;***

(n) "System" means the Kentucky Lien Information System established pursuant to Section 1 of this Act.

(2) Other definitions applying to this article and the sections in which they appear are:

"Account." KRS 355.9-106;
"Attach." KRS 355.9-203;
"Construction mortgage." KRS 355.9-313(1);
"Consumer goods." KRS 355.9-109(1);
"Equipment." KRS 355.9-109(2);
"Farm products." KRS 355.9-109(3);
"Fixture." KRS 355.9-313;
"Fixture filing." KRS 355.9-313;
"General intangibles." KRS 355.9-106;
"Inventory." KRS 355.9-109(4);
"Lien creditor." KRS 355.9-301(3);
"Proceeds." KRS 355.9-306(1);
"Purchase money security interest." KRS 355.9-107;
"United States." KRS 355.9-103.

(3) The following definitions in other articles apply to this article:

"Check." KRS 355.3-104;
"Contract for sale." KRS 355.2-106;
"Holder in due course." KRS 355.3-302;
"Note." KRS 355.3-104;
"Sale." KRS 355.2-106.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Section 9. KRS 355.9-401 is amended to read as follows:

(1) The proper place to file in order to perfect a security interest is as follows:

(a) Except for equine or interests therein defined in KRS 355.9-109(3), when the collateral is equipment used in farming operations, or farm products, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the county clerk in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown in the office of the county clerk in the county where the land is located;

(b) When the collateral is timber to be cut or is minerals or the like (including oil and gas), other than coal, or accounts subject to subsection (5) of KRS 355.9-103, other than accounts arising out of the sale of coal, or when the financing statement is filed as a fixture filing (KRS 355.9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded, and where they shall be indexed separately from mortgage instruments; and

(c) In all other cases, if the debtor is a resident of this state in the office of the county clerk in the county of the debtor's residence or, if the debtor is a nonresident of this state, then in the office of the Secretary of State of the Commonwealth of Kentucky. The Secretary of State may collect ***the same*** [~~a~~] fee ***received by county clerks pursuant to KRS 64.012*** [~~of eight dollars ($8)~~] for each filing in his office under this section.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in KRS 355.9-103 determine whether filing is necessary in this state.

(5) For the purposes of this section:

(a) An individual debtor for whom filing is controlled by subsection (1)(c) of this section shall be deemed a resident of the county in which the debtor's principal place of business in this state is located. If the debtor does not have a place of business in this state, then the debtor shall be deemed a nonresident for purposes of filing in this state;

(b) A partnership shall be deemed a resident of the county in which its principal place of business in this state is located. If the debtor does not have a place of business in this state, then the debtor shall be deemed a nonresident for purposes of filing in this state;

(c) A limited partnership organized under KRS Chapter 362 shall be deemed a resident of the county in which its office is located, as set forth in its certificate of limited partnership or most recent amendment thereto filed pursuant to KRS Chapter 362. If such office is not located in this state, the debtor shall be deemed a nonresident for purposes of filing in this state;

(d) A limited partnership not organized under the laws of this state and authorized to do business in this state under KRS Chapter 362 shall be deemed a resident of the county in which the office of its process agent is located, as set forth in the designation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;

(e) A corporation organized under KRS Chapter 271B, 273 or 274 shall be deemed a resident of the county in which its registered office is located, as set forth in its most recent corporate filing with the Secretary of State which officially designates its current registered office;

(f) A corporation not organized under the laws of this state and authorized to transact or do business in this state under KRS Chapter 271B, 273 or 274 shall be deemed a resident of the county in which its registered office is located, as set forth in its most recent corporate filing with the Secretary of State which officially designates its current registered office;

(g) A cooperative corporation or association organized under KRS Chapter 272 shall be deemed a resident of the county in which its principal business is transacted, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;

(h) A cooperative corporation organized under KRS Chapter 279 shall be deemed a resident of the county in which its principal office is located, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;

(i) A business trust organized under KRS Chapter 386 shall be deemed a resident of the county in which its principal place of business is located, as evidenced by the recordation of its declaration of trust in that county pursuant to KRS Chapter 386;

(j) A credit union organized under KRS Chapter 290 shall be deemed a resident of the county in which its principal place of business is located, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky; and

(k) Any other organization (defined in KRS 355.1-201) shall be deemed a resident of the county in which its principal place of business in this state is located, except that any limited partnership or corporation not organized under the laws of this state and not authorized to transact or do business in this state shall be deemed a nonresident for purposes of filing in this state. If the organization does not have a place of business in this state, then it shall be deemed a nonresident for purposes of filing in this state.

Section 10. KRS 355.9-403 is amended to read as follows:

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) Except as provided in subsection (6) of this section a filed financing statement is effective for a period of five (5) years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five (5) year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty (60) days or until expiration of the five (5) year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within six (6) months prior to the expiration of the five (5) year period specified in subsection (2) of this section. Any such continuation statement must be signed by the secured party, identify the original statement by file number and date filed and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of KRS 355.9-405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the

original statement is continued for five (5) years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) of this section unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one (1) year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other relating filings, or by other means, that if he physically destroys the financing statements of a period more than five (5) years past, those which have been continued by a continuation statement or which are still effective under subsection (6) of this section shall be retained.

(4) Except as provided in subsection (7) of this section***,*** a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall***:***

(a) Index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement***; and***

(b) Promptly transmit, within the time and in the manner prescribed by administrative regulations promulgated by the Secretary of State, the information contained in the statement, together with the date and time of filing and file number thereof, to the office of the Secretary of State for inclusion in the master index created under the Kentucky Lien Information System.

(5) The uniform fee for filing and indexing an original or a continuation statement shall be as provided for in KRS 64.012. This fee includes the fee for filing and indexing a termination statement and for sending or delivering the terminated instrument and financing statement.

(6) A real estate mortgage which is effective as a fixture filing under subsection (6) of KRS 355.9-402 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas), other than coal, or accounts subject to subsection (5) of KRS 355.9-103, other than accounts arising out of the sale of coal, or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

Section 11. KRS 355.9-404 is amended to read as follows:

(1) ***When*** [~~Whenever~~] there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, and identify the original statement by file number and date filed. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of KRS 355.9-405, including payment of the required fee. The uniform fee for filing and indexing such an assignment or statement thereof shall be three dollars ($3). If the affected secured party fails to file such termination statement as required by this subsection, or to send such a termination statement within ten (10) days after proper demand therefor he shall be liable to the debtor for one hundred dollars ($100), and in addition for any loss caused to the debtor by such failure.

(2) In the absence of a demand by the debtor for a statement of termination, and within fifteen (15) days after a secured transaction evidenced by record in the county clerk's or Secretary of State's office has terminated, the secured party must file with each filing officer with whom the financing statement was filed a termination statement to the effect that he no longer claims a security interest under the financing statement or other instrument, which shall be identified by file number and date filed. If the actual secured party willfully fails to send such a termination statement within fifteen (15) days after he no longer claims a security interest, he shall be liable to the debtor for twenty-five dollars ($25), and in addition for any loss caused to the debtor by such failure.

(3) ***(a)*** On presentation to the filing officer of such a termination statement he ***shall:*** [~~must~~]

1. Note it in the index***; and***

2. Promptly transmit, within the time and in the manner prescribed by administrative regulations promulgated by the Secretary of State, the information contained in the termination statement, together with the date and time of filing and the file number thereof, to the office of the Secretary of State for inclusion in the master index created under the Kentucky Lien Information System.

(b) If he has received the termination statement in duplicate, he shall return one (1) copy of the termination statement to the secured party stamped to show the time of receipt thereof. Whenever a statement required under this chapter need be sent to a party to the transaction by the filing officer, it shall be sufficient for the filing officer to send the statement to the party entitled to receive it, at his last known address. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one (1) year after receipt of the termination statement.

(4) The uniform fee for filing and indexing a termination statement for any financing statement filed prior to July 1, 1966 for which a termination fee was not paid when the financing statement was filed and for sending or delivering the terminated instrument and for sending or delivering the financing statement shall be ***three dollars ($3)*** {~~seventy-five cents ($0.75)~~}.

Section 12. KRS 355.9-405 is amended to read as follows:

(1) ***(a)*** A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall***:***

1. Mark the same as provided in KRS 355.9-403(4)***; and***

2. Promptly transmit, within the time and in the manner prescribed by administrative regulations promulgated by the Secretary of State, the information contained in the termination statement, together with the date and time of filing and the file number thereof, to the office of the Secretary of State for inclusion in the master index created under the Kentucky Lien Information System.

(b) The uniform fee for filing and indexing a financing statement so indicating an assignment shall be as provided in KRS 64.012.

(2) ***(a)*** A secured party may assign of record all or a part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall***:***

1. Mark ***the*** {~~such~~} separate statement with the date and hour of filing***; and***

2.. ***Promptly transmit, within the time and in the manner prescribed by administrative regulations promulgated by the Secretary of State, the information contained in the termination statement, together with the date and time of filing and the file number thereof, to the office of the Secretary of State for inclusion in the master index created under the Kentucky Lien Information System***.

(b) He shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas), other than coal, or accounts subject to subsection (5) of KRS 355.9-103, other than accounts arising out of the sale of coal, he shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing and indexing such a separate statement of assignment shall be as provided in KRS 64.012. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of KRS 355.9-402) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this chapter.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

Section 13. KRS 355.9-406 is amended to read as follows:

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of KRS 355.9-405, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing***;*** {~~and~~} shall note the same upon the margin of the index of the filing of the financing statement***; and shall promptly transmit, within the time and in the manner prescribed by administrative regulations promulgated by the Secretary of State, the information contained in the termination statement, together with the date and time of filing and the file number thereof, to the office of the Secretary of State for inclusion in the master index of the Kentucky Lien Information System***. The uniform fee for filing and noting {~~such~~} a statement of release shall be as provided for in KRS 64.012.

Section 14. KRS 355.9-407 is amended to read as follows:

(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and

date and hour of the filing of the original and deliver or send the copy to *the* [~~such~~] person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each [~~such~~] statement and the names and addresses of each secured party therein. Upon request*,* the filing officer shall furnish a certified copy of any filed financing statement or statement of assignment.

(3) *Upon the request of any person, a county clerk or the Secretary of State shall conduct a search of the master index for any effective financing statements, lien notations, statements of assignment, continuation statements, releases, termination statements, and other statements filed pursuant to KRS Chapters 134, 186, 186A, and 355 with respect to a specified debtor. The officer shall report his findings as of a specified date and hour by issuing a certificate listing the file number, date, hour, and filing location of each filing and the names and addresses of each secured party, lessor, or consignor therein. The certificate shall contain the following disclaimer: "This is an information system. The Secretary of State, by furnishing this information, makes no warranty or representation that the information is correct or complete. Any party obtaining information from this system shall be on notice to examine the individual filings for any legal reliance." The fee for this search shall be fixed by administrative regulation promulgated by the Secretary of State and shall be divided between the Kentucky Lien Information System, and the county clerk or Secretary of State conducting the search in the manner provided in the administrative regulation.*

(4) Neither the filing officer*, county clerk, Secretary of State* nor any employee *thereof* [~~of the filing officer~~] shall be personally liable for any damages which may arise due to information furnished pursuant to this section which is subsequently shown to be inaccurate.

Section 15. Sections 5 through 14 of this Act shall take effect July 1, 1995.

The Committee Substitute to **HB 464** is as follows:

HB 464, AN ACT relating to a lien information system.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

(1) It is the intent of the General Assembly that a statewide automated lien information system be created to accumulate and disseminate information to the public, and to any state agency that needs information, relative to lien notations on certificates of title to property issued by the Commonwealth, financing statements, continuation statements, lien releases, amendments and assignments of liens, and other information and lien documents filed pursuant to 26 U.S.C. Section 6321 and KRS Chapters 134, 186, 186A, and 355.

(2) There is hereby created and established within the office of the Secretary of State an independent agency of state government known as the Kentucky Lien Information System. The Secretary of State shall govern and administer the system, and he shall develop and implement the system and coordinate, on a statewide level, the strategic planning relating to the system's creation, operation, sale of data, and maintenance.

(3) The Secretary of State shall make the system operational by April 15, 1996. By November 1, 1994, he shall promulgate all administrative regulations required pursuant to this Act. By March 1, 1996, the Secretary of State shall disseminate to the county clerks all administrative regulations in effect.

(4) The system shall permit information from the filings made in the offices of the county clerks or Secretary of State pursuant to 26 U.S.C. Section 6321 and KRS Chapters 134, 186, 186A, and 355 to be retrieved by automated means from the system and the master index created under the system by county clerks, the Secretary of State, and other persons designated by administrative regulations promulgated by the Secretary of State.

(5) The system shall require county clerks and the Secretary of State to automatically enter information relative to title lien notation filings, security interests, financing statements, continuation statements, releases, amendments and assignments thereof, and other Uniform Commercial Code and lien documents filed in their offices on or after July 1, 1995, pursuant to 26 U.S.C. Section 6321 and KRS Chapters 134, 186, 186A, and 355, into the system and the master index utilizing telecommunication terminals and associated devices pursuant to administrative regulations promulgated by the Secretary of State.

(6) The system shall include the public's right, at no charge, to search for and inspect, at the offices of each county clerk and the Secretary of State, public records, or reasonable summaries of public records, included in the master index created under the system. Design of the system for public access shall include consideration of the volume of public usage of the system, and all practicable steps shall be taken to assure that members of the public are not unreasonably delayed in their ability to search for and inspect public records included in the master index.

(7) The automated system established pursuant to KRS Chapter 186A shall be used by and integrated into the system where possible, and all cabinets, the Department of Information Systems, and other agencies of state government shall cooperate and assist the Secretary of State in the orderly development and implementation of the system.

(8) The Secretary of State shall employ staff necessary to operate and maintain the system and may transfer funds from the trust account established pursuant to Section 3 of this Act to reimburse the cabinets, departments, and other agencies of state government for the staff time and other resources devoted to assisting the Secretary of State in carrying out his duties as administrator of the system.

SECTION 2. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

(1) As administrator of the Kentucky Lien Information System, the Secretary of State shall:

- ***(a) Create within the system a master index for all information relating to liens and security interests filed pursuant to 26 U.S.C. Section 6321 and KRS Chapters 134, 186, 186A, and 355 at the offices of county clerks and the Secretary of State;***
- ***(b) Permit the offices of all county clerks, and the Secretary of State to add, modify, and delete information in the system and its master index as required in 26 U.S.C. Section 6321 and KRS Chapters 134, 186, 186A, and 355;***
- ***(c) Permit the offices of all county clerks, and the Secretary of State to have access to the master index for review and search capabilities;***
- ***(d) Maintain the system and the master index;***
- ***(e) Provide security and protection of all information in the system and monitor the system to prevent unauthorized entry;***
- ***(f) Require standardized information for entry into the system and its unique master indexing system;***
- ***(g) Approve all forms used in connection with the system;***
- ***(h) Promulgate administrative regulations for the terms of release and cost of sale of data in a machine-readable form or by electronic transmission;***
- ***(i) Promulgate administrative regulations by which all users and purchasers of information are advised of the disclaimer stated in subsection (3) of Section 14 of this Act; and***
- ***(j) Promulgate administrative regulations pursuant to KRS Chapter 13A to implement the system.***

(2) If requested by a secured party of record or other lienholder and upon payment of an additional fee prescribed by administrative regulations promulgated by the Secretary of State, the Secretary of State shall send written notice confirming receipt of information in the system, and reflecting all information received and included in the master index as required in 26 U.S.C. Section 6321 and KRS Chapters 134, 186, 186A, and 355, to that secured party of record or other lienholder no later than 3:00 p.m., Frankfort time, on the next business day following receipt of the information.

SECTION 3. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

There is hereby established a trust fund in the Treasury of the Commonwealth for use by the Secretary of State. The Secretary of State shall use the trust fund solely for the establishment, operation, and maintenance of the Kentucky Lien Information System. The trust fund shall be credited with one dollar ($1) of the fees charged by county clerks and the Secretary of State for the filing of an original financing statement pursuant to KRS Chapter 355; for the notation of a lien on the certificate of title to property issued by the Commonwealth of Kentucky under KRS Chapter 186 or 186A; and for the filing and recording of a notice of a lien or a lien discharge issued by the Internal Revenue Service under KRS 382.480. The funds shall be controlled by the Secretary of State for the system. The Secretary of State may request, and the request shall be honored, that the funds be invested and reinvested for the benefit of the system, and he shall use the funds to develop the system and pay for the necessary software, hardware, maintenance, and other costs of developing and operating the system. Income from the investments shall be credited to the funds available to the system.

Section 4. KRS 64.012 is amended to read as follows:

The county clerk shall receive for the following services the following fees ***and shall transmit, at least monthly, a portion thereof as provided in Section 3 of this Act to the Treasury of the Commonwealth for credit to the trust fund established pursuant to Section 3 of this Act***:

Recording deed of trust or assignment for the benefit of creditors, ***if*** ~~[provided]~~ the entire thereof does not exceed three (3) pages	$ 5.00
Exceeding three (3) pages, ~~[for]~~ each ***additional*** page	***2.00*** ~~[1.50]~~
Copy and certification of same when ordered ***if the record does not exceed three (3) pages***	3.50
Exceeding three (3) pages, each additional page	***.50***
Each bond required to be taken or prepared by the clerk	2.00
Copy of any bond when ordered	1.50

Recording a bond, each bond	5.00
Receiving the acknowledgment or proof of any deed, mortgage, or agreement, power of attorney, or other written instrument required by law to be done and certifying same	1.25
Taking the acknowledgment or proof of a deed of real estate, certifying and recording the same and recording his own certificate, ***if*** [~~provided~~] the entire record thereof does not exceed three (3) pages	7.00
Exceeding three (3) pages, [~~for~~] each ***additional*** page	1.50
Certified copy of deed ***if the entire record does not exceed three (3) pages***	3.50
Exceeding three (3) pages, each additional page	***.50***
Recording a mortgage of real estate, certificates, and all services connected with the same, ***if*** [~~provided~~] the entire record thereof does not exceed three (3) page	7.00
Exceeding three (3) pages, for each page	1.50
Certified copy of real estate mortgage ***if the entire record does not exceed three (3) pages***	3.50
Exceeding three (3) pages, each additional page	***.50***
Recording deed of assignment of real estate mortgage	5.00
Noting release of any lien, mortgage, or redemption other than a deed of release	2.50
Receiving the acknowledgment, recording, and certifying each deed of release of a mortgage or lien under KRS 382.360	5.00
Each additional marginal notation relating to same instrument	2.50
Making a record for the establishment of a city, recording the plan or plat thereof, and all other services incident	10.00
Recording survey of a city, or any part thereof, or any addition to or extensions of the boundary of a city	10.00
Every order concerning the establishment, changing, closing, or discontinuing of roads, to be paid out of the county levy when the road is established, changed, closed, or discontinued, and by the applicant when it is not	1.00
Administering an oath and certificate thereof	1.00
Issuing license for which no other fee is fixed by law	1.50
Marriage license, bond, certificate, and recording	14.00
For filing and indexing an original ***financing*** or continuation [~~financing~~] statement, and noting the security interest on the ***certificate of title*** [~~required receipt~~] for one ***(1)*** motor vehicle ***and entering it into the automated vehicle information system and into the Kentucky Lien Information System, established pursuant to Section 1 of this Act, if the entire record does not exceed three (3) pages***	***10.00***[~~6.00~~]
Exceeding three (3) pages, each additional page	***1.50***
For filing and indexing an assignment of ***rights under*** a financing statement ***or title lien statement and entering the assignment into the automated vehicle information system pursuant to KRS 186.045 and into the Kentucky Lien Information System***	

established pursuant to Section 1 of this Act	***10.00***[~~6.00~~]
For filing and indexing an amendment to a financing statement and entering same into the automated vehicle information system and into the Kentucky Lien Information System established pursuant to Section 1 of this Act, if the entire record does not exceed three (3) pages	***10.00***
Exceeding three (3) pages, each additional page	***1.50***
For filing and noting a statement of release of collateral under a financing statement ***or title lien statement and entering the statement of release into the automated vehicle information system and into the Kentucky Lien Information System established pursuant to Section 1 of this Act***	***2.00***[~~1.00~~]
Issuance of a certification as provided in KRS 355.9-407	***7.50***[~~3.50~~]
Certified copy of financing statement or statement of assignment as provided in KRS 355.9-407 ***if the entire record does not exceed three (3) pages***	***5.00***[~~3.50~~]
Exceeding three (3) pages, each additional page	***.50***
Recording real estate options, ***if*** [~~provided~~] the entire record [~~thereof~~] does not exceed three (3) pages	5.00
Exceeding three (3) pages, [~~for~~] each ***additional*** page	1.50
Recording power of attorney or revocation of power of attorney, ***if*** [~~provided~~] the entire record [~~thereof~~] does not exceed three (3) pages	5.00
Exceeding three (3) pages, [~~for~~] each ***additional*** page	1.50
Recording plats, maps and surveys, not exceeding 24 inches by 36 inches, per page	10.00
Recording all leases which are recordable by law, ***if*** [~~provided~~] the entire record [~~thereof~~] does not exceed three (3) pages	5.00
Exceeding three (3) pages, for each page	1.50
Marginal notation to same instrument	2.50
Filing or recording of certification of intention to operate a business under an assumed name	5.00
Filing a lien on a delinquent motor vehicle or trailer bill	6.00
Releasing a lien on a delinquent motor vehicle or trailer bill	1.50
Filing or recording of mechanic's and artisan's liens under KRS Chapter 376	5.00
Filing or recording of notice of lien issued by the Internal Revenue Service ***and entering the notice into the Kentucky Lien Information System established pursuant to Section 1 of this Act***	***10.00*** [~~5.00~~]
Filing or recording of notice of lien discharges issued by the Internal Revenue Service ***and entering the notice into the Kentucky Lien Information System established pursuant to Section 1 of this Act***	***10.00*** [~~5.00~~]
Filing or recording of lis pendens notice concerning proceedings in bankruptcy and other lis pendens notices, ***if*** [~~provided~~] the entire record [~~thereof~~] does not exceed three (3) pages	5.00
Exceeding three (3) pages, [~~for~~] each ***additional*** page	1.50
Filing or recording United States liens, ***if*** [~~provided~~] the entire record	

per lien does not exceed three (3) pages	5.00
Exceeding three (3) pages, [~~for~~] each ***additional*** page	1.50
Filing or recording release of a United States lien, ***if*** [~~provided~~] the entire record per lien does not exceed three (3) pages	5.00
Exceeding three (3) pages, [~~for~~] each ***additional*** page	1.50
Filing or recording state tax or other state liens, other than liens on delinquent motor vehicles or trailers	5.00
Filing release of a state tax or other state lien, other than a lien on a delinquent motor vehicle or trailer	5.00
Filing notification and declaration and petition of candidates for Commonwealth's attorney, District Court, and Circuit Court	200.00
Filing notification and declaration and petition of candidates for office in cities of the fifth or sixth class and candidates for county and independent boards of education	20.00
Filing notification and declaration and petition of candidates for other offices	50.00
Recording wills or other probate documents under KRS 394.300	5.00
Issuance of fish and game licenses or tags costing more than $1.00 each	.75
Registration of licenses for professional persons required to register with the county clerk	5.00
Recording and issuing articles, statements, or reports of corporations pursuant to KRS Chapters 271B, 272 and 273, including articles of incorporation, amendment, restatement of incorporation, merger, consolidation, or dissolution and statements of establishment of a series of shares, cancellation of a series of shares, reduction of capital, intent to dissolve, revocation of voluntary dissolution, or any other statement or report of a foreign or domestic corporation, ***if*** [~~provided~~] the entire record thereof does not exceed three (3) pages	5.00
Exceeding three (3) pages, [~~for~~] each ***additional*** page	1.50
Miscellaneous recordings for which no specific fee is set, ***if*** [~~provided~~] the entire record thereof does not exceed three (3) pages (except military discharges)	5.00
Exceeding three (3) pages, each additional page	1.50
Filing miscellaneous documents for which no specific fee is set, ***if*** [~~provided~~] the entire record thereof does not exceed three (3) pages	5.00
Exceeding three (3) pages, each additional page	1.50
Filing certification required by KRS 65.070(1)(a)	2.00
Certification of franchise tax assessment	2.50
Electronic fax transmission of copies, per page	***2.50***
Certified copy of any record if the record does not exceed three (3) pages	***3.50***
Exceeding three (3) pages, each additional page	***.50***

Section 5. KRS 186.045 is amended to read as follows:

(1) ***When*** [~~Whenever~~] a perfected security interest is assigned, the assignor ***may*** [~~shall~~] immediately give a statement of assignment to the assignee and at the same time deliver another copy of the statement to the debtor. The assignee ***may*** [~~shall~~], within thirty (30) days thereafter, present a copy of the statement of assignment to the county clerk in whose office the security interest was noted on the certificate of title. ***The failure of the assignor to give a statement of assignment to the assignee or the debtor or the assignee's failure to present a copy to the county clerk shall not***

affect the validity of the lien or its perfected status, but any person without notice of the assignment is protected in dealing with the assignor as the holder of the security interest. The assignor shall remain liable for any obligations as lienholder until the statement of assignment is provided to the assignee and the debtor and a copy is presented to the county clerk and entered in the automated vehicle information system. Upon receipt of the assignment, the county clerk shall mark the same as provided in subsection (2) of KRS 355.9-405 and attach it to the motor vehicle lien statement. The county clerk shall enter ***any*** [~~the~~] assignment of ***a*** [~~the~~] perfected security interest ***presented to the clerk*** into the automated vehicle information system ***and the Kentucky Lien Information System established pursuant to Section 1 of this Act***. For this service the county clerk shall collect a fee pursuant to KRS 64.012.

(2) ***When*** [~~Whenever~~] a security interest has been discharged, other than by proceedings under KRS 355.9-501 to 355.9-507 or similar proceedings, the secured party shall, within ten (10) days thereafter, deliver a termination statement in the manner required by KRS 355.9-404 to the county clerk of the county in which the motor vehicle lien statement was submitted. The secured party shall also deliver a copy of the termination statement to the debtor or the debtor's transferee. For failure to file the termination statement within the allowable time, the secured party shall be subject to the penalty provided in KRS 186.990(1). Within five (5) days after the receipt of ***the*** [~~such~~] documents, the county clerk shall note the filing in the index, in language prescribed by the cabinet, that the termination statement has been filed ***and shall promptly transmit electronically the filing to the office of the Secretary of State for inclusion in the master index created under the Kentucky Lien Information System established pursuant to Section 1 of this Act, within the time and in the manner prescribed by administrative regulations promulgated by the Secretary of State***. Upon presentation of the owner's title showing ***the*** [~~such~~] security interest to the county clerk where the termination statement was submitted, and with the copy of the termination statement submitted by the secured party, the clerk shall discharge the security interest by noting on ***the*** [~~such~~] title that the termination statement has been filed and place the seal of the county clerk thereon. The clerk shall return the owner's title to the owner. The county clerk shall then file the termination statement in the place from which the motor vehicle lien statement was removed. ***A*** termination ***statement shall*** [~~statements must~~] be retained in the clerk's files for a period of two (2) years subsequent to the date of filing ***the*** [~~such~~] statement, at which time ***it*** [~~they~~] may be destroyed. The fee for these services ***is*** [~~are~~] included in the ***fee for noting the original security interest on the certificate of title for one (1) motor vehicle pursuant to KRS 64.012*** [~~provisions of KRS 186A.190~~].

(3) Upon presentation of the owner's title showing ***the*** [~~such~~] security interest to the county clerk of a county where the termination statement was not delivered, the county clerk of that county shall access the automated system to determine whether a record of termination of the security interest has been entered into the automated system by the county clerk where the termination statement was delivered by the secured party as provided in KRS 186A.210. If ***the*** [~~such~~] record of termination has been entered into the automated system, the county clerk of the county where the termination statement was not delivered[~~,~~] shall note the discharge of the security interest on the certificate of title by noting that the termination statement has been delivered, the county where it was delivered, and placing the seal of the county clerk thereon and may rely on the automated system to do so. If ***the*** [~~such~~] record of termination has not been entered into the automated system, [~~in no case shall~~] the county clerk of the county other than where the termination statement was delivered ***shall not***[~~,~~] make any notation upon the certificate of title that the security interest has been discharged or that a termination statement has been delivered to the county where the motor vehicle lien statement was submitted.

(4) ***When*** [~~Whenever~~] any secured party repossesses a vehicle titled in this state, for which a security interest is in existence at the time of repossession, and disposes of ***the*** [~~such~~] vehicle pursuant to the provisions of KRS Chapter 355, he ***shall*** [~~must~~] present, within fifteen (15) days after ***the*** [~~such~~] disposition, an affidavit in form prescribed by the department***, a copy of the security agreement,*** and a termination statement or proof that ***the*** [~~such~~] termination statement has been filed. The new owner shall pay all applicable fees for titling and transferring the vehicle to the county clerk. Upon receipt of ***the*** [~~such~~] documents, the county clerk who issued the lien***, if shown on the title,*** shall then omit from the title he makes application for any information relating to the security interest under which the vehicle was repossessed or any security interest subordinate thereto. However, any security interest, as shown by ***the*** [~~such~~] title which is superior to the one under which the vehicle was repossessed, ***shall*** [~~must~~] be shown on the title issued by the clerk unless the prior secured party has discharged ***the*** [~~such~~] security interest in ***the*** [~~such~~] clerk's office or proof of termination is submitted in case ***the*** [~~such~~] prior security interest was discharged in another clerk's office.

(5) ***When*** [~~Whenever~~] any vehicle brought into this state is required to be titled in this state and ***the*** [~~such~~] vehicle is [~~then~~] subject to a security interest in another state as shown by the out-of-state documents presented to the clerk, the county clerk ***shall be*** [~~is~~] prohibited from processing the application for title on the vehicle unless the owner obtains from the secured party a financing statement or motor vehicle lien statement and presents ***it*** [~~same~~] to the clerk along with the fees required in KRS ***64.012*** [~~186A.190~~]. The clerk shall note the out-of-state security interest on the certificate of title. This provision ***shall*** [~~does~~] not apply to vehicles required to be registered in Kentucky under forced registration provisions under KRS 186.145.

(6) The fees provided for in this section ***shall be*** [~~are~~] in addition to any state fee provided for by law.

(7) Any person violating any provision of this section or any person refusing to surrender a certificate of title registration and ownership or transfer certificate upon request of any person entitled thereto, is subject to the penalties provided in

subsection (1) of KRS 186.990.

(8) The county clerk ***shall be*** [~~is~~] prohibited from noting any security interest on a certificate of title on any vehicle subject to the provisions of KRS Chapter 186A if a certificate of title therefor is presented to him which has all the spaces provided thereon for noting security interests fully exhausted. The owner ***shall*** [~~must~~] see to it that a discharge is noted on the certificate of title for each security interest and then a duplicate title as provided for in KRS 186A.180 ***shall*** [~~must~~] be obtained from the clerk by the owner of the vehicle.

(9) Security interests in vehicles sold to or owned by residents of other states ***shall*** [~~must~~] be perfected in the state of ***the*** [~~such~~] nonresident and repossession of the vehicle ***shall*** [~~must~~] be taken pursuant to the laws of ***that*** [~~such~~] state, unless the vehicle is principally operated in Kentucky and is properly titled [~~herein~~] under KRS Chapter 186A and the security interest is authorized to be noted on the certificate of title by the county clerk under KRS Chapter 186A.

Section 6. KRS 186A.190 is amended to read as follows:

(1) The perfection and discharge of a security interest in any property for which has been issued a Kentucky certificate of title shall be by notation on the certificate of title. The notation of the security interest on the certificate of title shall be in accordance with this chapter and remain effective until discharged under this chapter and KRS Chapter 186. The perfection of an assignment of a security interest which has been noted on the certificate of title shall be in accordance with the provisions of KRS 186.045(1).

(2) The notation of security interests relating to property required to be titled in Kentucky through the county clerk shall be done in the office of the county clerk of the county in which the debtor resides. If the debtor is other than a natural person, the provisions of KRS 355.9-401(5)(b) through (k) shall govern the determination of the county of the debtor's residence. If the debtor does not reside in the Commonwealth, the notation of the security interest shall be done in the office of the county clerk in which the property is principally situated or operated. Notwithstanding the existence of any filed financing statement under the provisions of KRS Chapter 355 relating to any property registered or titled in Kentucky, the sole means of perfecting and discharging a security interest in property for which a certificate of title is required by this chapter ***shall be*** [~~is~~] by notation on ***the*** [~~such~~] property's certificate of title. In other respects***,*** the security interest ***shall be*** [~~is~~] governed by the provisions of KRS Chapter 355.

(3) Before ownership of property subject to a lien evidenced by notation on the certificate of title may be transferred, the transferor shall obtain the release of the prior liens in his name against the property being transferred. Once a security interest has been noted on the owner's title, no subsequent title ***shall*** [~~may~~] be issued by any county clerk free of ***the*** [~~such~~] notation unless the owner's title is presented to the clerk and it has been noted thereon[~~,~~] that the security interest has been discharged. If this requirement is met, information relating to any security interest shown on the title as having been discharged may be omitted from the title to be issued by the clerk.

(4) No more than two (2) active security interests ***shall*** [~~may~~] be noted upon a certificate of title.

(5) In noting a security interest upon a certificate of title, the county clerk shall ensure that the certificate of title bears the lienholder's name, mailing address and zip code, the date the lien was noted, the notation number and the county in which the security interest was noted. The clerk shall obtain the information required by this subsection for notation upon the certificate of title from the title lien statement described in KRS 186A.195 to be provided to the county clerk by the secured party.

(6) [~~In lieu of any and all fees prescribed by statute and~~] For all the costs incurred in the notation and discharge of a security interest on the certificate of title, the county clerk shall receive ***the fees prescribed in KRS 64.012. The fees*** [~~ten dollars and fifty cents ($10.50) of which seven dollars and fifty cents ($7.50) shall be retained by the clerk and three dollars ($3) transmitted to the State Treasurer. The fee prescribed by this subsection~~] shall be paid at the time of submittal of the title lien statement described in KRS 186A.195.

(7) A copy of the application, certified by the county clerk, indicating the lien will be noted on the certificate of title shall be forwarded to the lienholder.

(8) At the same time that the security interest is noted on the certificate of title, the county clerk shall promptly electronically transmit, within the time and in the manner prescribed by administrative regulations promulgated by the Secretary of State, the information required by this chapter to the office of the Secretary of State for inclusion in the master index created under the Kentucky Lien Information System established pursuant to Section 1 of this Act.

Section 7. KRS 142.010 is amended to read as follows:

(1) The following taxes shall be paid:

(a) A tax of three dollars and fifty cents ($3.50) on each marriage license;

(b) A tax of three dollars ($3) on each power of attorney to convey real or personal property;

(c) A tax of three dollars ($3) on each mortgage, financing statement, [~~or~~] security agreement***, or notation of a lien or security interest on a certificate of title;***

(d) A tax of three dollars ($3) on each conveyance of real property; and

(e) A tax of three dollars ($3) on each lien or conveyance of coal, oil, gas, or other mineral right or privilege.

(2) The tax imposed by this section shall be collected by each county clerk as a prerequisite to the issuance of a marriage license or the original filing of an instrument subject to the tax. Subsequent assignment of the original instrument shall not be cause for additional taxation under this section. This section shall not be construed to require any tax upon a deed of release of a lien retained in a deed or mortgage.

(3) Taxes imposed under this section shall be reported and paid to the Revenue Cabinet by each county clerk within ten (10) days following the end of the calendar month in which instruments subject to tax are filed or marriage licenses issued. Each remittance shall be accompanied by a summary report on a form prescribed by the cabinet.

(4) Any county clerk who violates any of the provisions of this section shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180. In every case, any tax not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the date due until the date of payment.

Section 8. KRS 355.9-105 is amended to read as follows:

(1) In this article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of Article 1 (KRS 355.1-201) and a receipt of the kind described in subsection (2) of KRS 355.7-201;

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (KRS 355.9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops;

(i) "Instrument" means a negotiable instrument (defined in KRS 355.3-104), or a certificated security (defined in KRS 355.8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party***;***

(n) "System" means the Kentucky Lien Information System established pursuant to Section 1 of this Act.

(2) Other definitions applying to this article and the sections in which they appear are:

"Account." KRS 355.9-106;

"Attach." KRS 355.9-203;

"Construction mortgage." KRS 355.9-313(1);

"Consumer goods." KRS 355.9-109(1);

"Equipment." KRS 355.9-109(2);

"Farm products." KRS 355.9-109(3);
"Fixture." KRS 355.9-313;
"Fixture filing." KRS 355.9-313;
"General intangibles." KRS 355.9-106;
"Inventory." KRS 355.9-109(4);
"Lien creditor." KRS 355.9-301(3);
"Proceeds." KRS 355.9-306(1);
"Purchase money security interest." KRS 355.9-107;
"United States." KRS 355.9-103.

(3) The following definitions in other articles apply to this article:

"Check." KRS 355.3-104;
"Contract for sale." KRS 355.2-106;
"Holder in due course." KRS 355.3-302;
"Note." KRS 355.3-104;
"Sale." KRS 355.2-106.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Section 9. KRS 355.9-401 is amended to read as follows:

(1) The proper place to file in order to perfect a security interest is as follows:

(a) Except for equine or interests therein defined in KRS 355.9-109(3), when the collateral is equipment used in farming operations, or farm products, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the county clerk in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown in the office of the county clerk in the county where the land is located;

(b) When the collateral is timber to be cut or is minerals or the like (including oil and gas), other than coal, or accounts subject to subsection (5) of KRS 355.9-103, other than accounts arising out of the sale of coal, or when the financing statement is filed as a fixture filing (KRS 355.9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded, and where they shall be indexed separately from mortgage instruments; and

(c) In all other cases, if the debtor is a resident of this state in the office of the county clerk in the county of the debtor's residence or, if the debtor is a nonresident of this state, then in the office of the Secretary of State of the Commonwealth of Kentucky. The Secretary of State may collect ***the same*** [~~a~~] fee ***received by county clerks pursuant to KRS 64.012*** [~~of eight dollars ($8)~~] for each filing in his office under this section.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in KRS 355.9-103 determine whether filing is necessary in this state.

(5) For the purposes of this section:

(a) An individual debtor for whom filing is controlled by subsection (1)(c) of this section shall be deemed a resident of the county in which the debtor's principal place of business in this state is located. If the debtor does not have a place of business in this state, then the debtor shall be deemed a nonresident for purposes of filing in this state;

(b) A partnership shall be deemed a resident of the county in which its principal place of business in this state is located. If the debtor does not have a place of business in this state, then the debtor shall be deemed a nonresident for purposes of filing in this state;

(c) A limited partnership organized under KRS Chapter 362 shall be deemed a resident of the county in which its office is located, as set forth in its certificate of limited partnership or most recent amendment thereto filed pursuant to KRS Chapter 362. If such office is not located in this state, the debtor shall be deemed a nonresident for purposes of filing in this state;

(d) A limited partnership not organized under the laws of this state and authorized to do business in this state under KRS Chapter 362 shall be deemed a resident of the county in which the office of its process agent is located, as set forth in the designation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;

(e) A corporation organized under KRS Chapter 271B, 273 or 274 shall be deemed a resident of the county in which its registered office is located, as set forth in its most recent corporate filing with the Secretary of State which officially designates its current registered office;

(f) A corporation not organized under the laws of this state and authorized to transact or do business in this state under KRS Chapter 271B, 273 or 274 shall be deemed a resident of the county in which its registered office is located, as set forth in its most recent corporate filing with the Secretary of State which officially designates its current registered office;

(g) A cooperative corporation or association organized under KRS Chapter 272 shall be deemed a resident of the county in which its principal business is transacted, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;

(h) A cooperative corporation organized under KRS Chapter 279 shall be deemed a resident of the county in which its principal office is located, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;

(i) A business trust organized under KRS Chapter 386 shall be deemed a resident of the county in which its principal place of business is located, as evidenced by the recordation of its declaration of trust in that county pursuant to KRS Chapter 386;

(j) A credit union organized under KRS Chapter 290 shall be deemed a resident of the county in which its principal place of business is located, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky; and

(k) Any other organization (defined in KRS 355.1-201) shall be deemed a resident of the county in which its principal place of business in this state is located, except that any limited partnership or corporation not organized under the laws of this state and not authorized to transact or do business in this state shall be deemed a nonresident for purposes of filing in this state. If the organization does not have a place of business in this state, then it shall be deemed a nonresident for purposes of filing in this state.

Section 10. KRS 355.9-403 is amended to read as follows:

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) Except as provided in subsection (6) of this section a filed financing statement is effective for a period of five (5) years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five (5) year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty (60) days or until expiration of the five (5) year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within six (6) months prior to the expiration of the five (5) year period specified in subsection (2) of this section. Any such continuation statement must be signed by the secured party, identify the original statement by file number and date filed and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of KRS 355.9-405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five (5) years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) of this section unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one (1) year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other relating filings, or by other means, that if he physically destroys the financing statements of a period more than five (5) years past, those which have been continued by a continuation statement or which are still effective under subsection (6) of this section shall be retained.

(4) Except as provided in subsection (7) of this section*,* a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall*:*

(a) Index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement*; and*

(b) Promptly transmit, within the time and in the manner prescribed by administrative regulations promulgated

by the Secretary of State, the information contained in the statement, together with the date and time of filing and file number thereof, to the office of the Secretary of State for inclusion in the master index created under the Kentucky Lien Information System.

(5) The uniform fee for filing and indexing an original or a continuation statement shall be as provided for in KRS 64.012. This fee includes the fee for filing and indexing a termination statement and for sending or delivering the terminated instrument and financing statement.

(6) A real estate mortgage which is effective as a fixture filing under subsection (6) of KRS 355.9-402 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas), other than coal, or accounts subject to subsection (5) of KRS 355.9-103, other than accounts arising out of the sale of coal, or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

Section 11. KRS 355.9-404 is amended to read as follows:

(1) ***When*** [~~Whenever~~] there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, and identify the original statement by file number and date filed. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of KRS 355.9-405, including payment of the required fee. The uniform fee for filing and indexing such an assignment or statement thereof shall be three dollars ($3). If the affected secured party fails to file such termination statement as required by this subsection, or to send such a termination statement within ten (10) days after proper demand therefor he shall be liable to the debtor for one hundred dollars ($100), and in addition for any loss caused to the debtor by such failure.

(2) In the absence of a demand by the debtor for a statement of termination, and within fifteen (15) days after a secured transaction evidenced by record in the county clerk's or Secretary of State's office has terminated, the secured party must file with each filing officer with whom the financing statement was filed a termination statement to the effect that he no longer claims a security interest under the financing statement or other instrument, which shall be identified by file number and date filed. If the actual secured party willfully fails to send such a termination statement within fifteen (15) days after he no longer claims a security interest, he shall be liable to the debtor for twenty-five dollars ($25), and in addition for any loss caused to the debtor by such failure.

(3) ***(a)*** On presentation to the filing officer of such a termination statement he ***shall:*** [~~must~~]

1. Note it in the index***; and***

2. Promptly transmit, within the time and in the manner prescribed by administrative regulations promulgated by the Secretary of State, the information contained in the termination statement, together with the date and time of filing and the file number thereof, to the office of the Secretary of State for inclusion in the master index created under the Kentucky Lien Information System.

(b) If he has received the termination statement in duplicate, he shall return one (1) copy of the termination statement to the secured party stamped to show the time of receipt thereof. Whenever a statement required under this chapter need be sent to a party to the transaction by the filing officer, it shall be sufficient for the filing officer to send the statement to the party entitled to receive it, at his last known address. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one (1) year after receipt of the termination statement.

(4) The uniform fee for filing and indexing a termination statement for any financing statement filed prior to July 1, 1966 for which a termination fee was not paid when the financing statement was filed and for sending or delivering the terminated instrument and for sending or delivering the financing statement shall be ***three dollars ($3)*** [~~seventy-five cents ($0.75)~~].

Section 12. KRS 355.9-405 is amended to read as follows:

(1) ***(a)*** A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall***:***

1. Mark the same as provided in KRS 355.9-403(4)***; and***

2. ***Promptly transmit, within the time and in the manner prescribed by administrative regulations promulgated by the Secretary of State, the information contained in the termination statement, together with the date and time of filing and the file number thereof, to the office of the Secretary of State for inclusion in the master index created under the Kentucky Lien Information System***.

(b) The uniform fee for filing and indexing a financing statement so indicating an assignment shall be as provided in KRS 64.012.

(2) ***(a)*** A secured party may assign of record all or a part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall***:***

1. Mark ***the*** [~~such~~] separate statement with the date and hour of filing***; and***

2. ***Promptly transmit, within the time and in the manner prescribed by administrative regulations promulgated by the Secretary of State, the information contained in the termination statement, together with the date and time of filing and the file number thereof, to the office of the Secretary of State for inclusion in the master index created under the Kentucky Lien Information System***.

(b) He shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas), other than coal, or accounts subject to subsection (5) of KRS 355.9-103, other than accounts arising out of the sale of coal, he shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing and indexing such a separate statement of assignment shall be as provided in KRS 64.012. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of KRS 355.9-402) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this chapter.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

Section 13. KRS 355.9-406 is amended to read as follows:

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of KRS 355.9-405, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing***;*** [~~and~~] shall note the same upon the margin of the index of the filing of the financing statement***; and shall promptly transmit, within the time and in the manner prescribed by administrative regulations promulgated by the Secretary of State, the information contained in the termination statement, together with the date and time of filing and the file number thereof, to the office of the Secretary of State for inclusion in the master index of the Kentucky Lien Information System***. The uniform fee for filing and noting [~~such~~] a statement of release shall be as provided for in KRS 64.012.

Section 14. KRS 355.9-407 is amended to read as follows:

(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to ***the*** [~~such~~] person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each [~~such~~] statement and the names and addresses of each secured party therein. Upon request***,*** the filing officer shall furnish a certified copy of any filed financing statement or statement of assignment.

(3) ***Upon the request of any person, a county clerk or the Secretary of State shall conduct a search of the master index for any effective financing statements, lien notations, statements of assignment, continuation statements, releases, termination statements, and other statements filed pursuant to 26 U.S.C. Section 6321 and KRS Chapters 134, 186, 186A, and 355 with respect to a specified debtor. The officer shall report his findings as of a specified date and hour by issuing a certificate listing the file number, date, hour, and filing location of each filing and the names and addresses of each secured party, lessor, or consignor therein. The certificate shall contain the following disclaimer: "This is an information system. The Secretary of State, by furnishing this information, makes no warranty or representation that the information is correct or complete. Any party obtaining information from this system shall be on notice to examine the individual filings for any legal reliance." The fee for this search shall be fixed by***

administrative regulation consistent with and pursuant to 64.012.

(4) Neither the filing officer***, county clerk, Secretary of State*** nor any employee ***thereof*** [~~of the filing officer~~] shall be personally liable for any damages which may arise due to information furnished pursuant to this section which is subsequently shown to be inaccurate.

Section 15. KRS 382.480 is amended to read as follows:

(1) Notices of tax liens payable to the United States and certificates discharging such liens shall be filed by the collector of internal revenue, in duplicate, in the office of the county clerk of each county within which the property subject to the lien is located ***for entry in the Kentucky Lien Information System established pursuant to Section 1 of this Act***.

(2) When a notice of a federal tax lien is filed, the county clerk shall forthwith enter the same in ***the Kentucky Lien Information System and in*** an alphabetical federal tax lien index, showing on one (1) line the name and residence of the taxpayer named in the notice, the collector's serial number of ***the*** [~~such~~] notice, the date and hour of filing, and the amount of tax and penalties. He shall endorse on both the original and duplicate copies of the notice the date and hour of filing and shall mail the duplicate to the collector of internal revenue from whom received. The county clerk shall file and keep all original notices so filed, in numerical order, in a file designated "Federal Tax Lien Notices," or in the encumbrance book.

(3) Notices of all other liens payable to the United States, including, but not limited to environmental protection liens, and certificates discharging such liens shall be filed, in duplicate, in the office of the county clerk of each county within which the property subject to the lien is located.

(4) When a notice of a federal lien as provided by subsection (3) of this section is filed, the county clerk shall forthwith enter the same in an alphabetical federal lien index, showing on one (1) line the name and residence of the property owner named in the notice, identifying the specific lien holder, the date and hour of filing, and the amount of the lien. He shall indorse on both the original and duplicate copies of the notice the date and hour of filing and shall mail the duplicate to the lien holder from whom received. The county clerk shall file and keep all original notices so filed, in numerical order, in a file designated "Federal Lien Notices," or in the encumbrance book.

Section 16. Sections 5 through 15 of this Act shall take effect April 15, 1996.

HB 573, AN ACT relating to the Department of Information Systems.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 45.253 is amended to read as follows:

(1) Revolving accounts may be established by appropriation in a branch budget bill to finance activities which are self-supporting in whole or in part.

(2) Trust and agency accounts may be established by a branch budget bill to receive and disburse contributions, gifts, donations, devises, and federal appropriations, and, when authorized by law, by depositing all of the fees (which include fees for maintenance in state institutions, incidental fees, tuition fees, fees for board and room, athletics, and student activities), rentals, admittance, sales, licenses collected by law, subventions, and other miscellaneous receipts of budget units.

(3) The head of the budget unit or other responsible fiscal agent of the unit for which a revolving, trust, or agency account has been established shall deposit with the State Treasury all receipts of the character above described, and the Finance and Administration Cabinet shall credit all receipts to the budget unit and shall keep separate accounting for each account so established.

(4) The amounts credited to any revolving, trust, or agency account so provided, shall be held available for disbursement for the purpose provided by law and shall not be diverted to any other purpose. Revolving, trust, or agency accounts shall be subject to withdrawal from the State Treasury by the head of each budget unit when actually needed, on requisition to the Finance and Administration Cabinet in the same manner provided by law as other state funds are withdrawn. Funds received from the federal government in the form of grants or otherwise may be expended for the purpose intended even though received in a fiscal year other than that in which the related original encumbrance or expenditure was incurred. Trust and agency funds shall be allotted before an expenditure is made; and the secretary of the Finance and Administration Cabinet may withhold allotment of general fund appropriations to the extent trust and agency funds are available.

(5) Subject to prior approval by the secretary of the Finance and Administration Cabinet, the Chief Justice, and the Legislative Research Commission for their respective branches, any budget unit which, as an incident to its authorized duties and functions, furnishes requested services or materials to any persons outside state government, where such services or materials are not required by law to be furnished gratuitously, may charge such persons an amount not to exceed the total expense to the budget unit of the services or materials furnished. The receipts from the approved charges shall be credited to the surplus account of the general fund. Payroll deductions for the Kentucky State Police legal fund shall be made without any service fees or charges.

(6) The Department of Information Systems may charge any agency of local government***, any citizen, or any nongovernment agency*** an amount, not to exceed the total expense to the department, for services rendered or materials furnished at the request of the local government agency, unless the services or materials are required by law to be furnished gratuitously. The receipts from the authorized charges shall be deposited in the State Treasury and credited to the trust and agency fund, Department of Information Systems' operating account.

The Committee Amendment No. 1 to **HB 573** is as follows:

On page 2, line 13, by deleting "***, any citizen, or nongovernment agency***"

On page 2, after line 18, by inserting the following:

(7) All receipts which accrue as the result of the Department of Information Systems providing on-line computer access to public records, by nongovernment entities, shall be deposited in the State Treasury and credited to the trust and agency fund, Department of Information Systems' operating account."

HCR 36, A CONCURRENT RESOLUTION confirming the appointment of Joan Riehm to the Board of the Kentucky Long-Term Policy Research Center.

WHEREAS, pursuant to KRS 7B.030, the Governor has appointed Joan Riehm as an at-large member of the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 1994; and

WHEREAS, at-large appointments to the Kentucky Long-Term Policy Research Center Board are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of January 4, 1994, the Governor has delivered Ms. Riehm's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Joan Riehm meets the requirements established in KRS 7B.030 for membership on the Kentucky Long-Term Policy Research Center Board;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate hereby confirm the appointment of Joan Riehm to the Board of the Kentucky Long-Term Policy Research Center for a term ending October 6, 1994.

Section 2. That the Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Brereton C. Jones, Room 100, State Capitol and Ms. Joan Riehm, 3310 Trinity Road, Louisville, Kentucky 40206, in writing, of the General Assembly's action.

HCR 37, A CONCURRENT RESOLUTION confirming the appointment of Dr. Samuel Robinson to the State Board for Elementary and Secondary Education.

WHEREAS, KRS 156.029 specifies that the State Board for Elementary and Secondary Education shall consist of eleven (11) members, four (4) of whom shall represent the state at large, appointed by the Governor, subject to confirmation by the Senate and House of Representatives; and

WHEREAS, in Executive Order 92-290, dated March 20, 1992, ,Governor Brereton C. Jones appointed Dr. Samuel Robinson to represent the state at large on the State Board for Elementary and Secondary Education for the remainder of a term expiring April 14, 1996; and

WHEREAS, by letter of January 4, 1994, the Governor submitted to the General Assembly for confirmation the appointment of Dr. Samuel Robinson to the State Board for Elementary and Secondary Education; and

WHEREAS, the House of Representatives and the Senate find that Dr. Robinson meets the requirement of KRS 156.029 not to be engaged as a professional educator;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate do confirm the appointment of Dr. Samuel Robinson as a member of the State Board for Elementary and Secondary Education, representing the state at large, for a term expiring April 14, 1996.

Section 2. That, pursuant to KRS 11.160, the Clerk of the House of Representatives shall forward a copy of this Resolution, with written notification of its adoption , to Dr. Samuel Robinson, 5503 Apache Road, Louisville, Kentucky 40207, and to Governor Brereton C. Jones, Room 100, State Capitol, Frankfort, Kentucky 40601.

HCR 43, A CONCURRENT RESOLUTION confirming the appointment of Forrest Wayne Callico, M.D., to the Board of the Kentucky Long-Term Policy Research Center.

WHEREAS, pursuant to KRS 7B.030, the Governor has appointed Forrest Wayne Callico. M.D. as an at-large member of the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 1996; and

WHEREAS, at-large appointments to the Kentucky Long-Term Policy Research Center Board are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of January 4, 1994, the Governor has delivered Dr. Callico's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Forrest Wayne Callico meets the requirements established in KRS 7B.030 for membership on the Kentucky Long-Term Policy Research Center Board;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate hereby confirm the appointment of Forrest Wayne Callico, M.D. to the Board of the Kentucky Long-Term Policy Research Center for a term ending October 6, 1996.

Section 2. That the Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Brereton C. Jones, Room 100, State Capitol and Forrest Wayne Callico, M.D., 310 Cherrywood Drive, Ft. Mitchell, Kentucky 41011, in writing, of the General Assembly's action.

The Committee Substitute to **HCR 43** is as follows:

HCR 43, A CONCURRENT RESOLUTION confirming the appointment of Forrest Wayne Calico, M.D., to the Board of the Kentucky Long-Term Policy Research Center.

WHEREAS, pursuant to KRS 7B.030, the Governor has appointed Forrest Wayne Calico, M.D. as an at-large member of the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 1996; and

WHEREAS, at-large appointments to the Kentucky Long-Term Policy Research Center Board are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of January 4, 1994, the Governor has delivered Dr. Calico's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Forrest Wayne Calico meets the requirements established in KRS 7B.030 for membership on the Kentucky Long-Term Policy Research Center Board;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and the Senate hereby confirm the appointment of Forrest Wayne Calico, M.D. to the Board of the Kentucky Long-Term Policy Research Center for a term ending October 6, 1996.

Section 2. That the Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Brereton C. Jones, Room 100, State Capitol and Forrest Wayne Calico, M.D., 650 C Forest Hill Drive, Lexington, Kentucky 40509, in writing, of the General Assembly's action.

The Committee Title Amendment to **HCR 43** is as follows:

By changing "Callico" to "Calico".

HR 45, A RESOLUTION relating to committees of the General Assembly.

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. That the Majority Caucus of the House of Representatives consists of all House members of majority party affiliation.

Section 2. That the Minority Caucus of the House of Representatives consists of all House members of minority party affiliation.

Section 3. That the majority and minority caucuses of the House of Representatives are deemed to be committees, other than standing committees, of the House of Representatives and General Assembly.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills have been posted for Committee consideration:

Judiciary: **HB 141, HB 147, HB 414, HB 210, HB 251, HB 576, HB 305, HB 346, HB 358, HB 451, HB 461, HB 477, HB 494, HB 496, HB 515, HB 542, HB 543, HB 545, HB 553, HB 554, HB 570, HB 587, HB 594, HB 560**

Natural Resources and Environment: **HB 349, HB 350, HB 633, HB 650, HB 434**

Appropriations and Revenue: **HB 138, HB 341, HB 330, HB 331, HB 377**

Agriculture and Small Business: **HB 645**

Health and Welfare: **HB 653**

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 548**, by Representative Riggs:

On page 2, after line 13, by adding:

"Section 2. KRS 304.9-295 is amended to read as follows:

(1) This section shall apply to resident natural persons licensed as agents or solicitors for the following kinds of insurance: life, health, property, or casualty.

(2) This section shall not apply to:

(a) Persons holding licenses for which no examination is required by KRS 304.9-170 except that persons exempted from examination by KRS 304.9-170(1) and (2) shall be subject to this section;

(b) Persons holding limited or restricted licenses, as exempted by the commissioner, or

(c) Persons not licensed for one (1) full year prior to the end of a continuing education biennium as described in subsection (3) of this section.

(3) The licensees specified in subsection (1) of this section and not exempt under subsection (2) of this section who hold licenses issued on or after July 1, 1988, shall satisfactorily complete a minimum of twenty-four (24) classroom hours of continuing education courses during each continuing education biennium. A continuing education biennium shall begin on July 1 and end on June 30 two (2) years later.

(4) Only continuing education courses approved by the commissioner ***and attendance at legislative meetings as permitted in paragraph (e) of this subsection*** may be used to satisfy the continuing education requirement of subsection (3) of this section.

(a) The continuing education courses which meet the commissioner's standards for continuing education requirements are:

1. Any part of the Life Underwriter Training Council life course curriculum;
2. Any part of the Life Underwriter Training Council health course curriculum;
3. Any part of the American College Chartered Life Underwriter diploma curriculum;
4. Any part of the American Institute for Property and Liability Underwriters' chartered property and casualty underwriter profession designation program;
5. Any part of the Insurance Institute of America's programs;
6. Any part of the certified insurance counselor program;
7. Any insurance related course taught at an accredited college or university, if such course is approved by the commissioner;
8. Any course of instruction or seminar developed or sponsored by any authorized insurer, recognized agent association, recognized insurance trade association, or any independent program of instruction, if approved by the commissioner;
9. Any correspondence course approved by the commissioner.

(b) The commissioner shall prescribe the number of hours of continuing education credit for each continuing education course approved pursuant to this subsection.

(c) If a continuing education course requires successful completion of a written examination, no continuing education credit shall be given to persons who do not successfully complete such written examination.

(d) The fee for filing continuing education courses for approval by the commissioner shall be as specified in Subtitle 4 of KRS Chapter 304.

(e) Attendance at a regular or an interim meeting of the Kentucky General Assembly Banking and Insurance Committees by a licensed agent either as an observor or as a member of the committee, shall be awarded one hour's credit for each meeting attended upon the appropriate reporting by the licensed agent, but no more than three (3) hours credit shall be awarded during any continuing education biennium.

(5) A person teaching any approved continuing education course shall qualify for the same number of hours of continuing education credit as would be granted to a person taking and satisfactorily completing such course.

(6) Excess credit hours accumulated during any continuing education biennium may be carried forward. The commissioner may, by regulation, limit the number of hours carried forward.

(7) For good cause shown, the commissioner may grant an extension of time during which the continuing education requirement of subsection (3) of this section may be completed, but such extension of time shall not exceed two (2) years. What constitutes good cause for such extension of time rests within the discretion of the commissioner.

(8) Every person subject to this section shall furnish to the commissioner written certification as to the continuing education courses satisfactorily completed by such person. Such certification shall be signed by or on behalf of the organization sponsoring the continuing education course. Such certification shall be on a form prescribed by the commissioner.

(9) The license of any person failing to comply with the continuing education requirement of subsection (3) of this section and who has not been granted an extension of time to comply pursuant to subsection (7) of this section shall be canceled and promptly surrendered to the commissioner without demand.

(10) The license of any person subject to the continuing education requirement shall be suspended or revoked, a civil penalty imposed in lieu thereof, or both, pursuant to KRS 304.9-440 if such person submits to the commissioner a false or fraudulent certificate of compliance with the continuing education requirement.".

Motions, Petitions and Communications (Continued)

Representative Collins moved that the rules be suspended to withdraw **HB 460**. Agreed.

Representative Riggs moved that the rules be suspended to withdraw **HB 281**. Agreed.

Representative Farrow moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Farrow moved that he be recorded as voting "yea" on **HCR 24, HCR 25, HCR 34, HCR 35, HCR 38, HCR 39, HCR 40, HB 256, HB 187, HB 466, SB 2, SB 12, HB 505, HB 532, HB 57, HB 114, HB 264, HB 267, HB 268, HB 278, HB 345** and **HB 533**. Agreed.

Representative Riggs moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Riggs moved that he be recorded as voting "yea" on **HB 420**. Agreed.

Representative Morris moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Morris moved that his vote be changed from "yea" to "nay" on **SJR 13**. Agreed.

Representative Zimmerman moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Zimmerman moved that his vote be changed from "yea" to "nay" on **SJR 13**. Agreed.

Representative Bowling moved that the rules be suspended for the purpose of recording votes. Agreed.

Representative Bowling moved that he be recorded as voting "yea" on **HB 360, HB 177, HB 420, HB 421, HB 500** and **HB 385**. Agreed.

The following members filed requests to have their names added as co-sponsors to Bills under rules previously suspended: **HB 9, HB 646**, Representative Donnermeyer; **HB 252**, Representative Riggs; **HB 346**, Representative Marzian; **HB 412**, Representative Treesh; **HB 484**, Representative Lile; **HB 580**, Representative Wayne; **HB 670, HB 671**, Representative Farrow; **HB 691**, Representative Heleringer.

The following members filed requests to have their names withdrawn as co-sponsors to Bills: **HB 460**, Representative Stumbo; **HB 618**, Representative Bentley.

Announcements

The Clerk announced the following meetings:

Tourism Development and Energy, upon adjournment, Room 149

Appropriations and Revenue, fifteen minutes upon adjournment

Committee on Rules, upon adjournment, Speaker's Office

Adjournment

Representative Stumbo moved that the House adjourn until 9:00 a.m., Friday, February 25, 1994.

On the roll call the vote was **Yeas 75**–Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bondurant, Bowling, Brown, Bryant, Buis, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Collins, Crenshaw, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gee, Geveden, Graham, Gray, Hampton, Harper, Hatcher, Jensen, Johnson, Keith, Kerr, Lear, Lee, Lindsay, Marzian, Mason, McElroy, Moberly, Napier, Noland, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, R. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Yates. **Nays 5**–Hancock, Heleringer, LeMaster, Lile, Riggs.

The motion to adjourn was adopted.

FRIDAY, FEBRUARY 25, 1994

THIRTY-FIFTH LEGISLATIVE DAY

The House was called to order by Speaker Clarke.

Prayer by Reverend Lillian Nunnelly, Director, Adult Learning Center, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Deskins and Little.

Representative McElroy moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative McElroy moved that the reading of the Journal of February 24, 1994 be dispensed with and the same approved. Agreed.

Representative Maggard moved that the rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Maggard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 177, SB 180, SB 185, SB 188, SB 193, SB 208** and **HB 128**. (Time: 9:05 a.m.)

Introduction of Bills and Resolutions

HB 705, by Representative Long: AN ACT authorizing the payment of certain claims against the state which have been duly audited and approved according to law, and have not been paid because of the lapsing or insufficiency of former appropriations against which claims were chargeable and declaring an emergency.

HB 706, by Representative Burch: AN ACT relating to adult protection.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolution:

Appropriations and Revenue: **HB 686, HB 691, HB 703**

Banking and Insurance: **HB 678**

Counties and Special Districts: **HB 687**

Education: **HCR 54, HB 685, HB 694**

Elections and Constitutional Amendments: **HB 677, HB 682, HB 702**

Health and Welfare: **HB 679, HB 704**

Judiciary: **HB 675, HB 676, HB 689, HB 692, HB 693, HB 695, HB 698**

Natural Resources and Environment: **HB 681**

State Government: **HB 680, HB 690, HB 696, HB 697, HB 699, HB 700, HB 701**

Tourism Development and Energy: **HB 683, HB 684**

Transportation: **HB 688**

Report of Committees

The Committee on Rules reported the following Consent Bill has been posted for passage in the Regular Orders of the Day for February 28, 1994: **HB 386**

The Committee on Rules reported that **HB 482, HB 333, HB 442, HB 478, HB 490, HCR 44, SB 1** and **SB 40** have been posted for passage in the Orders of the Day for February 28, 1994.

The Committee on Rules reported that the following Bill has been recommitted:

Appropriations and Revenue: **HB 405**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills and Resolutions have been posted for Committee consideration:

Elections and Constitutional Amendments: **HCR 2, HB 124, HB 148, HB 172, HB 228, HB 254**

Education: **HB 336, HB 566, HB 579, HJR 31, SB 51, SB 88, SB 92, SB 148, SB 162**

Report of Committees (Continued)

The Committee on Appropriations and Revenue reported **HB 250**, with Committee Substitutes and Committee Title Amendment attached thereto, with the expression of opinion that the same should pass. Ordered referred to the Committee on Rules.

The Committee Substitute No. 2 to **HB 250** is as follows:

HB 250, AN ACT relating to health care reform.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

PART 1

KENTUCKY HEALTH POLICY BOARD

SECTION 1. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 15, 37, and 38 of this Act, unless the context requires otherwise:

(1) "Board" means the Kentucky Health Policy Board created pursuant to Section 2 of this Act.

(2) "Facility" means any hospital or other health care facility, whether operated for profit or not, required to be licensed pursuant to KRS Chapter 216B.

(3) "Health care provider" or "provider" means any facility and service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:

- ***(a) Physicians, osteopaths, and podiatrists licensed pursuant to KRS Chapter 311;***
- ***(b) Chiropractors licensed pursuant to KRS Chapter 312;***
- ***(c) Dentists licensed pursuant to KRS Chapter 313;***
- ***(d) Optometrists licensed pursuant to KRS Chapter 320;***
- ***(e) Physician assistants regulated pursuant to KRS Chapter 311;***
- ***(f) Nurse practitioners licensed pursuant to KRS Chapter 314;***
- ***(g) Psychologists licensed pursuant to KRS Chapter 319; and***
- ***(h) Licensed clinical social workers pursuant to KRS Chapter 335.***

(4) "Hospital services" means:

- ***(a) Inpatient hospital services as enumerated in medicare regulation 42 C.F.R. Sec. 409.10, as it may be amended from time to time;***
- ***(b) Emergency services;***
- ***(c) Outpatient services provided by the hospital;***
- ***(d) Physician and other services provided in a hospital on an inpatient or outpatient basis; and***
- ***(e) Inpatient and outpatient mental health and substance abuse services, including intensive outpatient and day treatment.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board is hereby created as an independent agency of state government. The goal of the board shall be to control health care costs, improve quality and efficiency, encourage competition, and develop a system of integrated health care delivery which makes necessary health services available to all residents of the Commonwealth. The board shall be attached for administrative purposes to the Cabinet for Human Resources.

(2) The board shall consist of five (5) members appointed by the Governor no later than August 1, 1994, and confirmed by the Kentucky Senate. The members shall be full-time state employees and a chairman shall be appointed by the Governor from among the membership. Three (3) members shall be persons who do not hold, and have not held, any

full-time employment with a facility and who are not, and have not been licensed providers. Each of the remaining two (2) members shall either have at least five (5) years experience in the management or operation of a facility or have been a licensed provider for at least five (5) years. Each member shall have a demonstrated interest in the provision of efficient, economical, and quality health care. Compensation for members of the board shall be exempt from the provisions of KRS 64.640. The members shall comply with the provisions of KRS Chapter 11A and any code of ethics for executive branch employees. The Governor may at any time remove any member for cause after furnishing the member with a written copy of the charges against the member and affording the member a public hearing if requested. No member of the board shall accept employment or compensation from any facility or provider, or become a practicing provider within the Commonwealth of Kentucky for two (2) years, following the end of the member's term.

(3) The terms of members of the board shall be four (4) years except that the terms of initial members shall be staggered to end as follows:

- *(a) Two (2) on June 30, 1995;*
- *(b) One (1) on June 30, 1997; and*
- *(c) Two (2) on June 30, 1998.*

(4) At the end of a term, a member shall continue to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed and qualifies. A member who serves (2) consecutive full four (4) year terms shall not be reappointed for four (4) years after completion of those terms.

(5) A majority of the full authorized membership of the board shall constitute a quorum.

(6) The board shall appoint an executive director, to be the chief administrative officer of the board. The executive director shall serve at the pleasure of the board. Under the direction of the board, the executive director shall perform any duty or function that the board requires.

(7) The executive director may employ staff necessary for the performance of the duties of the board. The board's staff shall not be subject to the classified service provided for by KRS 18A.005 to 18A.200.

(8) No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.

SECTION 3. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The board may:

- *(a) Annually set a target expenditure limit for total state health expenditures with a goal that the rate of increase decline by ten percent (10%) per year until the rate of increase in total state health expenditures is equal to the rate of increase in state personal income.*
- *(b) Promulgate any administrative regulations pursuant to KRS Chapter 13A necessary to carry out its statutory responsibilities;*
- *(c) Appoint temporary volunteer advisory committees, which may include individuals and representatives of interested public or private entities or organizations to carry out its statutory responsibilities;*
- *(d) Apply for and accept any funds, property, or services from any person or government agency to carry out its statutory responsibilities;*
- *(e) By administrative regulation, promulgated pursuant to KRS Chapter 13A, comply with any federal requirement that may be imposed or opportunity that may be presented with regard to any matter under the jurisdiction of the board;*
- *(f) Make agreements with a grantor of funds, or property, or services, including an agreement to make any study, plan, demonstration, or project to carry out its statutory responsibilities;*
- *(g) Develop and implement pilot programs relating to health care costs, quality, or access as it deems appropriate;*
- *(h) Publish and make available information that relates to the health care financing and delivery system that is in the public interest;*
- *(i) Sue and be sued;*
- *(j) Contract with a qualified, independent third party for any service necessary to carry out the powers and duties of the board, subject to the provisions of KRS Chapter 45A; however, unless permission is granted specifically by the board, a third party hired by the board shall not release, publish, or otherwise use any information to which the third party has access under its contract;*
- *(k) Authorize purchasing cooperatives through which licensed providers may purchase medical supplies, medical equipment, services, or pharmaceuticals at discount prices for the purpose of lowering health care costs to*

patients.

(l) Financially audit the books and records of the Kentucky Health Purchasing Alliance created by Section 66 of this Act;

(m) Recommend the initiation of disciplinary proceedings for health care providers before the State Board of Medical Licensure created pursuant to KRS Chapter 311, the State Board of Podiatry created pursuant to KRS Chapter 311, the State Board of Chiropractic Examiners created pursuant to KRS Chapter 312, the Kentucky Board of Dentistry created pursuant to KRS Chapter 313, the Kentucky Board of Nursing created pursuant to KRS Chapter 314, the Kentucky Board of Pharmacy created pursuant to KRS Chapter 315, the Kentucky Board of Examiners of Psychology created pursuant to KRS Chapter 319, the Kentucky Occupational Therapy Board created pursuant to KRS Chapter 319A, the Kentucky Board of Optometric Examiners created pursuant to KRS Chapter 320, the State Board of Physical Therapy created pursuant to KRS Chapter 327, the State Board of Examiners of Social Work of Kentucky created pursuant to KRS Chapter 335, and the Kentucky Licensure Board for Specialists in Hearing Aid Instruments created pursuant to KRS Chapter 334, for any violations of any provisions of KRS Chapter 164, 205, 216, 216B, 304, or 314; and

(n) Conduct pilot projects providing for the use of a health care voucher system or medical savings plans, or both.

(2) The board shall:

(a) Analyze specific health service costs and benefits, and define and develop a priority listing of minimum health benefits on the basis of the relationships between costs, benefits, and improved quality of life for citizens of the Commonwealth of Kentucky. The board shall use the minimum list of health care benefits to recommend to the 1996 Regular Session of the General Assembly a plan for the implementation and funding of a universal access plan for all Kentuckians;

(b) Periodically participate in or conduct analyses and studies that relate to:

1. Health care costs;

2. Health care quality or outcome;

3. Health providers and health services; or

4. Epidemiologic studies;

(c) Prescribe one (1) standardized uniform health claim form which shall be used when processing any health insurance claim and workers' compensation health claim made in this state. Any uniform health insurance claim forms prescribed by the board shall conform to nationally-approved claim forms required for payment under Title 18 of the Social Security Act.

1. No health insurer, or employer, or carrier processing workers' compensation claims shall require submission of any information, attachments certifications, or similar additions for receipt of payment which exceed that which is contained on the uniform health insurance claim forms prescribed by the board.

2. For purposes of this section, "health insurance" and "health insurer" mean health care coverage provided by any insurance company; health maintenance organization; self-insurer; or multiple employer welfare arrangement or other benefit arrangement, to the extent permitted by ERISA; nonprofit hospital, medical-surgical, dental, and health service corporation authorized to transact health insurance business in Kentucky; and the Department for Medicaid Services.

3. The board shall promulgate an administrative regulation, pursuant to KRS Chapter 13A, to carry out the provisions of this paragraph.

4. Any person who intentionally violates this paragraph by failing to use or accept the standardized uniform health claim form shall be subject to a civil fine not to exceed one hundred dollars ($100) for the first violation and five hundred dollars ($500) for subsequent violations;

(d) Collect, analyze, and disseminate county specific data from health care providers on maximum fees charged for health care procedures as described under Sections 11 to 15 of this Act;

(e) Develop, update, and recommend implementation of parameters for clinical practice for use by health care providers as described under Section 16 of this Act;

(f) Compile and publish a list from information supplied by each health care provider of equipment, health facilities, and health services in which the provider has five percent (5%) or more ownership or financial interest as described under Section 37 of this Act;

(g) Authorize pilot projects for twenty-four (24) hour health coverage as set forth under Section 38 of this Act;

(h) Approve or disapprove certificate-of-need applications under KRS Chapter 216B;

(i) Establish a mechanism for biennial review of projects for compliance with the terms of the granted certificate of need as set forth under Section 45 of this Act;

(j) Certify and may decertify the Kentucky Health Purchasing Alliance for the Commonwealth pursuant to Section 69 of this Act;

(k) Annually review the performance of the Kentucky Health Purchasing Alliance;

(l) Supervise the Kentucky Health Purchasing Alliance to protect against violation of antitrust laws as provided under Section 70 of this Act

(m) Define standard benefit plans, as provided under Section 67 of this Act, on which requests for proposals are submitted to the Kentucky Health Purchasing Alliance by the accountable health plans;

(n) Inform Kentucky residents of the existence and provisions of the five (5) standard benefits plans available, as provided under Section 79 of this Act;

(o) Develop and approve a risk adjustment process as provided under Section 76 of this Act;

(p) Approve supplemental benefit plans as provided under Sections 67 and 79 of this Act;

(q) Develop an underserved area physician respite program as provided under Section 93 of this Act;

(r) Within ninety (90) days after the end of each facility's fiscal year or more often as the board determines, prepare from the information filed with the board any summary, compilation, or other supplementary report required by the board;

(s) Set deadlines for the filing of statutorily-required reports and make each required report filed and each summary, compilation, or supplementary report, except for privileged medical information, available for public inspection at the office of the board during regular business hours and each summary and compilation available to any agency or person on request and upon payment to the board of a reasonable fee for distribution of an electronic or printed copy of the information;

(t) Promulgate administrative regulations pursuant to KRS Chapter 13A that relate to meetings, minutes which shall be kept of each meeting, and transactions of the board;

(u) Prepare annually a budget proposal that includes the estimated income of the board and proposed expenses for its administration and operation;

(v) On or before October 1 of each year, submit to the Governor, Legislative Research Commission, and Interim Joint Committees on Appropriations and Revenue and Health and Welfare an annual report on the operations and activities of the board during the preceding fiscal year, including:

  1. A copy of each summary, compilation, and supplementary report deemed relevant by the board; and

  2. Any other fact, suggestion, or policy recommendation that the board considers necessary;

(w) By July 1, 1995, promulgate through administrative regulations pursuant to KRS Chapter 13A, uniform administrative procedures, data requirements, and, where provider documentation is required, forms for conducting review of the medical necessity and appropriateness of health services that shall be used by all third-party payors and private review agents certified by the Cabinet for Human Resources pursuant to KRS Chapter 211, KRS Chapter 311, and administrative regulations promulgated thereunder.

  1. All private review agents and third-party payors shall cooperate in the submission of any information requested by the board as may be needed in the development of the uniform utilization review standards required by this section.

  2. For purposes of this section, "third-party payor" means any insurer; health maintenance organization; self-insured plan; multiple employer welfare arrangement or other benefit arrangement to the extent permitted by ERISA; nonprofit hospital, medical-surgical, dental, and health service corporation authorized to transact health insurance business in Kentucky; the Department for Medicaid Services; and employer or carrier providing payment for medical services rendered under a workers' compensation program.

  3. The board shall appoint a technical advisory committee comprised of a sufficient number of physicians, hospital utilization review professionals, private review agents, and third-party payors knowledgeable in utilization review to assist the board in developing uniform standards required by this section; and

(x) Develop reimbursement methodologies pursuant to Sections 127 to 134 of this Act;

(y) By July 1 of each year, compile a list of the twenty-five (25) health care procedures most often performed statewide by physicians, osteopaths, and podiatrists licensed under KRS Chapter 311, dentists licensed under KRS Chapter 313, optometrists licensed under KRS Chapter 320, psychologists licensed under KRS Chapter 319, and chiropractors licensed under KRS Chapter 312;

(z) By July 1 of each year, compile a list of the fifty (50) prescription drugs by name, dosage, and quantities most often dispensed statewide by pharmacies granted permits under KRS Chapter 315; and

(aa) Within sixty (60) days of the compilation of the lists compiled pursuant to paragraphs (y) and (z) of this subsection provide a copy of the appropriate list to each provider within the classes identified in paragraphs (y) and (z) of this subsection.

(3) The board may promulgate administrative regulations that impose civil fines not to exceed one thousand dollars ($1,000) for each violation for failure to file a report as required. The amount of any fine imposed shall not be included in the costs of a facility in regulating its rates.

SECTION 4. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The power of the secretary for human resources over plans, proposals, and projects of units in the cabinet does not include the power to disapprove or modify any decision or determination that the board makes under powers specifically delegated by law to the board.

(2) The power of the secretary for human resources to transfer by administrative regulation, administrative order, or written directive, any staff, functions, or funds of units in the cabinet does not apply to any staff, function, or funds of the board.

PART 2

HEALTH DATA COLLECTION

SECTION 5. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

As used in Sections 5 to 15 of this Act, unless the context requires otherwise:

(1) "Ambulatory facility" means a facility, including an ambulatory surgical facility, ambulatory care clinic, alternative birth center, mobile health service, or a specialized medical technology service, which is not part of a hospital, and which is licensed pursuant to KRS Chapter 216B, and which provides one (1) or more major ambulatory procedures to patients not requiring hospitalization.

(2) "Charge" means all amounts billed by a hospital or ambulatory facility, including charges for all ancillary and support services or procedures, prior to any adjustment for bad debts, charity contractual allowances, administrative or courtesy discounts, or similar deductions from revenue. However, if necessary to achieve comparability of information between providers, charges for the professional services of hospital-based or ambulatory facility-based physicians shall be excluded from the calculation of charge.

(3) "Hospital" means a facility licensed pursuant to KRS Chapter 216B as either an acute care hospital, psychiatric hospital, rehabilitation hospital, or chemical dependency treatment facility.

(4) "Procedures" means those surgical, medical, radiological, diagnostic, or therapeutic, procedures performed by a provider, as periodically determined by the Kentucky Health Policy Board in administrative regulations promulgated pursuant to KRS Chapter 13A as those for which reports to the Kentucky Health Policy Board shall be required. "Procedures" also includes procedures that are provided in hospitals or other licensed ambulatory facilities, or those which require the use of special equipment, including fluoroscopic equipment, computer tomographic scanners, magnetic resonance imagers, mammography, ultrasound equipment, or any other new technology as periodically determined by the Kentucky Health Policy Board.

(5) "Quality" means the extent to which a provider renders care which obtains for patients optimal health outcomes.

(6) "Risk-adjusted" means mathematically modified to remove the effects of differences among providers in their patients' severity of illness or other factors that are not the result of the providers' treatment of the patients, but that are likely to affect the charges or quality of care.

SECTION 6. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board shall collect, analyze, and disseminate information on the cost, quality, and outcomes of health services provided by health facilities and health care providers in the Commonwealth.

(2) The executive director of the Kentucky Health Policy Board shall serve as chief administrative officer for the health data collection functions of Sections 5 to 10 of this Act.

(3) No member of the Kentucky Health Policy Board or employee thereof shall be subject to any personal liability for any loss sustained or damage suffered on account of any action or inaction of under Sections 5 to 10 of this Act.

SECTION 7. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) For the purposes of carrying out the provisions of Sections 5 to 10 of this Act, the Kentucky Health Policy Board may:

(a) Appoint temporary volunteer advisory committees, which may include individuals and representatives of interested public or private entities or organizations;

(b) Apply for and accept any funds, property, or services from any person or government agency;

(c) Make agreements with a grantor of funds or services, including an agreement to make any study allowed or required under Sections 5 to 10 of this Act; and

(d) Contract with a qualified, independent third party for any service necessary to carry out the provisions of Sections 5 to 10 of this Act; however, unless permission is granted specifically by the Kentucky Health Policy Board, a third party hired by the Kentucky Health Policy Board shall not release, publish, or otherwise use any information to which the third party has access under its contract.

(2) For the purposes of carrying out the provisions of Sections 5 to 10 of this Act, the Kentucky Health Policy Board shall:

(a) Publish and make available information that is in the public interest and relates to the health care financing and delivery system, motor vehicle health benefits, the cost of workers' compensation health benefits, and health insurance;

(b) Periodically participate in or conduct analyses and studies that relate to:

1. Health care costs;

2. Health care quality and outcomes;

3. Health care providers and health services;

4. Health insurance costs; and

5. The cost of health benefits covered by motor vehicle insurance and workers' compensation.

(c) Promulgate administrative regulations pursuant to KRS Chapter 13A that relate to its meetings, minutes, and transactions related to Sections 5 to 10 of this Act; and

(d) Prepare annually a budget proposal that includes the estimated income and proposed expenditures for the administration and operation of Sections 5 to 10 of this Act.

(3) All insurers and self-insurers authorized to write motor vehicle, workers' compensation, or health insurance in this state shall transmit annually by January 30 to the Kentucky Health Data Commission the following information on their insurance experience in this state for the preceding calendar year:

(a) Total premiums paid;

(b) Total cost of claims filed;

(c) Total cost of claims paid:

1. Total cost of health and medical claims payments for motor vehicle insurance; and

2. Total cost of health and medical claims payments for workers' compensation insurance;

(d) Total policies canceled by type and the aggregate reasons therefor; and

(e) List of total health and medical services paid for, grouped by types of services and costs:

1. Total cost per health and medical service per insured group per month:

a. Cost paid by insurer;

b. Cost paid by insured; and

2. Percentage of insureds who received each service.

(4) The Kentucky Health Policy Board may promulgate administrative regulations pursuant to KRS Chapter 13A that impose civil fines not to exceed five hundred dollars ($500) for each violation for failure to file a report as required. The amount of any fine imposed shall not be included in the allowed costs of a facility for medicare or medicaid reimbursement.

SECTION 8. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board shall establish by promulgation of administrative regulations pursuant to KRS Chapter 13A, no later than September 1, 1994, those data elements required to be submitted to the Kentucky Health Policy Board by all licensed hospitals and ambulatory facilities, including a timetable for submission and acceptable data forms which shall include the uniform health claim form pursuant to KRS 304.14-135 or any other universal health claim form to be determined by the Kentucky Health Policy Board. Thereafter, every hospital and ambulatory facility shall be required to report, on a periodic basis, information regarding the charge for and quality of the procedures and health care services performed therein, and as stipulated by administrative regulations promulgated pursuant to KRS Chapter 13A. The Kentucky Health Policy Board may conduct statistical surveys of a sample of hospitals, ambulatory facilities, or other providers in lieu of requiring the submission of information by all hospitals, ambulatory facilities, or providers.

(2) The Kentucky Health Policy Board shall require for submission to the board by any group of providers, including those categories within the definition of provider contained in Section 1 of this Act and any further categories determined by the board, at the beginning of each fiscal year after January 1, 1995, and within the limits of the

state, federal, and other funds made available to the board for that year, and as provided by board promulgation of administrative regulations pursuant to KRS Chapter 13A, the following:

(a) A list of medical conditions, health services, and procedures for which charge and quality data shall be collected and published at specified time intervals and in a specified manner;

(b) A timetable for filing data;

(c) A list of data elements that are necessary to enable the board to analyze and disseminate risk-adjusted charge, quality, and outcome information, including mortality and morbidity data;

(d) A format for data submission which shall include use of the uniform health claim form pursuant to KRS 304.14-135 or any other universal health claim form to be determined by the Kentucky Health Policy Board, and which may be in the form of magnetic computer tape, computer diskettes, or other electronic media, or through an electronic network, or in the form of hard copy;

(e) Procedures to allow health care providers at least thirty (30) days to review information generated from any data required to be submitted by them, with any reports generated by the board to reflect valid corrections by the provider before the information is released to the public; and

(f) Procedures pertaining to the confidentiality of data collected.

(3) The board shall coordinate its data-gathering activities with other data-collection activities conducted by the Cabinet for Human Resources and the Department of Insurance, as well as other state agencies which collect health-related service, utilization, financial, and health care personnel data, to prevent duplicate filing requirements.

(4) The board shall conduct outcome analyses and effectiveness studies and prepare other reports pertaining to issues involving health care charges and quality.

(5) The board may independently audit any data required to be submitted by providers as needed to corroborate the accuracy of the submitted data. Any audit may be at the expense of the board and shall, to the extent practicable, be coordinated with other audits performed by state agencies.

(6) The board may initiate activities set forth in subsection (1) or (2) of this section at any time after the effective date of this Act.

SECTION 9. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The following types of data shall be deemed as relating to personal privacy and, except by court order, shall not be published or otherwise released by the Kentucky Health Policy Board or its staff and shall not be subject to inspection under KRS 61.870 to 61.884;

(a) Any data, summary of data, correspondence, or notes that identify or could be used to identify any individual patient or member of the general public, unless the identified individual gives written permission to release the data or correspondence; and

(b) Any correspondence or related notes from or to any employee or employees of a provider if the correspondence or notes identify or could be used to identify any individual employee of a provider, unless the corresponding persons grant permission to release the correspondence.

(2) Health care providers submitting required data to the board shall not be required to obtain individual permission to release the data, except as specified in subsection (1) of this section, and, if submission of the data to the board complies with pertinent administrative regulations promulgated pursuant to KRS Chapter 13A, shall not be deemed as having violated any statute or administrative regulation protecting individual privacy.

(3) No less than sixty (60) days after the annual report or reports are published and except as otherwise provided, the board shall make all aggregate data which does not allow disclosure of the identity of any individual patient, and which was obtained for the annual period covered by the reports, available to the public. The aggregate data shall be made available in both printed format and in a standard electronic format which is readable by commonly available software for personal computers. Single copies of the printed data shall be made available to individuals at no cost. The board may impose a fee no greater than that necessary to cover its costs for providing electronic or multiple printed copies of the data. At least one (1) printed and one (1) electronic copy of the aggregate data shall be provided without charge to the Legislative Research Commission.

(4) Collection of data about individual patients shall be in a nonidentifying numeric form and shall not include a patient's name or Social Security number. Any person who receives information identifying a patient through error or any other means shall return all copies of the information immediately.

(5) All data and information collected shall be kept in a secure location and under lock and key when specifically responsible personnel are absent.

(6) Only designated board staff shall have access to raw data and information. The designated staff shall be made aware of their responsibilities to maintain confidentiality. Staff with access to raw data and information shall sign a statement indicating that the staff person accepts responsibility to hold that data or identifying information in

confidence and is aware of penalties under state or federal law for breach of confidentiality. Data which, because of small sample size, breaches the confidence of individual patients, shall not be released.

(7) Any employee of the board or member of the board who violates any provision of this section shall be fined not more than five hundred dollars ($500) for each violation or be confined in the county jail for not more than six (6) months, or both, and shall be removed and disqualified from office or employment.

SECTION 10. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board shall annually, on or before July 1, prepare and publish, in understandable language with sufficient explanation to allow consumers to draw meaningful comparisons, a report or reports on health care charges, quality, and outcomes which includes diagnosis-specific or procedure-specific comparisons for each hospital and ambulatory facility, differentiated by payor if relevant, and for other provider groups as relevant data becomes available.

(2) The board shall annually, on or before October 1, submit to the Interim Joint Committees on Appropriations and Revenue and Health and Welfare and to the Governor a report on the operations and activities of the board under Sections 5 to 10 of this Act during the preceding fiscal year, including a copy of each study or report required or authorized under Sections 5 to 10 of this Act and any recommendations relating thereto.

(3) The board shall report at least biennially, no later than October 1 of each odd-numbered year, to the Interim Joint Committees on Appropriations and Revenue and Health and Welfare and to the Governor on matters pertaining to comparative health care charges, quality, and outcomes, the effectiveness of its activities relating to educating consumers and containing health care costs, including the implementation of Sections 11 to 15 of this Act, and any recommendations regarding its data collection and dissemination activities.

(4) The board shall report at least biennially, no later than October 1 of each odd-numbered year, on the special health needs of the minority population in the Commonwealth as compared to the population in the Commonwealth as compared to the population at large. The report shall be transmitted to the Interim Joint Committees on Appropriations and Revenue and Health and Welfare and to the Governor and shall contain an overview of the health status of minority Kentuckians, shall identify the diseases and conditions experienced at disproportionate mortality and morbidity rates within the minority population, and shall make recommendations to meet the identified health needs of the minority population.

PART 3

FEE DISCLOSURE FOR PROVIDERS

SECTION 11. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds that one of the factors affecting the increasing cost of health care services is a lack of consumer knowledge of health care costs prior to obtaining treatment. Therefore, it is the purpose of Sections 11 to 15 of this Act to promote health care cost awareness among health care consumers and providers, to encourage competitive health care pricing, and to improve the quality of health care in the Commonwealth through the public disclosure of fees charged by licensed health care providers as set forth under Section 13 of this Act.

SECTION 12. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

As used in Sections 11 to 15 of this Act, "health care recipient" means any individual who receives, or should have received, health care from a health care provider.

SECTION 13. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) All physician, osteopaths, and podiatrists licensed under KRS Chapter 311, all dentists licensed under KRS Chapter 313, all optometrists licensed under KRS Chapter 320, all psychologists licensed under KRS Chapter 319, and all chiropractors licensed under KRS Chapter 312 shall make available upon request a quotation of the maximum fee charged for each of the twenty-five (25) procedures identified by the Health Care Policy Board pursuant to paragraph (y) of subsection (2) of Section 3 of this Act.

(2) All pharmacies granted permits under KRS Chapter 315 shall make available upon request a quotation of the maximum retail selling price for each of the fifty (50) prescription drugs identified by the Health Care Policy Board pursuant to paragraph (z) of subsection (2) of Section 3 of this Act.

(3) All hospitals and other health facilities licensed under KRS Chapter 216B and all drug and alcohol treatment centers licensed under KRS Chapter 222 shall make available upon request the following:

(a) A statement of the maximum daily charge for room and board, inclusive of all nursing services, by level of care; and

(b) A statement of the average daily charge for all other nonnursing services incurred by health care recipients, by level of care. The average daily charge quoted shall be based on data from the previous calendar year and shall be updated on or before July 1 of each year. A statement of the maximum charge for all other health care procedures shall be made available upon request.

(4) All other health care providers not subject to subsections (1) to (3) of this section shall make available upon request a statement of the maximum fee charged for the ten (10) procedures most often performed by the provider.

(5) All providers, hospitals, and health facilities subject to provisions of Sections 11 to 15 of this Act shall post in a conspicuous place, in a form approved by the board, a notice of the availability of a list of charges, fees, or prices as provided Sections 11 to 15 of this Act.

(6) Notwithstanding any other contrary provisions of law, no health care provider shall charge for or receive payment or reimbursement in any amount which is in excess of the maximum amount quoted to a recipient for a health care procedure, pursuant to Sections 11 to 15 of this Act.

SECTION 14. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board pursuant to subsection (2) of Section 3 of this Act may require any providers to submit a listing of the charges or fees for the procedures and services identified in Section 13 of this Act.

(2) The board shall collect, analyze, and disseminate the data and shall develop specific reports that are to be made available in pamphlet form that are reasonably understandable and will allow for valid comparisons.

(3) The board may promulgate administrative regulations under KRS Chapter 13A to implement this section, including provisions for the standardization of the form on which health care providers shall submit charge or fee data and the content and form of other related data.

SECTION 15. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

Any health care provider who willfully violates any of the provisions of Sections 11 to 15 of this Act shall be fined no less than one hundred dollars ($100) per day for failure to provide the required list of fees charged and one thousand dollars ($1,000) per month for failure to submit the required data to the board.

PART 4

QUALITY IMPROVEMENT

SECTION 16. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

For the purpose of improving and assessing the quality of clinical care, the Kentucky Health Policy Board, created by Section 2 of this Act, through the various professional licensure boards and any volunteer advisory committees deemed necessary by the board, shall develop, update, and recommend implementation of parameters for clinical practice for use by health care providers as defined in Section 1 of this Act. The board may adopt any parameters for clinical practice as developed and updated by the federal Agency for Health Care Policy Research, or the board may adopt other parameters for clinical practice which are developed by qualified bodies, as determined by the board, with periodic updating based on data collected during the application of the parameters. Outcome measures shall be developed by the board in conjunction with the provider community. After these measures have been established they shall be disseminated to the various professional licensure boards.

PART 5

PROVIDER ARBITRATION AND MEDIATION

SECTION 17. KRS CHAPTER 417A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

The following provisions shall apply to actions prior to filing a lawsuit against a health care provider alleging personal injury or wrongful death:

(1) Any person, or the personal representative of a deceased person, aggrieved by reason of any action or inaction of a health care provider may, in person or by counsel, file with the clerk of the Circuit Court a preliminary complaint which alleges the names and addresses of the heclth care provider or providers by whom the party claims to have been injured and sets forth sufficient facts to establish where, when, and how the patient was injured, and requests mediation prior to submission of a formal complaint. Upon filing the preliminary complaint the clerk of the court shall notify the health care provider or providers of the allegation and request to mediate. Upon receipt of written agreement by the health care provider or providers, a mediation process shall be initiated.

(2) The filing of the preliminary complaint shall initiate the mediation process pursuant to Section 18 of this Act, and shall toll the statute of limitations so long as the preliminary complaint is filed within the period allowed for filing a complaint against a health care provider.

(3) The notification issued against the health care provider or providers shall state that the subject matter of the preliminary complaint shall be submitted to mediation; shall identify the mediator; and shall state the time and place of the mediation which shall be scheduled no sooner than thirty (30) days following the filing of the preliminary complaint nor later than sixty (60) days from the filing of the preliminary complaint.

(4) The health care provider or providers may file a responsive pleading to a preliminary complaint within a time allowed by the court.

(5) If the aggrieved party is not represented by counsel, then the health care provider or providers shall be encouraged

to respond to mediation without counsel, but may engage counsel at the health care provider's option.

(6) If the mediation does not result in a resolution of the dispute, the aggrieved party has ninety (90) days after the mediator files a report with the court in which to file a complaint for lawsuit, within the Kentucky Rules of Civil Procedure, and to issue summons to be served upon the health care provider or providers for that purpose.

(7) If the mediation does not result in the resolution of the dispute and the aggrieved party files a complaint under the Rules of Civil Procedure, then the mediation process required under Section 18 shall be waived.

SECTION 18. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

The following provisions shall apply to any action filed in Circuit Court by a patient or patient's representative against a health care provider alleging personal injury or wrongful death:

(1) Upon filing of a complaint in a personal injury action alleging negligence of a health care provider, the plaintiff's attorney shall file an affidavit stating as follows:

(a) That the plaintiff's attorney has gathered all pertinent medical records and has had those records reviewed by a qualified expert, who would otherwise be qualified under Kentucky law to give opinions on the standard of care, and that person, after reviewing the records, has given the opinion, predicated upon reasonable medical probability, that there was a departure from the standard of care and that the departure was a substantial factor in causing the injury or death; or

(b) That, because of significant time constraints posed by the applicable statute of limitations, the plaintiff's attorney has not had time to do the acts required in paragraph (a) of this subsection, in which case the plaintiff's attorney shall within ninety (90) days of the date of the filing of the complaint file the required affidavit, with the time for the health care provider and any other defendants to file a responsive pleading not to commence until after the affidavit is filed.

(2) The complaint shall be dismissed at the cost of the plaintiff and any other sanctions as the trial court deems appropriate may be assessed against the plaintiff and plaintiff's attorney for failure to comply with the provisions of paragraph (a) or (b) of subsection (1) of this section.

(3) In all actions covered by this section the case shall be referred to mediation as follows:

(a) After the expiration of ninety (90) days from the date of service of summons upon the health care provider, or at an earlier time as the health care provider may agree, the trial court shall order the parties to mediation which mediation shall be held no later than one hundred and eighty (180) days from the date of service of summons upon the health care provider or at an earlier date as the parties may agree;

(b) The parties may serve interrogatories, requests for documents, requests for admissions, and obtain medical records by agreement or subpoena prior to mediation without leave of court, but any depositions to be taken shall be taken only with leave of court upon a showing of good cause, or by agreement of the parties;

(c) The parties shall attend a mediation conference on a date and at a time certain with the following persons required to be present:

1. The parties in the case of individuals, or the duly-appointed personal representative of an estate, or in the case of a corporate entity, a duly-authorized representative with authority to settle;

2. Each party's counsel of record, if any;

3. A representative of each party's insurer who is not the counsel for the health care provider and who has authority to settle at any amount up to the total liability covered provided without further consultation; and

4. Other persons as the trial court may order, or the parties may agree, including but not limited to factual and expert witnesses.

(d) The mediation conference shall be at a time and place set by order of the court in which the action is pending and shall be conducted by a mediator appointed by the court to consider the possibility of settlement, the simplification of issues, and any other matters which the mediator and the parties determine may aid in the handling of the disposition of the proceedings. The mediator may schedule additional conferences necessary to complete the process and mediation shall continue until the parties have reached a settlement, until they are unwilling to proceed further, or until the mediator determines that further efforts would be futile. The mediator shall report to the court whether or not mediation was successful, or if further mediation might be considered after additional discovery, but the mediator shall not make findings of facts, nor shall the mediator assign blame to any party for the failure of the mediation process.

(e) If any party fails to appear at a duly-noticed and scheduled mediation conference without good cause, the trial court shall upon motion impose sanctions against the party or counsel, or both, which sanctions may include an award of attorney's fees and other reasonable costs and expenses.

1. At least ten (10) days prior to the mediation conference, each party shall submit to the mediator a

written statement of the case. The statement shall be confidential and shall not be disclosed to the other party or parties without first obtaining permission of the party presenting the statement. Each statement shall contain the following information:

a. When and by whom the patient was treated and the nature of that treatment;

b. The alleged propriety or impropriety of the treatment and the nature and extent of the patient's injuries and damages; and

c. The amount, if any, that the parties would be willing to settle the matter at that stage of the proceeding.

2. Each party shall provide copies of the medical records believed by that party to be relevant, to the mediator and to all other parties.

3. Upon conclusion of the mediation conference the mediator shall return to the parties the written statements of the case, unless otherwise agreed by the parties.

(4) The procedure for mediation shall be as follows:

(a) All persons required by paragraph (c) of subsection (3) of this section shall be present with the mediator presiding;

(b) The plaintiff if an individual, the personal representative of the patient's estate, or the attorney representing the plaintiff may present the facts, and if the party states the facts, the attorney may elaborate upon them or make positional or conclusionary statements regarding the facts;

(c) The defendant, or, in the case of a corporate entity, the representative of that health care provider, or the attorney for the health care provider may make statements of facts as deemed necessary and the attorney for each health care provider may make additional statements or make positional or conclusionary statements regarding the facts; and

(d) The mediator shall discuss the facts with all parties and their attorneys to determine the areas of conflict and shall confer with them as the mediator deems proper in accordance with the mediator's training and experience, with the intent and purpose of reaching a compromise on all or as many of the issues as is possible.

(5) Except as otherwise provided for in this section, all mediation documents and mediation communications are privileged and confidential and shall not:

(a) Be disclosed;

(b) Be subject to disclosure through discovery or any other process;

(c) Be admissible into evidence in any judicial or administrative proceeding; or

(d) Be considered a public record.

(6) Any party may, during the mediation process, name an expert witness, but no party may depose that expert unless the party identifying the expert later advises that the expert will be called as a witness at the trial. The opposing party shall not later designate the expert as a witness, nor may the witness be examined concerning any report that may have been furnished during the mediation process, unless the party producing the witness intends to offer the report into evidence.

(7) There is no privilege and no restriction on release of information considered privileged or confidential under subsection (5) of this section if:

(a) All parties consent in writing;

(b) The mediation communication or mediation document gives the mediator knowledge of or a reasonable cause to suspect a child has been abused or neglected, but only to the extent and for the specific purpose the communication or document is required to be disclosed; or

(c) The mediation communications were made in furtherance of the commission of a crime or fraud or as part of a plan to commit a crime or fraud, but only to the extent and for the specific purpose the communication or document is required to be disclosed.

(8) Guidelines and procedures for medical negligence mediation under this section, including mediator qualifications and mediation training, shall be developed by the Supreme Court of Kentucky and issued as rules.

(9) The Supreme Court of Kentucky shall, by rule, set a fee schedule for mediation services under this section.

(10) The trial court shall, utilizing the fee schedule, set a reasonable fee for the mediator based upon the complexity of issues and the time required for mediation. This fee shall be assessed among the parties on a pro rata basis. The court in which the action is pending may, utilizing the fee schedule, upon motion, increase the mediator's fee due to the complexity of the case, or the time involved.

(11) The mediators shall successfully complete mediation training in a program approved by the Administrative Offices

of the Courts.

(12) Nothing contained in this section shall be construed to limit or prohibit the trial court, upon the motion of all parties, from referring a pending case against a health care provider to mediation at any time prior to the entry of a final judgment and any subsequent referral to mediation after the initial mediation conference shall be in accordance with the provisions of this section.

(13) In any action brought against a health care provider under this section, the trial court may, after an evidentiary hearing, award attorney's fees and expenses if the court finds as fact that:

(a) The claim or defense is totally without merit; and

(b) The party against which the award is made persisted in the claim or defense after it was known that the claim or defense was without merit, after having been placed upon notice by the opposing party.

SECTION 19. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

Notwithstanding any of the provisions of this chapter to the contrary, the provisions of Section 20 of this Act shall be applicable to the arbitration of a dispute, controversy, or issue arising out of or resulting from injury to, or the death of, a person caused by an error, omission, or negligence in the performance of professional services by a health care provider in Kentucky.

SECTION 20. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) Any person who receives allegedly negligent health care from a health care provider shall have the option to execute an agreement to arbitrate a dispute, controversy, or issue arising out of the allegedly negligent health care or treatment, in lieu of civil action.

(2) Arbitration shall not commence without the voluntary agreement of the claimant and all defendants. The agreement to arbitrate shall not be valid if executed prior to receipt of medical services or treatment which are at issue in the arbitration.

(3) The form of the agreement shall be established by the Supreme Court and shall be accompanied by an information brochure developed by the Administrative Office of the Courts which clearly details the agreement provisions including, but not limited to, the limit on damages of five hundred thousand dollars ($500,000). The agreement to arbitrate shall specify that the maximum limit on damages which may be awarded in arbitration shall be five hundred thousand dollars ($500,000).

(4) (a) The agreement shall be executed only upon filing a notice of agreement in the Circuit Court which would otherwise have jurisdiction if a civil action were filed in a dispute, controversy, or issue arising out of or resulting from injury to, or the death of, a person caused by an error, omission, or negligence in the performance of a health care provider in Kentucky. All parties shall be present at the hearing in the Circuit Court and shall have a right to consult counsel. If after being advised of their right to consult counsel, the parties choose to waive that right the Circuit Court shall further advise the parties that by executing the arbitration agreement they are waiving:

1. The right to a trial by jury;

2. The right to appeal to the Kentucky and United States appellate courts; and

3. The right to have their case tried pursuant to the Kentucky Rules of Evidence.

(b) The Circuit Court shall allow the agreement to be executed only after the court is satisfied that all of the parties are capable of understanding the waivers set forth in paragraph (a) of this subsection, are executing the waivers without duress or under influence, and do in fact understand the waivers.

(5) The agreement to arbitrate shall state that any issues on appeal of an arbitration decision shall be limited to issues allowed in appeals of arbitration cases generally under state law.

(6) Each party to the agreement to arbitrate shall be entitled to cancel the agreement within three (3) business days by notifying the Administrative Office of the Courts in writing by midnight of the third business day following the date that the party signed the agreement to arbitrate. Written notification is deemed given if mailed or delivered by midnight of the third business day.

(7) The agreement to arbitrate shall state in at least ten (10) point bold faced type the following: "NOTICE TO EACH PARTY TO AGREEMENT TO ARBITRATE: IF WITHIN THREE (3) BUSINESS DAYS YOU DECIDE THAT YOU DO NOT WISH TO SUBMIT THE CASE TO ARBITRATION AND REMAIN A PARTY TO THIS AGREEMENT TO ARBITRATE, YOU MAY CANCEL THIS AGREEMENT BY MAILING A NOTICE TO THE ADMINISTRATIVE OFFICE OF THE COURTS BY MIDNIGHT OF THE THIRD BUSINESS DAY FOLLOWING THE DAY THAT YOU SIGNED THE AGREEMENT TO ARBITRATE. THE WRITTEN NOTICE SHOULD BE MAILED TO THE FOLLOWING ADDRESS: (current address of the Administrative Office of the Courts)."

SECTION 21. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) In a proceeding pursuant to Sections 19 to 36 of this Act:

(a) The parties may be represented by counsel, be heard, present evidence material to the controversy, and cross-examine any witness;

(b) The prevailing standard of duty, practice, or care applicable in a civil action shall be the standard applied in the arbitration, except as provided by Section 36 of this Act; and

(c) Damages shall be limited in total value to five hundred thousand dollars ($500,000).

(2) A party may appear without counsel and shall be advised of this right and the right to retain counsel in a manner calculated to inform the person of the nature and complexity of a proceeding by a simple concise form to be distributed by the Administrative Office of the Courts. The agreement to arbitrate shall specify that the parties have the right to representation by counsel during the arbitration proceedings.

(3) Actions commenced under this section shall be in accordance with KRS 413.140.

(4) Issues on appeal of an arbitration decision shall be limited to issues allowed in appeals of arbitration cases generally under state law.

SECTION 22. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) The arbitration process shall administer the proceeding without charge to the claimant. The administrative expense shall be one hundred fifty dollars ($150) per party per case, or as may be agreed by the parties and the Administrative Office of the Courts.

(2) An arbitration under Sections 19 to 36 of this Act shall be heard by a panel of three (3) arbitrators. The first panel member shall be an attorney who shall be chosen by the plaintiff from a list of three (3) volunteers submitted to the Administrative Office of the Courts by the Kentucky Academy of Trial Attorneys, pursuant to subsection (3) of this section. The second panel member shall be a health care provider, from the defendant's area of specialty, who shall be chosen by the defendant from a list of three (3) volunteer providers submitted to the Administrative Office of the Courts by the professional provider organization in the same field as the defendant, pursuant to subsection (3) of this section. The third panel member shall be a person chosen by agreement of the provider and attorney panel members from a list of experienced arbitrators who are Kentucky residents. The third panel member shall also serve as chairperson of the panel and shall determine hearing dates and locations.

(3) The third panel member of the panel shall be a qualified experienced arbitrator selected from a pool of candidates generated by the Administrative Office of the Courts. The Administrative Office of the Courts shall send simultaneously to each party an identical list of three (3) arbitrator candidates together with a brief biographical statement on each candidate. A party may strike from the list any name which is unacceptable and shall number the remaining names in order of preference. When the lists are returned, they shall be compared and the first mutually agreeable candidate in each category shall be invited to serve.

(4) Where no mutually agreed upon arbitrator is selected, the Administrative Office of the Courts shall generate a second list for consideration pursuant to the process defined in subsection (3) of this section. Where no mutually agreed upon arbitrator is selected from the second list, the Administrative Office of the Courts shall randomly select the arbitrator.

(5) The parties shall be restricted to the list of panel candidates submitted to them for consideration.

(6) The health care provider panel member shall not reside in the area development district where the defendant provider practices or resides, except upon agreement of the plaintiff and defendant.

(7) The attorney panel member shall not reside in the area development district where the plaintiff's attorney practices or resides, except on agreement of the defendant and plaintiff.

(8) The Administrative Office of the Courts, through its director or the director's designee, shall operate the arbitration process, with the initial claims filed with the Administrative Office of the Courts.

(9) All fees pursuant to subsection (1) of this section shall be submitted to the Administrative Office of the Courts to defray related expenses.

(10) Panel members shall be paid at the rate of one hundred dollars ($100) per day plus an amount for necessary expenses, as determined by the Administrative Office of the Courts.

SECTION 23. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) The professional provider organization in the same field as the defendant and the Kentucky Academy of Trial Attorneys shall make an initial screening for bias and shall require a candidate for a particular case to attest and complete a current personal disclosure statement. In addition to other relevant information, the statement shall disclose any personal acquaintance with any of the parties or their counsel and the nature of the acquaintance. If the statement reveals facts which suggest the possibility of partiality, the professional provider organization or the Kentucky Academy of Trial Attorneys shall communicate those facts to the Administrative Office of the Courts. The Administrative Office of the Courts shall make a final screening for bias and may eliminate from consideration any candidate determined to be unreasonably partial. The Administrative Office of the Courts shall communicate any facts regarding the possibility of the partiality of any arbitrator candidate to the defendant and claimant.

(2) Any party may propound reasonable questions to an arbitrator candidate if the questions are propounded within ten (10) days of the receipt of the candidate's name. Questions shall be propounded through the Administrative Office of the Courts, and the candidate shall respond to the Administrative Office of the Courts within ten (10) days of receipt.

(3) A party shall not communicate with a candidate directly or indirectly except through the Administrative Office of the Courts, the professional provider organization in the same field as the defendant, or the Kentucky Academy of Trial Attorneys any time after the filing of the request for arbitration. Any candidate who is aware of a communication shall immediately notify the Administrative Office of the Courts.

SECTION 24. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) A minor child shall be bound by a written agreement to arbitrate disputes, controversies, or issues upon the execution of an agreement on his behalf by a parent or legal guardian. The minor child shall not subsequently disaffirm the agreement.

(2) In cases involving a common question of law or fact, if a number of defendants are involved, the disputes, controversies, and issues shall be consolidated into a single arbitration proceeding if the consolidation is consistent with the Kentucky Rules of Civil Procedure.

(3) A person who is not a party to the arbitration agreement may join in the arbitration or be joined at the request of any party with all the rights and obligations of the original parties. Each party to an arbitration under Sections 19 to 36 of this Act shall be required to arbitrate with all parties, whether the parties are original or joined pursuant to this section.

SECTION 25. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) Prior to the institution of a proceeding or claim by a patient, any offer of reparations and all communications incidental thereto made in writing to a patient by a health care provider or hospital is privileged and shall not be used by any party to establish the liability or measure of damages attributable to the offeror.

(2) An offer of reparations shall provide that a patient has thirty (30) days to accept or reject the offer, or a lesser period of time as may be necessitated by the condition of the health of the patient.

(3) After any rejection or the lapse of the applicable time, any party may request binding arbitration.

(4) Any offer to a patient shall include a statement that the patient may consult legal counsel before rejecting or accepting the offer.

(5) If a potential claim is identified by a health care provider or hospital where, in its judgment, reparations are not appropriate, the provider may, at its option, file a request for arbitration which shall identify the potential claim and deny liability.

SECTION 26. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) After the appointment of the panel, the parties to the arbitration may take depositions and obtain discovery regarding the subject matter of the arbitration and use and exercise the same rights, remedies, and procedures, and be subject to the same duties, liabilities, and obligations in the arbitration with respect to the subject matter thereof, as if the subject matter of the arbitration were pending in a civil action in Circuit Court.

(2) The panel shall conclude the entire proceeding as expeditiously as possible.

(3) Discovery shall commence no earlier than twenty (20) days after all parties have received a copy of the agreement to arbitrate and shall be completed within five (5) months after the date that the last party received a copy of the agreement to arbitrate.

(4) A party may be granted an extension of time to complete discovery upon a showing that the extension is not the result of neglect and that the extension is necessary in order to avoid substantial prejudice to the rights of the party.

SECTION 27. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) The name of any expert witnesses who will be called at the arbitration shall be disclosed to the opposing party, who may depose the witness.

(2) Any party may also provide discovery of that party's expert witnesses by the written interrogatory procedure provided in the Kentucky Rules of Civil Procedure. A party may disclose without request or shall disclose, upon request, the name of each expert the party expects to call at the hearing, the subject matter on which the expert will testify, the substance of facts and opinions to which the expert will testify, and a summary of the grounds for each opinion.

(3) If a party is provided or requests the discovery procedure in subsection (2) of this section and the provision or request occurs prior to the date on which an expert is noticed for deposition or other discovery is commenced under prevailing civil practice, any further discovery of the expert by any other party by deposition or otherwise shall obligate the other party to compensate the expert for time and expenses in a reasonable amount as may be determined by the panel.

SECTION 28. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) An arbitration hearing established pursuant to Sections 19 to 36 of this Act shall adhere to the Kentucky Rules of Civil Procedure.

(2) Testimony shall be taken under oath and a record of the proceedings shall be made by a video tape recording. Any party, at that party's expense, may have transcriptions or copies of the recording made or may provide for a written transcript of the proceedings. The cost of any transcription ordered by the panel for its own use shall be deemed part of the cost of the proceedings.

(3) Expert testimony shall not be required; but if expert testimony is used, it shall be admitted under the same circumstances as in a civil trial and be subject to cross-examination.

(4) The party with the burden of establishing a standard of care and breach thereof shall establish standards, either by the introduction of expert testimony or by other competent proof of the standard and breach thereof, which may include the use of works as provided in subsection (5) of this section.

(5) Authoritative, published works on the general and specific subjects in issue may be admitted and argued from, upon prior notice to all other parties.

(6) The panel shall accord that weight and probative worth to expert evidence which it deems appropriate. The panel may call a neutral expert on its own motion, which expert witness shall be subject to cross-examination by the parties. The cost of the expert shall be deemed a cost of the proceeding.

SECTION 29. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

The panel or its chairperson in the arbitration proceeding shall, upon application by a party to the proceeding, and may upon its own determination, issue a subpoena requiring a person to appear and be examined with reference to a matter within the scope of the proceeding, and to produce books, records, or papers pertinent to the proceeding. In case of disobedience to the subpoena, the chairperson or a majority of the arbitration panel in the arbitration proceeding may petition the Circuit Court of the county in which the witness resides or the Circuit Court of the county in which the inquiry is being held to require the attendance and testimony of the witness and the production of books, papers, and documents. A Circuit Court, in case of contumacy or refusal to obey a subpoena, may issue an order requiring the person to appear and to produce books, records, and papers and give evidence related to the matter in question, or which may give rise to matters relevant to the issues in question. Failure to obey the order of the court may be punished by the court as contempt.

SECTION 30. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) On application of a party to the arbitration, the panel or its chairperson may order the deposition of a witness to be taken for use as evidence and not for discovery if the witness cannot be compelled to attend the hearing or if exceptional circumstances exist making it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be taken. The deposition shall be taken in the manner prescribed by law or court rule for the taking of depositions in civil actions.

(2) In addition to the power of determining the merits of the arbitration, the panel may enforce the rights, remedies, procedures, duties, liabilities, and obligations of discovery by the imposition of the same terms, conditions, consequences, liabilities, sanctions, and penalties as may be imposed in like circumstances in a civil action by a Circuit Court of the Commonwealth, except the power to order the arrest or imprisonment of a person.

(3) For the purpose of enforcing the duty to make discovery, to produce evidence or information, including books and records, and to produce persons to testify at a deposition or at a hearing, and to impose terms, conditions, consequences, liabilities, sanctions, and penalties upon a party for violation of a duty, a party shall be deemed to include every affiliate of the party as defined in subsection (4) of this section. For that purpose, the personnel of an affiliate shall be deemed to be the officers, directors, managing agents, agents, and employees of that party to the same degree as each of them, respectively, bears that status to the affiliate; and the files, books, and records of an affiliate shall be deemed to be in the possession and control of, and capable of production by, the party.

(4) As used in this section, "affiliate" of the party to the arbitration means and includes a party or person for whose immediate benefit the action or proceeding is prosecuted or defended or an officer, director, administrator, member, agent, employee, or managing agent of that party or person.

SECTION 31. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) Except for the parties to the arbitration and their agents, officers, and employees, all witnesses appearing pursuant to subpoena shall be entitled to receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in the Circuit Court. The fee and mileage of a witness subpoenaed upon the application of a party to the arbitration shall be paid by that party. The fee and mileage of a witness subpoenaed solely upon the determination of the arbitrator or the majority of a panel of arbitrators shall be paid in the manner provided for the payment of the arbitrator's expenses.

(2) The cost of each arbitrator's fees and expenses, together with any administrative fee, may be assessed against any

party in the arbitration decision or may be assessed among parties in the proportions determined in the arbitration decision.

SECTION 32. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) A majority of the panel of arbitrators may grant any relief found to be equitable and just, including money damages, provision for hospitalization, medical, or rehabilitative procedures, support, or any combination thereof.

(2) The panel may order submission of written briefs within thirty (30) days after the close of hearings. In written briefs, each party may summarize the evidence and testimony and may propose a comprehensive award of remedial or compensatory elements.

(3) The panel shall render its decision within thirty (30) days after the close of the hearing or the receipt of briefs, if ordered.

(4) The decision in the arbitration proceeding shall be in writing and shall be signed by the chairperson or by the majority of the panel. The decision shall include a determination of all the questions submitted to arbitration by each party, the resolution of which is necessary to determine the dispute, controversy, or issue.

SECTION 33. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) In addition to the decision, the panel shall render a written opinion which states its reasoning for the finding of liability or nonliability, and the reasoning for the amount and kind of any award. A panel member who disagrees with the majority may write a dissenting opinion.

(2) The panel shall determine the degree to which each defendant party was at fault for the total damages accruing to any other party to the arbitration, considering all sources of damage involving parties to the arbitration, but excluding the damages attributable to persons not parties to the arbitration.

(3) The panel shall prepare a schedule of contributions according to the relative fault of each party, which schedule shall be binding as between those parties, but that determination shall not affect a claimant's right to recover jointly and severally from all parties where that right otherwise exists in the law.

SECTION 34. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) In the case of an award, any element of which includes remedial services, contracts, annuities, or other noncash award element, the panel shall determine the current cash value of each element of the award and shall also determine a total current cash value of the entire award, which shall not exceed five hundred thousand dollars ($500,000).

(2) An award of remedial surgery or care shall not require that the patient undergo that treatment or care by the health care provider whose conduct resulted in the award.

(3) A claimant may refuse to accept the benefits of an award for remedial surgery or other noncash award element, and the refusal shall not affect the claimant's right to receive any other part of the award, nor shall the refusal entitle the claimant to payment of the current cash value of the portion refused.

SECTION 35. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) The Administrative Office of the Courts shall transmit to the commissioner of insurance and the applicable licensing board of any defendant party a copy of the demand for arbitration within ten (10) days of filing. A copy of the decision and opinion of the panel shall be transmitted to the same parties within ten (10) days of the filing of the decision and opinion. The decision and opinion shall be filed for informational purposes and the making or filing of the decision and opinion shall not of itself be a ground for discipline.

(2) The commissioner of insurance shall by July 1, on odd numbered years, compile a report of the total number and type of demands for arbitration and the nature of the decisions and opinions reached and shall transmit the report to the Governor, Legislative Research Commission, Interim Joint Committees on Banking and Insurance and Health and Welfare, and the Kentucky Health Policy Board.

SECTION 36. A NEW SECTION OF KRS CHAPTER 417A IS CREATED TO READ AS FOLLOWS:

(1) In each action brought against a health care provider relating to alleged negligence, the arbitration panel created pursuant to Section 22 of this Act, shall consider separately, and render a decision within thirty (30) days, any claim that the plaintiff's allegations were without probable cause or merit or were frivolous. For the purposes of this section, "frivolous" allegations means those allegations found by the arbitration panel to be so totally lacking in merit that the allegation appears to have been made in bad faith.

(2) A claim that an allegation was frivolous or was made without probable cause or merit shall be made by the defendant and asserted in the defendant's initial response to the claim, or the recourse established under this section shall be waived.

(3) If a claim that an allegation was frivolous or was made without probable cause or merit is found to be correct by the arbitration panel, the plaintiff shall pay all associated costs and defendant's attorney fees and other expenses, as determined to be reasonable by the arbitration panel.

(4) If a claim of frivolous allegation or of an allegation without probable cause or merit is found to be incorrect by the arbitration panel, the defendant shall pay all associated costs and the plaintiff's attorney fees and other expenses, incurred to consider the claim, as determined to be reasonable by the arbitration panel.

(5) For the purposes of this section, the standard of proof in arbitration panel hearings shall be whether the health care provider rendered care consistent with applicable practice parameters which existed at the time of service. "Applicable practice parameters" means those guidelines or parameters adopted by the national specialty board governing the procedure or by the federal Agency for Health Care Policy and Research or by other agencies as accepted by the arbitration panel. In the absence of practice parameters adopted by the national specialty board governing the procedure, the federal Agency for Health Care Policy and Research, or other agencies, regarding the procedure which is the subject of the action, the standard of proof in arbitration panel hearings shall be whether the health care provider rendered care consistent with what a reasonably prudent health care provider in the same field that is the subject of the action would render under the same or similar circumstances.

PART 6

SELF-REFERRAL RESTRICTIONS

SECTION 37. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) Except as otherwise provided in KRS 205.510 to 205.630, no provider shall knowingly solicit, receive, or offer any remuneration (including any kickback, bribe, or rebate) for furnishing medical assistance benefits or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be received regardless of source of payment.

(2) (a) No provider shall knowingly make, offer, or receive a payment, a rebate of a fee, or a charge for referring a recipient to another provider for furnishing of benefits.

(b) Any conduct or activity which does not violate or which is protected under the provisions of 42 U.S.C. sec. 1395nn or 42 U.S.C. sec. 1320A-7B(b), as amended, or federal regulations promulgated under those statutes, shall not be deemed to violate the provisions of this section and the conduct or activity shall be accorded the same protections allowed under federal law and regulation.

(3) Any person who violates subsection (1) or (2) of this section shall be guilty of a Class A misdemeanor unless the combination or aggregation of offenses is valued at three hundred dollars ($300) or more, in which case it shall be a Class D felony. In addition to any other penalty authorized by law, any person who violates the provisions of subsection (2)(a) of this section shall not be entitled to bill or collect from the recipient or any third party payor and shall repay any payments due the Commonwealth for services provided which were related to the referral.

PART 7

TWENTY-FOUR HOUR HEALTH COVERAGE

SECTION 38. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) By January 1, 1995, the Kentucky Health Policy Board shall promulgate administrative regulations pursuant to KRS Chapter 13A authorizing the establishment by March 1, 1995, of pilot projects for twenty-four (24) hour health coverage. The administrative regulations for the pilot projects shall provide that:

(a) A twenty-four (24) hour policy may cover general health care for purposes of general health insurance, auto insurance, workers' compensation, or health care normally covered by any line of insurance written in the Commonwealth;

(b) A twenty-four (24) hour coverage policy shall not contain deductibles or copayments for medical services or treatment for work-related injuries or diseases; and

(c) There shall be no transfer of liabilities or expenses between or among particular lines of insurance whose medical or health components have been combined into a twenty-four (24) hour coverage for health care.

(2) No policy for twenty-four (24) hour coverage shall become effective until it is reviewed and approved by the board, in consultation with the commissioner of the Department of Insurance.

(3) Notwithstanding any other provision of the Kentucky Revised Statutes to the contrary, each insurer authorized or licensed to write insurance in the Commonwealth shall provide any information requested by the board for the purpose of developing a twenty-four (24) hour health policy.

(4) The purchase of a twenty-four (24) hour health policy shall not constitute an exemption from statutory provisions which require other nonmedical insurance coverage. However, an insurance carrier shall reduce its premium for insurance coverage written without the medical or health care component. Notwithstanding the provisions of Subtitle 13 of KRS Chapter 304, the premium reduction required in this subsection shall be subject to the approval of the commissioner of the Department of Insurance.

(5) If an employer obtains a twenty-four (24) hour health insurance policy, pursuant to this section, to secure payment of compensation for medical care and treatment under KRS Chapter 342, the employer shall also procure an

insurance policy which shall provide indemnity benefits to ensure that the total coverage afforded by both the twenty-four (24) hour insurance policy and the policy providing indemnity benefits, shall provide the total compensation required by KRS Chapter 342.

(6) The participants in a pilot project for twenty-four (24) hour health coverage shall comply with periodic reporting requirements of the Kentucky Health Policy Board.

(7) Each insurer authorized or licensed to write insurance in the Commonwealth shall cooperate with the board and shall provide any information requested by the board for the purpose of studying twenty-four (24) hour health policy.

(8) Each agency of state government shall cooperate with the board if requested to provide information for the purposes of this section.

Section 39. KRS 342.020 is amended to read as follows:

(1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employee may select the physician to treat ***the*** [~~his~~] injury, and the hospital in which ***treatment may be rendered*** [~~he shall be treated~~]. The employer, or an insurer on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of such services within thirty (30) days of receipt of a statement for services. The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter if appropriate as long as medical services are rendered.

(2) ***Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, medical services and treatment provided under this chapter shall not be subject to copayments or deductibles.***

(3) When a compensable injury or occupational disease results in the amputation of an arm, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, the employer shall initially pay for, in addition to the other medical, surgical, and hospital treatment enumerated in subsection (1) and this subsection, a modern artificial member and, where required, proper braces.

(4)[~~(3)~~] Upon motion of the employer, with sufficient notice to the employee for a response to be filed, if it is shown to the satisfaction of the administrative law judge by affidavits or testimony that, because of the physician selected by the employee to treat ***the*** [~~his~~] injury or disease, or because of the hospital selected by the employee in which ***treatment is being rendered*** [~~he is being treated~~], that the employee is not receiving proper medical treatment and ***the*** [~~his~~] recovery is being substantially affected or delayed; or that the funds for [~~his~~] medical expenses are being spent without reasonable benefit to the employee; or that because of the physician selected by the employee or because of the type of medical treatment being received by the employee that the employer will substantially be prejudiced in any compensation proceedings resulting from the employee's injury or disease; then the administrative law judge may allow the employer to select a physician to treat the employee and the hospital or hospitals in which the employee is treated for ***the*** [~~his~~] injury or disease. No action shall be brought against any employer subject to this chapter by any person to recover damages for malpractice or improper treatment received by any employee from any physician, hospital, or attendant thereof.

(5)[~~(4)~~] An employee who reports an injury alleged to be work-related or files an application for adjustment of a claim shall execute a waiver and consent of any physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding any other provision in the Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, workers' compensation insurer, special fund, uninsured employers' fund, or the administrative law judge, provide the requesting party with any information or written material reasonably related to any injury for which the employee claims compensation.

Section 40. KRS 342.375 is amended to read as follows:

Every policy or contract of workers' compensation insurance under this chapter, issued or delivered in this state, shall cover the entire liability of the employer for compensation to ***each employee*** [~~every one of his employees~~] subject to this chapter, except as otherwise provided in KRS 342.345 ***or Sections 38 to 39 of this Act***. However, if specifically authorized by the commissioner, a separate insurance policy may be issued for a specified plant or work location if the liability of ***the*** [~~such~~] employer under this chapter to ***each employee*** [~~all his other employees~~] subject to this chapter is otherwise secured and provided that no employee transferred from one plant or work location to another within the employment of the same employer shall thereby lose any benefit rights accumulated under the average weekly wage concept.

PART 8

CERTIFICATE OF NEED

Section 41. KRS 216B.010 is amended to read as follows:

The General Assembly finds that the licensure of health facilities***,*** [~~and~~] health services***, and health care providers*** is a means to insure that the citizens of this Commonwealth will have safe, adequate***,*** and efficient medical care; that the proliferation of unnecessary health care facilities, health services and major medical equipment results in costly duplication and underuse of such facilities, services and equipment; and that such proliferation increases the cost of quality health care within the Commonwealth. Therefore, it is the purpose of this chapter to ***fully authorize and empower the Kentucky Health Policy Board to perform any certificate-of-need function and other statutory functions necessary to improve the quality and increase access to health care facilities, services, and providers, and to create a cost-efficient health care delivery system for the citizens of the Commonwealth. The Kentucky Health Policy Board may recommend to the Kentucky General Assembly methods to increase access to health care facilities, services, and providers*** [~~provide for the establishment of the Commission for Health Economics Control in Kentucky for the purpose of acting on applications for certificates of need~~].

Section 42. KRS 216B.015 is amended to read as follows:

Except as otherwise provided, for purposes of this chapter, the following definitions shall apply:

(1) "Administrative regulation" means a regulation adopted and promulgated pursuant to the procedures in KRS Chapter 13A.

(2) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health facilities which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; the cabinet and third-party payors who reimburse health facilities for services in the health service area in which the project is proposed to be located.

(3) "Applicant" means ***any physician's office requesting a major medical equipment expenditure of five hundred thousand dollars ($500,000) or more or*** any person, health facility, or health service requesting a certificate of need or license***, from the Kentucky Health Policy Board***.

(4) ***"Board" means the Kentucky Health Policy Board created by Section 2 of this Act.***

(5) "Cabinet" means the Cabinet for Human Resources.

(6)[~~(5)~~] "Capital expenditure" means an expenditure made by or on behalf of a health facility which:

(a) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance or is not for investment purposes only; or

(b) Is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part thereof.

(7)[~~(6)~~] "Capital expenditure minimum" means one million five hundred thousand dollars ($1,500,000) beginning ***with the effective date of this section*** [~~July 15, 1990,~~] and as adjusted annually thereafter. In determining whether an expenditure exceeds the expenditure minimum, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the improvement, expansion, or replacement of any plant or any equipment with respect to which the expenditure is made shall be included. Donations of equipment or facilities to a health facility which if acquired directly by the facility would be subject to review under this chapter shall be considered a capital expenditure, and a transfer of the equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review.

(8)[~~(7)~~] "Certificate of need" means an authorization by the ***board*** [~~commission to proceed~~] to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service as covered by this chapter.

[~~(8) "Commission" means the Commission for Health Economics Control in Kentucky.~~

~~(9) "Committee" means the Kentucky Health Care Cost Containment Advisory Committee.~~]

(9)[~~(10)~~] "Formal review process" means the ninety (90) day certificate of need review conducted by the ***board*** [~~commission~~].

(10)[~~(11)~~] "Health facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include, but shall not be limited to, health facilities and health services commonly referred to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, tuberculosis hospitals, skilled nursing facilities, nursing facilities, nursing homes, personal care homes, intermediate care facilities, family care homes, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance services, nonemergency health transportation services, hospices, community mental health and mental retardation centers, home health agencies, kidney disease treatment centers and freestanding hemodialysis units, health maintenance organizations, and others providing similarly organized services regardless of nomenclature.

(11)[~~(12)~~] "Health services" means clinically related services provided within the Commonwealth to two (2) or more persons, including, but not limited to, diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services.

(12)[~~(13)~~] "Major medical equipment" means equipment which is used for the provision of medical and other health services and which costs in excess of the medical equipment expenditure minimum[~~, except that the term does not include medical equipment acquired by or on behalf of a medical laboratory~~]. For purposes of this ***subsection*** [~~paragraph~~], "medical equipment expenditure minimum" means one million five hundred thousand dollars ($1,500,000) beginning ***with the effective date of this section*** [~~July 15, 1990,~~] and as adjusted annually thereafter. In determining whether medical equipment has a value in excess of the medical equipment expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included.

(13)[~~(14)~~] "Nonsubstantive review" means an expedited review conducted by the ***board*** [~~cabinet~~] of an application for a certificate of need as authorized under KRS 216B.095.

(14)[~~(15)~~] "Nonclinically related expenditures" means expenditures for:

(a) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a substantial change in beds, a substantial change in a health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility; or

(b) Projects which do not involve the provision of direct clinical patient care including, but not limited to, the following:

1. Parking facilities;
2. Telecommunications or telephone systems;
3. Management information systems;
4. Ventilation systems;
5. Heating or air conditioning, or both;
6. Energy conservation; or
7. Administrative offices.

(15)[~~(16)~~] "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record.

(16)[~~(17)~~] "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a group, state, or political subdivision or instrumentality including a municipal corporation of a state.

(17)[~~(18)~~] "Record" means, as applicable in a particular proceeding:

(a) The application and any information provided by the applicant at the request of the cabinet or the ***board*** [~~commission~~];

(b) Any information provided by a holder of a certificate of need or license in response to a notice of revocation of a certificate of need or license;

(c) Any memoranda or documents prepared by or for the cabinet or the ***board*** [~~commission~~] regarding the matter under review which were introduced at any hearing;

(d) Any staff reports or recommendations prepared by or for the cabinet or the ***board*** [~~commission~~];

(e) Any recommendation or decision of the ***board*** [~~cabinet~~];

(f) Any testimony or documentary evidence adduced at a hearing;

(g) The findings of fact and opinions of the ***board*** [~~commission~~] or the findings of fact and recommendation of the hearing officer; and

(h) Any other items required by administrative regulations promulgated by the ***board*** [~~commission~~].

(18)[~~(19)~~] "Secretary" means the secretary of the Cabinet for Human Resources.

(19)[~~(20)~~] "State health plan" means the document prepared***, under the direction of the board*** triennially, updated annually, [~~and duly adopted by the state health planning council~~] and approved by the Governor.

[~~(21) "State Health Planning Council" means the Council for Health Services established under KRS 194.090.~~]

(20)[~~(22)~~] "Substantial change in a health service" means:

(a) The addition of a health service for which there are review criteria and standards in the state health plan;

(b) The addition of a health service subject to licensure under this chapter; or

(c) The reduction or termination of a health service which had previously been provided in the health facility.

(21)[~~(23)~~] "Substantial change in bed capacity" means the addition, reduction, relocation, or redistribution of beds by licensure classification within a health facility.

(22)[~~(24)~~] "Substantial change in a project" means a change made to a pending or approved project which results in:

(a) A substantial change in a health service, except a reduction or termination of a health service;

(b) A substantial change in bed capacity, except for reductions;

(c) A change of location; or

(d) An increase in costs greater than the allowable amount as prescribed by regulation.

(23)[~~(25)~~] "To acquire" means to obtain from another by purchase, transfer, lease, or other comparable arrangement of the controlling interest of a capital asset or capital stock, or voting rights of a corporation. An acquisition shall be deemed to occur when more than fifty percent (50%) of an existing capital asset or capital stock or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one person from another person.

(24)[~~(26)~~] ***"To batch"*** [~~To "batch"~~] means to review in the same review cycle and, if applicable, give comparative consideration to all filed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area.

(25)[~~(27)~~] "To establish" means to construct, develop, or initiate a health facility.

(26)[~~(28)~~] "To obligate" means to enter any enforceable contract for the construction, acquisition, lease, or financing of a capital asset. A contract shall be considered enforceable when all contingencies and conditions in the contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract.

(27)[~~(29)~~] "To offer" means, when used in connection with health services, to hold a health facility out as capable of providing, or as having the means of providing, specified health services.

Section 43. KRS 216B.020 is amended to read as follows:

(1) [~~The provisions of this chapter that relate to the issuance of a certificate of need shall not apply to family care homes; state veterans' nursing homes; services provided on a contractual basis in a rural primary care hospital as provided under KRS 216.380; community mental health centers for services as defined in KRS Chapter 210; primary care centers; rural health clinics; private duty nursing services licensed as nursing pools; group homes; end stage renal disease dialysis facilities, freestanding or hospital based; swing beds; special clinics, including, but not limited to, wellness, weight loss, family planning, disability determination, speech and hearing, counseling, pulmonary care, and other clinics which only provide diagnostic services with equipment not exceeding the major medical equipment cost threshold and for which there are no review criteria in the state health plan; nonclinically related expenditures; the relocation of hospital administrative or outpatient services into medical office buildings which are on or contiguous to the premises of the hospital or the following health services provided on site in an existing health facility when the cost is less than six hundred thousand dollars ($600,000) and the services are in place by December 30, 1991: psychiatric care where chemical dependency services are provided, level one (1) and level two (2) of neonatal care, cardiac catheterization, and open heart surgery where cardiac catheterization services are in place as of July 15, 1990. The provisions of this section shall not apply to nursing homes, personal care homes, intermediate care facilities, and family care homes; or nonconforming ambulance services as defined by administrative regulation. These listed facilities or services shall be subject to licensure, when applicable.~~

~~(2) The provisions of this chapter that relate to the issuance of a certificate of need shall not apply, after September 15, 1991, to licensed acute care hospitals, as defined by administrative regulation, in counties with more than 3,000 acute-care hospital beds, except as these provisions relate to rehabilitation beds and long term care beds.~~

~~(3)~~] Nothing in this chapter shall be construed to authorize the licensure, supervision, regulation, or control in any manner of:

(a) Private offices and clinics of physicians, dentists, and other practitioners of the healing arts ***unless the physician's office meets the criteria set forth in subsection (3) of Section 42 of this Act***;

(b) Office buildings built by or on behalf of a health facility for the exclusive use of physicians, dentists, and other practitioners of the healing arts; ***unless the physician's office meets the criteria set forth in subsection (3) of Section 42 of this Act,*** except no capital expenditure or expenses relating to any such building shall be chargeable to or reimbursable as a cost for providing inpatient services offered by a health facility;

(c) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees, if the facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four (24) hours;

(d) Establishments, such as motels, hotels, and boarding houses, which provide domiciliary and auxiliary commercial services, but do not provide any health related services and boarding houses which are operated by persons contracting with the United States Veterans Administration for boarding services;

(e) The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination and recognized by that church or denomination; and

(f) On-duty police and fire department personnel assisting in emergency situations by providing first-aid or transportation when regular emergency units licensed to provide first-aid or transportation are unable to arrive at the scene of an emergency situation within a reasonable time.

(2)[~~(4)~~] An existing facility licensed as skilled nursing, intermediate care, or nursing home shall notify the cabinet of its intent to change to a nursing facility as defined in Public Law 100-203. A certificate of need shall not be required for conversion of skilled nursing, intermediate care, or nursing home to the nursing facility licensure category.

Section 44. KRS 216B.035 is amended to read as follows:

(1) The ***board*** [~~secretary~~] shall ***hire any*** [~~provide the commission such~~] administrative staff [~~assistance as may be~~] required by the ***board*** [~~commission~~] to carry out its duties and functions under the provisions of this chapter.

(2) The chairman shall keep a full and true record of all the proceedings of the ***board*** [~~commission~~], of all books and papers ordered filed by the ***board*** [~~commission~~], and of all exemptions and certificates of need issued by the ***board*** [~~commission~~], and shall be responsible to it for the safe custody and preservation of all documents in its office. Under the direction of the ***board*** [~~commission~~], the ***executive director*** [~~chairman~~] shall have general charge of its office, superintend its clerical business***,*** and perform such other duties as the ***board*** [~~commission~~] prescribes. ***The executive director and chairman*** [~~He~~] may administer oaths in all parts of the state, where the exercise of that power is properly incidental to the performance of ***their*** [~~his~~] duties or those of the ***board*** [~~commission~~].

Section 45. KRS 216B.040 is amended to read as follows:

(1) The ***board*** [~~commission~~] shall have four (4) separate and distinct functions ***in administering this chapter***:

(a) To approve or deny certificates of need in accordance with the provisions of this chapter, except as to those applications which have been granted nonsubstantive review status by the chairman;

(b) To issue and to revoke certificates of need;

(c) To provide a due process hearing and issue a final determination on all actions by the cabinet to deny, revoke, modify, or suspend licenses of health facilities and health services issued by the cabinet; and

(d) To enforce, through legal actions on its own motion, the provisions of this chapter and its orders and decisions issued pursuant to its functions.

(2) The ***board*** [~~commission~~] shall:

(a) ***Promulgate*** [~~Issue~~] administrative regulations ***pursuant to the provisions of KRS Chapter 13A***[~~through the secretary~~]:

1. To establish the certificate of need review procedures, including but not limited to, application procedures, notice provisions, procedures for review of completeness of applications, and timetables for review cycles.

2. To establish criteria for issuance and denial of certificates of need which shall be limited to the following considerations:

a. Consistency with plans. ***Each proposal approved by the board shall*** [~~The proposals may~~] be consistent with the state health plan***, subject to biennial budget authorizations and limitations, and with consideration given to the proposal's impact on health care costs in the Commonwealth***. The state health plan shall contain a need assessment for long-term care beds, which shall be based on a statistically valid analysis of the present and future needs of the state as a whole and counties individually. The need assessment shall be applied uniformly to all areas of the state. The methodology shall be reviewed and updated on an annual basis. The fact that the state health plan shall not address the specific type of proposal being reviewed shall not constitute grounds for disapproval of the proposal;

b. Need and accessibility. The proposal shall meet an identified need in a defined geographic area and be accessible to all residents of the area. A defined geographic area shall be defined as the area the proposal seeks to serve, including its demographics, and shall not be limited to geographical boundaries;

c. Interrelationships and linkages. The proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state, accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system;

d. Costs, economic feasibility, and resources availability. The proposal, when measured against the cost of alternatives for meeting needs, shall be judged to be an effective and economical use of resources, not only of capital investment, but also ongoing requirements for health manpower and operational financing;

e. Quality of services. The applicant shall be prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements assuring the provision of quality health care services***, as established by the board*** [~~and~~];

f. Hospital based skilled nursing, intermediate care and personal care beds shall [~~not~~] be considered by the ***board*** [~~commission~~] in determining the need for freestanding long-term care beds.

(b) Conduct public hearings, as requested, in respect to certificate of need applications, revocations of certificates of need, and denials, suspensions, modifications, or revocations of licenses.

(3) The ***board*** [~~commission~~] may:

(a) Issue other administrative regulations [~~through the secretary~~] necessary for the proper administration of ***this chapter*** [~~its functions~~];

(b) Administer oaths, issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the ***board*** [~~commission~~], and the process shall extend to all parts of the Commonwealth. Service of process in all proceedings brought before or initiated by the ***board*** [~~commission~~] may be made by certified mail, or in the same manner as other process in civil cases, as the ***board*** [~~commission~~] directs;

(c) Establish by ***promulgation of*** administrative regulation ***under KRS Chapter 13A*** reasonable application fees for certificates of need;

(d) Appoint technical advisory committees as are deemed necessary to administer its functions under the provisions of this chapter; [~~and~~]

(e) Establish a mechanism for issuing advisory opinions to prospective applicants for certificates of need regarding the requirements of a certificate of need***; and***

(f) Establish a mechanism for biennial review of projects for compliance with the terms of the certificate of need.

Section 46. KRS 216B.042 is amended to read as follows:

(1) The cabinet shall:

(a) Establish by ***promulgation of*** administrative regulation under KRS Chapter 13A reasonable application fees for licenses and ***promulgate*** [~~issue~~] other administrative regulations necessary for the proper administration of the licensure function;

(b) Issue, deny, revoke, modify, or suspend licenses or provisional licenses in accordance with the provisions of this chapter; and

(c) Establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. These regulations, under KRS Chapter 13A, shall include, but need not be limited to:

1. Patient care standards and safety standards, minimum operating standards, minimum standards for training, required licenses for medical staff personnel, and minimum standards for maintaining patient records;
2. Licensure application and renewal procedures; and
3. Classification of health facilities and health services according to type, size, range of services, and level of care.

(2) The cabinet ***or board*** may authorize its agents or representatives to enter upon the premises of any health care facility for the purpose of inspection, and under the conditions set forth in administrative regulations promulgated ***under KRS Chapter 13A*** by the ***board or*** [~~commission and~~] the cabinet.

(3) The board may revoke licenses or certificates of need for specific health facilities or health services or recommend the initiation of disciplinary proceedings for health care providers on the basis of the violation of any provisions of this chapter.

Section 47. KRS 216B.045 is amended to read as follows:

Every order, decision, finding, license or certificate issued or approved by the ***board*** [~~commission~~] or cabinet under any of the provisions of this chapter shall be in writing and shall be entered on the records of the ***board*** [~~commission~~] or cabinet.

Section 48. KRS 216B.050 is amended to read as follows:

The ***board*** [~~commission~~] or cabinet may compel obedience to its lawful orders by mandamus, injunction***,*** or other proper proceedings in the Franklin Circuit Court or any other Circuit Court of competent jurisdiction. Every order entered by the ***board*** [~~commission~~] or cabinet shall continue in force until the expiration of the time, if any, named by the ***board*** [~~commission~~] or cabinet in the order, or until revoked or modified.

Section 49. KRS 216B.055 is amended to read as follows:

Notice of decisions and orders made by the ***board*** [~~commission~~] or cabinet under the provisions of this chapter shall be made by certified mail addressed to the last known address on file with the cabinet or ***board*** [~~commission~~], or by personal service. ***The*** [~~Such~~] notice shall be mailed or personal service shall be obtained no later than fifteen (15) working days after the decision or order. Notice shall be complete and effective upon mailing.

Section 50. KRS 216B.061 is amended to read as follows:

(1) Unless otherwise provided in this chapter, no person shall do any of the following without first obtaining a certificate of need:

(a) Establish a health facility;

(b) Obligate a capital expenditure which exceeds the capital expenditure minimum;

(c) Make a substantial change in the bed capacity of a health facility;

(d) Make a substantial change in a health service;

(e) Make a substantial change in a project;

(f) Acquire major medical equipment;

(g) Alter a geographical area or alter a specific location which has been designated on a certificate of need or license;

(h) Transfer an approved certificate of need for the establishment of a new health facility or the replacement of a licensed facility.

(2) No person shall separate portions of a single project into components in order to evade any expenditure minimum set forth in this chapter. For purposes of this chapter, the acquisition of one (1) or more items of functionally related diagnostic or therapeutic equipment shall be considered as one (1) project.

(3) No person shall have ex parte contact with any member of the ***board or the board's staff*** [~~commission~~] regarding a ***planned or pending*** certificate of need application ***prior to*** [~~from~~] the commencement of the review cycle to the final decision***, except that procedural inquiries may be addressed to the staff for response***. ***If*** [~~In the event~~] an ex parte contact occurs, it shall be promptly made a part of the record.

(4) No person shall obligate a capital expenditure in excess of the amount authorized by an existing certificate of need unless ***the person*** [~~he~~] has received an administrative escalation from the ***board*** [~~commission~~] as prescribed by regulation.

(5) No person shall proceed to obligate a capital expenditure under an approved certificate of need if there has been a substantial change in the project.

(6) A certificate of need shall be issued for a specific location and, when applicable, for a designated geographical area.

Section 51. KRS 216B.062 is amended to read as follows:

(1) Applications for certificates of need shall be submitted according to timetables established by the ***board*** [~~commission~~] by ***promulgation of*** administrative regulation***, pursuant to the provisions of KRS Chapter 13A***. Once an application has been deemed complete pursuant to the ***board's administrative*** [~~commission's adopted~~] regulations, notice shall be given as provided by the regulations of the beginning of the review, the proposed review schedule, and the right to request a hearing. The review shall be deemed to commence on the date of notice. No review shall take longer than ninety (90) days from the commencement of the review unless the applicant agrees to a deferral of action.

(2) Applications proposing the same or similar types of services, facilities, or equipment shall be batched for review purposes, excluding those granted nonsubstantive review status. The ***board*** [~~commission~~] shall by ***promulgation of administrative*** regulation ***under KRS Chapter 13A*** establish appropriate batching groups to assure that applications for each type of service, facility, or equipment will be eligible for consideration at set intervals. In each review batch, the ***board*** [~~commission~~] shall review and, if appropriate, compare all timely filed applications proposing similar types of services, facilities, or equipment in the same health service areas.

Section 52. KRS 216B.065 is amended to read as follows:

(1) Before any person enters into a contractual agreement to acquire a licensed health facility, the person shall notify the ***board*** [~~commission~~] of the [~~person's~~] intent to acquire the facility or major medical equipment and of the services to be offered in the facility and its bed capacity or the use of ***the*** [~~such~~] medical equipment. The notice shall be in writing and shall be filed at least thirty (30) days prior to entry into a contract to acquire the health facility or major medical equipment with respect to which the notice is given.

(2) A certificate of need shall be required for the acquisition of a health facility or major medical equipment, only if:

(a) The notice required in this section is not filed and the arrangement will require the obligation of a capital expenditure which exceeds the capital expenditure minimum; or

(b) The ***board*** [~~commission~~] finds within thirty (30) days after the date it received notice that the health services or bed capacity of the health facility will be substantially changed in being acquired.

(3) Donations, transfers, and leases of major medical equipment and health facilities shall be considered acquisitions of equipment and facilities, and an acquisition of medical equipment or a facility for less than fair market value shall be considered an acquisition if the fair market value exceeds the expenditure minimum.

(4) Before any health facility reduces or terminates a health service or reduces its bed capacity, the facility shall notify the ***board*** [~~commission~~] of its intent. The notice shall be in writing and shall be filed at least thirty (30) days prior to the reduction or termination. A certificate of need shall be required for the reduction or termination only if the notice required in this section is not filed.

Section 53. KRS 216B.066 is amended to read as follows:

(1) Before a health facility acquires major medical equipment to be used solely for research, offers a health service solely for

research or makes or obligates a capital expenditure solely for research, which exceeds the prescribed minimum, the health facility shall notify the ***board*** [~~commission~~] of its intent to do so. ***The*** [~~Such~~] notice shall be in writing and shall be made sixty (60) days prior to the acquisition, offering, or making or obligation of the expenditure with respect to which notice is given. The notice shall state the use to be made of the major medical equipment, health service or capital expenditure.

(2) A certificate of need shall be required for the acquisition of major medical equipment solely for research, the offering of a health service solely for research or the making or obligating of a capital expenditure solely for research by a health facility, only if:

(a) The notice required by this section is not filed; or

(b) The ***board*** [~~commission~~] finds within sixty (60) days after it receives notice that the project or transaction for which notice is given will affect the charges of the facility for the provision of medical or other patient care services other than services which are included in the research, will substantially change the bed capacity of the facility, or will substantially change the medical or other patient care services of the facility which were offered before the acquisition, offering, making or obligation.

(3) If major medical equipment is acquired, a health service is offered or a capital expenditure is made or obligated and, pursuant to this section, no certificate of need is required, ***the*** [~~such~~] equipment [~~or~~] service or facilities acquired through the capital expenditure ***shall*** [~~may~~] not be used in a manner which would affect the charges of the facility for the provision of medical or other patient care services other than that included in the research, substantially change the bed capacity of the facility or substantially change the medical or other patient care services of the facility unless a certificate of need is issued.

(4) For purposes of this section, "solely for research" means patient care provided on an occasional and irregular basis and not as part of a research project.

Section 54. KRS 216B.075 is amended to read as follows:

The ***board*** [~~commission~~] shall [~~, within ninety (90) days, following the date this chapter becomes effective,~~] promulgate administrative regulations respecting application and review procedures ***to comply with any*** [~~consistent with the~~] federal ***laws*** [~~act~~] and regulations promulgated thereunder.

Section 55. KRS 216B.085 is amended to read as follows:

(1) Any time no later than fifteen (15) days after the date the review commences, any affected person may request a public hearing. Hearings shall be before a quorum of the ***board*** [~~commission~~], or, at the request of the chairman, before a member of the ***board*** [~~commission~~] designated by the chairman to serve as hearing officer. The hearing officer shall be authorized to administer oaths, issue subpoenas, subpoenas duces tecum, and all necessary process in the proceedings.

(2) If a hearing is requested, the chairman shall set a date, time, and place for a public hearing. Reasonable notice of the hearing shall be given to all affected persons in accordance with administrative regulations promulgated by the ***board*** [~~commission~~].

(3) At the hearing, any party to the proceedings shall have the right to be represented by counsel, and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing, and may conduct reasonable cross-examination under oath of persons who make factual allegations relevant to such matters. A full and complete record shall be maintained of the hearing.

(4) Any decision of the ***board*** [~~commission~~] to issue or deny a certificate of need shall be based solely on the record established with regard to the matter. All decisions granting, denying, or modifying a certificate of need shall be made by the ***board*** [~~commission~~] in writing and shall be recorded in the minutes of the ***board*** [~~commission~~]. The ***board*** [~~commission~~] shall notify the parties to the proceedings of the decision and the decision shall be final for purposes of judicial appeal unless a request for reconsideration is filed. An approved certificate of need shall be issued forty (40) days after notice of the ***board's*** [~~commission's~~] decision unless a request for reconsideration is filed or a judicial appeal is taken and issuance is enjoined by the court.

Section 56. KRS 216B.086 is amended to read as follows:

(1) The ***board*** [~~commission~~] may revoke a certificate of need, or portion thereof, for failure of the holder of the certificate to implement the project in accordance with timetables and standards for implementation established by administrative regulation of the ***board*** [~~commission~~]. The ***board*** [~~commission~~] shall give notice to the holder of the certificate of its initial decision to revoke the certificate of need or portion thereof. The ***board's*** [~~commission's~~] initial decision to revoke a certificate of need or portion thereof shall become final after thirty (30) days unless a hearing is requested. The chairman shall give notice to the holder of the certificate of a decision which has become final under the provisions of this subsection.

(2) The holder of the certificate of need to be revoked may request in writing a public hearing in respect to an initial decision by the ***board*** [~~commission~~] to revoke a certificate of need within thirty (30) days of the date of notice of the initial decision. Failure to request a hearing shall constitute a waiver of any right to reconsideration or judicial appeal of a final ***board*** [~~commission~~] decision to revoke a certificate of need.

(3) The hearing shall be before the ***board*** [~~commission~~], or at the request of the chairman, before a member of the ***board*** [~~commission~~] designated by the chairman to be the hearing officer. The hearing shall be no later than thirty (30) days after the request for the hearing is filed.

(4) ***If*** [~~In the event~~] a hearing is requested, the chairman shall set a date, time, and place for a public hearing. Reasonable notice of the hearing shall be given to all affected persons in accordance with administrative regulations promulgated by the ***board*** [~~commission~~].

(5) At the hearing, any party to the proceedings shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the revocation of the certificate of need, and may conduct reasonable cross-examination under oath of persons who testify. A full and complete record shall be maintained of the hearing, and all testimony shall be recorded but not be transcribed unless the ***board's*** [~~commission's~~] final decision is appealed pursuant to this chapter.

(6) After the issuance of an initial decision to revoke a certificate of need and before a final decision is made, no person shall have ex parte contacts with members of the ***board*** [~~commission~~] regarding the revocation. ***If*** [~~In the event~~] an ex parte contact occurs, it shall be promptly made a part of the record.

(7) If a hearing is requested after notice of the ***board's*** [~~commission's~~] initial decision to revoke a certificate of need, the ***board*** [~~commission~~] shall make a final decision ***within thirty (30) days*** [~~at its next regularly scheduled meeting~~] after the hearing. Any final decision revoking a certificate of need shall be made by the ***board*** [~~commission~~] in writing and shall be recorded in the minutes of the ***board*** [~~commission~~]. The ***board*** [~~commission~~] shall notify the parties to the proceedings of the final decision.

(8) Any final decision of the ***board*** [~~commission~~] to revoke a certificate of need shall be based solely on the record established with regard to the revocation.

(9) Except as provided in subsection (1) of this section, reconsideration pursuant to KRS 216B.090 or judicial appeal pursuant to KRS 216B.115 is available with regard to a final decision of the ***board*** [~~commission~~] to revoke a certificate of need.

Section 57. KRS 216B.090 is amended to read as follows:

(1) Any party to the proceedings may, for good cause shown, request in writing a hearing for purposes of reconsideration of a decision of the ***board*** [~~commission~~] pertaining to a certificate of need or the revocation of a certificate of need under [~~such~~] procedures [~~as are~~] promulgated by administrative regulation. The request shall be filed within fifteen (15) days of the notice of the decision. For purposes of this section there shall be deemed to be "good cause shown" if the request for a public hearing:

(a) Presents significant, relevant information not previously available for consideration by the ***board*** [~~commission~~];

(b) Demonstrates that there have been significant changes in the factors or circumstances relied upon by the ***board*** [~~commission~~] in reaching its decision;

(c) Demonstrates that the ***board*** [~~commission~~] has materially failed to follow its adopted procedures in reaching its decision; or

(d) States that a public hearing pursuant to KRS 216B.085 was not conducted prior to a decision to deny a certificate of need.

(2) If a public hearing is granted, it shall be held within thirty (30) days after the decision to grant the request for reconsideration. The hearing shall be conducted in accordance with the provisions of this chapter. The ***board*** [~~commission~~] shall make its decision on reconsideration and shall give notice thereof. The decision of the ***board*** [~~commission~~] shall be final for purposes of judicial appeal. An approved certificate of need shall be issued forty (40) days after notice of the ***board's*** [~~commission's~~] decision unless a judicial appeal is taken and issuance is enjoined by the court.

Section 58. KRS 216B.095 is amended to read as follows:

(1) An applicant may waive the procedures for formal review of an application for a certificate of need and request a nonsubstantive review as provided below. The ***board may*** [~~chairman shall~~] grant or deny nonsubstantive review status within ten (10) days of the date the application is deemed completed and shall give notice to all affected persons of the decision to conduct a nonsubstantive review. Any affected person other than the applicant may request a hearing by filing a request with the ***board*** [~~commission~~] within ten (10) days of the notice to conduct a nonsubstantive review. As applicable, hearings shall be conducted as provided in KRS 216B.085. Based solely upon the record established with regard to the matter, the ***board*** [~~commission~~] shall approve or deny a certificate of need on all projects assigned nonsubstantive review status within thirty-five (35) days of the determination of nonsubstantive review status. If the application is denied nonsubstantive review status, it shall automatically be placed in the formal review process.

(2) If a certificate of need is denied following a nonsubstantive review, the applicant may request that the application be placed in the next cycle of the formal review process. Nothing in this subsection shall require an applicant to pursue a formal review before obtaining judicial review pursuant to KRS 216B.115.

(3) The ***board may*** [~~chairman shall~~] grant nonsubstantive review status to an application for a certificate of need which is required:

(a) To change the location of a proposed health facility;

(b) To replace or relocate a licensed health facility, ***if*** [~~provided~~] there is no substantial change in health services or substantial change in bed capacity;

(c) To replace or repair worn equipment ***if the*** [~~provided such~~] worn equipment ***has*** [~~shall have~~] been used by the applicant in a health facility for five (5) years or more;

(d) For cost escalations;

(e) [~~For change of ownership when applicable;~~

~~(f)~~] To establish an industrial ambulance service; or

(f)[~~(g)~~] In other circumstances the ***board*** [~~commission~~] by ***administrative*** regulation may prescribe.

(4) Notwithstanding any other provision to the contrary in this chapter, the ***board may*** [~~commission shall~~] approve a certificate of need for a project required for the purposes set out in ***paragraphs*** (a) through ***(f)***[~~(g)~~] of subsection (3) ***of this section*** [~~hereof~~], unless it finds the facility or service with respect to which the capital expenditure is proposed to be made is not [~~in fact so~~] required; or to the extent the facility or services contemplated by the proposed capital expenditure is addressed in the state health plan, the ***board*** [~~commission~~] finds that the capital expenditure is not consistent with the state health plan.

(5) The decision of the ***board*** [~~commission~~] approving or denying a certificate of need pursuant to this section shall be final for purposes of judicial appeal, unless the applicant requests the application be placed in the formal review process. An approved certificate shall be issued thirty (30) days after notice of the ***board's*** [~~commission's~~] decision, unless a judicial appeal is taken and issuance is enjoined by the court.

Section 59. KRS 216B.105 is amended to read as follows:

(1) Unless otherwise provided in this chapter, no person shall operate any health facility in this Commonwealth without first obtaining a license issued by the ***board*** [~~cabinet~~], which license shall specify the kind or kinds of health services the facility is authorized to provide. A license shall not be transferable and shall be issued for a specific location and, if specified, a designated geographical area.

(2) The ***board may*** [~~cabinet shall have the authority to~~] deny, revoke, modify***,*** or suspend a license in any case in which it finds that there has been a substantial failure to comply with the provisions of this chapter or the administrative regulations promulgated hereunder. ***The board shall deny, revoke, or suspend, a license in any case in which it finds there has been a violation of laws prohibiting discrimination based on disability, sex, age, religion, or race or national origin, in accordance with KRS Chapter 344. The*** [~~Such~~] denial, revocation, modification, or suspension shall be effected by mailing to the applicant or licensee, by certified mail, a notice setting forth the particular reasons for ***the*** [~~such~~] action. ***The*** [~~Such~~] denial, revocation, modification, or suspension shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within ***the*** [~~said~~] thirty (30) day period, shall file a request in writing for a hearing with the ***board*** [~~commission~~].

(3) The hearing shall be before the ***board*** [~~commission~~], or before a member of the ***board*** [~~commission~~] designated to serve as hearing officer by the chairman.

(4) If the hearing is before a designated hearing officer, within thirty (30) days from the conclusion of the hearing, the [~~hearing officer shall transmit his~~] findings and recommendations ***of the hearing officer shall be transmitted*** to the ***board*** [~~commission~~], with a synopsis of the evidence contained in the record and a statement of the basis of ***the hearing officer's*** [~~his~~] findings. The applicant or licensee shall be entitled to be represented at the hearing in person or by counsel, or both, and shall be entitled to introduce testimony by witnesses or, if the ***board*** [~~commission~~] so permits, by depositions. A full and complete record shall be kept of all hearings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to this chapter. The ***board*** [~~commission~~] may adopt the hearing officer's findings and recommendations or prepare written findings of fact and state the basis for its decision which shall become part of the record of the proceedings.

(5) All decisions revoking, suspending, modifying or denying licenses shall be made by the ***board*** [~~commission~~] in writing and shall be recorded in the minutes of the ***board*** [~~commission~~]. The ***board*** [~~commission~~] shall notify the applicant or licensee of the decision.

(6) The decision of the ***board*** [~~commission~~] shall be final for purposes of judicial appeal upon notice of the ***board's*** [~~commission's~~] decision.

Section 60. KRS 216B.115 is amended to read as follows:

(1) An appeal to the Franklin Circuit Court may be taken from any final decision of the ***board*** [~~commission or cabinet~~] with respect to a certificate of need application, a certificate of need, or a license, by any party to the proceedings.

(2) An appeal may be taken by filing a petition for review in the Franklin Circuit Court within thirty (30) days after notice of

the final decision unless a request for reconsideration has been filed, in which case the petition shall be filed within fifteen (15) days of the ***board's*** [~~commission's~~] decision not to reconsider or notice of its decision on reconsideration. The petition shall state completely the grounds upon which the review is sought and shall assign all errors relied upon. The petitioner shall serve a copy of the petition to each person who was a party to the proceedings. Summons shall be issued upon the petition directing the adverse party or parties to file an answer within twenty (20) days after service of summons. The ***board*** [~~commission or cabinet~~] shall, upon being served with the summons and within thirty (30) days thereafter, file a copy of the record, duly certified by the [~~cabinet or the~~] chairman of the ***board*** [~~commission~~], the cost of the record to be taxed as costs upon appeal. In lieu of filing of the record, an abstract thereof may be filed if all parties to the appeal agree.

Section 61. KRS 216B.120 is amended to read as follows:

(1) Each party to the proceedings may participate as a party in the proceedings in the Circuit Court on an appeal.

(2) In case of an appeal, no new or additional evidence may be introduced in the Circuit Court except as to fraud or misconduct of some person engaged in the administration of this chapter and affecting the decision or order; the court shall hear the case upon the certified record or abstract thereof, and shall dispose of the case in a summary manner, its review being limited to determining whether the ***board*** [~~commission~~] or cabinet acted within its jurisdiction, whether the decision or order was procured by fraud, and whether the findings of fact in issue are supported by substantial evidence and are not clearly erroneous based upon a review of the record as a whole.

(3) The court shall enter judgment affirming, modifying, reversing, or setting aside the decision or, in its discretion, remanding the case to the ***board*** [~~commission~~] or cabinet for proceedings in conformity with the directions of the court. If the court affirms the issuance of the certificate of need, the holder of the certificate shall be entitled to recover its costs of defense of the appeal, including its attorney's fees. The decision of the Circuit Court shall be final and nonappealable.

(4) In any case in which the granting of a license or certificate of need is appealed by a competing health care provider, the court shall require the appellant to post a bond, with good and sufficient surety, in ***the*** [~~such~~] sum [~~as~~] the court deems proper, for the payment of the costs and damages as may be incurred or suffered by the certificate of need or license applicant as a result of the filing and pendency of the appeal. Failure to post the bond as required by the court shall result in the dismissal of the appeal. If the decision of the ***board*** [~~commission~~] granting the certificate of need or license is sustained, the court shall order the appellant health care provider to pay the applicant its costs incurred and damages suffered as a result of the filing and pendency of the appeal, which shall not be limited to the amount of the bond. The court shall not withhold the finality of its decision on the merits of the appeal pending the determination as to ***the*** [~~such~~] costs and damages. As used in this section, "competing health care provider" means any health facility or health maintenance organization which competes with the applicant for patients, customers, the services of health care personnel, or policy holders.

Section 62. KRS 216B.125 is amended to read as follows:

If [~~In the event~~] the cabinet or ***board*** [~~commission~~] fails to issue or deny a certificate of need or an exemption pursuant to this chapter within the time prescribed under this chapter or administrative regulations promulgated by the ***board*** [~~commission~~], the applicant may seek judicial enforcement of this chapter by filing a civil action in Franklin Circuit Court.

Section 63. KRS 216B.130 is amended to read as follows:

Any other provisions of this chapter notwithstanding, any expenditure minimum or limit as provided in this chapter shall be adjusted for each twelve (12) month period beginning twelve (12) months after ***the effective date of this Act*** [~~July 15, 1980~~], to reflect the changes in the preceding twelve (12) month period in a cost index designated by regulation for the purposes of making ***the*** [~~such~~] adjustment. The ***board*** [~~commission~~] shall effect ***the*** [~~such~~] adjustment by administrative regulations.

Section 64. KRS 216B.455 is amended to read as follows:

(1) A certificate of need shall be required for all psychiatric residential treatment facilities. The application for a certificate of need shall include formal written agreements of cooperation that identify the nature and extent of the proposed working relationship between the proposed psychiatric residential treatment facility and each of the following agencies, organizations, or facilities located in the service area of the proposed facility:

  (a) Regional interagency council for children with emotional disability or severe emotional disability as defined in KRS 200.509;

  (b) Department for Social Services;

  (c) Local school districts;

  (d) Psychiatric hospitals; and

  (e) Any other agency, organization, or facility deemed appropriate by the ***board*** [~~Commission on Health Economics Control~~].

(2) All psychiatric residential treatment facilities shall comply with the licensure requirements as set forth in KRS 216B.105.

(3) All psychiatric residential treatment facilities shall be certified by the Joint Commission on Accreditation of Healthcare

Organizations.

(4) A psychiatric residential treatment facility shall not be located in or on the grounds of a psychiatric hospital.

(5) [~~If a psychiatric residential treatment facility is licensed prior to April 9, 1992, and pursuant to KRS 216B.020, the facility shall be exempt from subsections (1) and (4) of this section, if the facility is in compliance with the administrative regulations in effect on the date of the licensure.~~

~~(6)~~] The total number of psychiatric residential treatment facility beds shall not exceed sixteen (16) beds in any area development district with less than 275,000 population; thirty-two (32) beds in any area development district with 275,000 to 550,000 population; and forty-eight (48) beds in any area development district with over 550,000 population.

PART 9

THE KENTUCKY HEALTH PURCHASING ALLIANCE

SECTION 65. SUBTITLE 17A OF KRS CHAPTER 304 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in Sections 65 to 71 of this Act:

(1) "Accountable health plan" means an organization that integrates health care providers and facilities and assumes financial risk, in order to provide health care services to alliance members, and as certified by the alliance pursuant to Section 71 of this Act.

(2) "Alliance" means the Kentucky Health Purchasing Alliance created by Section 66 of this Act.

(3) "Alliance member" means:

(a) An employer who voluntarily chooses to participate in the alliance except that any employer who provides health plan benefits for one (1) full-time employee shall provide health plan benefits for all full-time employees; and

(b) An individual who voluntarily chooses to participate in the alliance.

(4) "Antitrust laws" means federal and state laws intended to protect commerce from unlawful restraints, monopolies, and unfair business practices.

(5) "Board" means the Kentucky Health Policy Board created by Section 2 of this Act.

(6) "Business health coalition" means a group of employers organized to share information about health services and insurance coverage, to enable the employers to obtain more cost-effective care for their employees.

(7) "Consumer" means an individual user of health care services.

(8) "Department" means the Kentucky Department of Insurance.

(9) "Grievance procedure" means an established set of rules that specify a process for appeal of an organizational decision.

(10) "Health care provider" or "provider" means any facility or service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:

(a) Physicians, osteopaths, and podiatrists licensed pursuant to KRS Chapter 311;

(b) Chiropractors licensed pursuant to KRS Chapter 312;

(c) Dentists licensed pursuant to KRS Chapter 313;

(d) Optometrists licensed pursuant to KRS Chapter 320;

(e) Physician assistants regulated pursuant to KRS Chapter 311;

(f) Nurse practitioners licensed pursuant to KRS Chapter 314;

(g) Psychologists licensed pursuant to KRS Chapter 319;

(h) Licensed clinical social workers pursuant to KRS Chapter 335; and

(i) Other health care practitioners as determined by the board by administrative regulations promulgated pursuant to KRS Chapter 13A.

(11) "Health insurer" or "insurer" means any insurance company; health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky.

(12) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; or health maintenance organization contract; or standard health benefit plans as established in Section 79 of this Act which affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not

include policies covering only accident, credit, dental, disability income, long-term care, medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(13) "Health status" means an assessment of an individual's mental and physical condition.

(14) "Managed care" means systems or techniques generally used by third party payors or their agents to affect access to and control payment for health care services. Managed care techniques may include one (1) or more of the following:

(a) Prior, concurrent, and retrospective review of the medical necessity and appropriateness of services or site of services;

(b) Contracts with selected health care providers;

(c) Financial incentives or disincentives related to the use of specified providers, services, or service sites;

(d) Controlled access to and coordination of services by a case manager; and

(e) Payor efforts to identify treatment alternatives and modify benefit restrictions for high cost patient care.

(15) "Managed competition" means a process by which purchasers participate in alliances to obtain information on health benefit plans, and purchase from, competing accountable health plans.

(16) "Medical outcomes" means a change in an individual's health status after the provision of health services.

(17) "Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals.

(18) "Purchaser" means an individual, an organization, or the Commonwealth that makes health benefit purchasing decisions on behalf of a group of individuals.

(19) "Self-funded plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for all covered services provided to its enrollees.

(20) "Utilization management" means programs designed to control the overutilization of health services by reviewing their appropriateness relative to established standards or norms.

(21) "Full-time employee" means an employee working thirty (30) or more hours per week.

SECTION 66. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created the Kentucky Health Purchasing Alliance consisting of the entire Commonwealth. The alliance shall operate independently from the Kentucky Health Policy Board but shall be attached to the Kentucky Health Policy Board for administrative purposes. The alliance shall be operational by July 15, 1995.

(2) The alliance designated in subsection (1) of this section shall be the only entity permitted to operate as a statewide health purchasing alliance in the Commonwealth and shall operate for the benefit of the members of the alliance. The alliance is the exclusive entity for the oversight and coordination of alliance member purchases. Any health benefit plan offered through the alliance shall be offered by an accountable health plan, and the alliance shall not:

(a) Directly provide insurance;

(b) Directly contract, for purposes of providing insurance, with a health care provider or provider network; or

(c) Bear any risk, or form self-insurance plans among its members.

Nothing in Sections 65 to 71 of this Act shall limit or authorize the formation of business health coalitions; however, a person or entity that pools together or assists in purchasing health coverage shall not discriminate in its activities based on the health status or historical or projected claims experience of such employers or recipients.

(3) Participation in the alliance shall be voluntary and open to those persons set forth in subsection (3) of Section 65 of this Act.

(4) The alliance shall be governed by a board of directors consisting of five (5) members to be appointed by the Governor and confirmed by the Kentucky Senate. Members shall have expertise in business, finance, economics, or health benefits management and shall represent the interests of employers and health care consumers. No member shall be, nor have been:

(a) A health care provider or health insurer;

(b) An employee of a health care provider, health insurer, or health plan; or

(c) A person having a fiduciary relationship to a health care provider, health insurer, or health plan.

(5) The Governor may at any time remove any member of the alliance board of directors for cause after furnishing the member with a written copy of the charges against the member and affording the member a public hearing if

requested.

(6) The alliance may have regional advisory boards with the number of members, terms of office, and conditions of participation to be determined by the alliance and with the members to be appointed by the Governor from a list of three (3) candidates for each open position on each regional advisory board submitted by the President of the Senate and the Speaker of the House; however, the terms of office of any member of a regional advisory board shall not exceed four (4) years. The qualifications for regional advisory board members shall be the same as for alliance board members as set forth in subsection (4) of this section.

(7) The members of the alliance board of directors and regional advisory boards shall be reimbursed for actual expenses incurred in the discharge of the member's duties.

(8) The alliance board of directors shall employ a chief executive officer and comptroller for the alliance. The chief executive officer shall employ any professional staff necessary to carry out the duties of the alliance and any regional advisory board subject to the approval of the Kentucky Health Policy Board.

(9) No member of the alliance board of directors or any regional advisory board shall be subject to any personal liability for any loss sustained or damage suffered on account of any action or inaction of the alliance.

(10) Nothing in Sections 65 to 71 of this Act shall be construed to prohibit or compel the health purchasing alliance or an accountable health plan from using the services of a licensed insurance agent or broker in order to assist in marketing, consumer education, claims assistance, grievance resolution, and servicing of health benefit coverage offered by the accountable health plan or through the health purchasing alliance. Any commissions or compensation paid by an accountable health plan to a licensed insurance agent or broker shall be determined between the accountable health plan and the agent or broker. An accountable health plan shall not vary compensation or commissions to such agents, brokers, contractors, or producers based directly or indirectly, on the anticipated or actual claims experience or health status associated with particular employers to which each plan is sold.

SECTION 67. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The duties of the Kentucky Health Purchasing Alliance shall be as follows:

(1) Establishing the conditions of alliance membership as set forth in Section 66 of this Act;

(2) Providing assistance to alliance members in selecting and obtaining coverage through accountable health plans and providing alliance members with clear, standardized information in the following areas:

(a) A description of each accountable health plan under contract with the alliance and each health benefit plan offered by each accountable health plan;

(b) Price, enrollee costs, quality, patient satisfaction, enrollment, and enrollee responsibilities for each accountable health plan and health benefit plan offered through the alliance; and

(c) A comparison sheet containing each accountable health plan participating in the alliance with information on basic coverage that may be obtained through the alliance;

(3) Annually offering to all alliance members all accountable health plans and health benefit plans offered by the accountable health plans under contract with the alliance which meet the requirements set forth in Section 71 of this Act, and enrolling alliance members in the health benefit plan of the member's choice;

(4) Requesting proposals for the offering to alliance members of standard benefit plans, as defined by the board, pursuant to Section 79 of this Act, from all accountable health plans in the area served by the alliance in a format to be determined by the alliance. At least one (1) standard benefit plan shall have coverage for alliance members which is comparable to the coverage provided under Kentucky Kare Standard as of January 1, 1994. The alliance shall aggressively negotiate contracts and select accountable health plans to offer to members that best meet cost, quality, access, and service objectives, as determined by the alliance;

(5) Requesting proposals from all accountable health plans in the area served by the alliance for supplemental benefit plans approved by the board, determining if the proposals submitted by the accountable health plans meet the requirements of the request for proposals, and offering them as options through riders to the standard benefit plan;

(6) Distributing to health care purchasers retail price data on prescription drugs and their generic equivalents, durable medical equipment, and disposable medical supplies;

(7) Establishing administrative and accounting procedures for the operation of the alliance and members' services, preparing an annual budget for the alliance, and preparing an annual report on alliance operations for submission to the board;

(8) Developing and implementing a marketing and public information plan to publicize the alliance to potential members;

(9) Developing grievance procedures to be used in resolving disputes between alliance members and the alliance and

disputes between the accountable health plans and the alliance. Any member of the alliance or accountable health plan that serves the alliance may appeal to the board any grievance that is not resolved by the alliance;

(10) Maintaining all records, reports, or other information required by the board or state law;

(11) Receiving and accepting grants, loans, advances, contributions, or funds from any public or private agency that are necessary for the operation of the alliance;

(12) Contracting with a qualified, independent third party, subject to approval of the board, for any service necessary to carry out the duties of the alliance;

(13) Developing a plan to facilitate participation of health care providers in accountable health plans in the area served by the alliance, with emphasis on participation by physicians in medically underserved areas;

(14) Ensuring that any accountable health plan that has a market share of fifteen percent (15%) or greater within the Commonwealth is offered to members of the alliance;

(15) Collecting premiums on behalf of participating accountable health plans, including the remittance of the share of the group premium paid by both an employer and an employee. The alliance shall pay participating accountable health plans their contracting premium amounts on a prepaid monthly basis, or as otherwise mutually agreed upon;

(16) Setting reasonable fees, not to exceed one percent (1%) of annual premiums for health benefit plans offered by the alliance, which shall finance all reasonable and necessary costs incurred in administering the alliance. Imposition of fees shall be subject to the approval of the board;

(17) Administering the risk adjustment process established by the Kentucky Health Policy Board pursuant to Section 76 of this Act if so directed by the board, but only as to accountable health plans participating in the alliance; and

(18) Ensuring that each alliance member always has a choice of one (1) fee-for-service plan.

SECTION 68. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The alliance shall establish conditions of participation in the alliance for employers which shall include:

  (a) Assurance that the group is a valid employer. This assurance shall include requirements for sole proprietors and self-employed individuals relating to the length of time the sole proprietor or self-employed individual has been in business, documentation to verify employment status, and any other requirements to ensure that the individual is working;

  (b) Assurance that the individuals in the employer group are employees and have not been added for the purpose of securing health benefit coverage;

  (c) Assurance that during the first year of membership in the alliance:

    1. An employer shall not be required to pay a premium that exceeds the amount of the premium that the employer was charged for a health benefit plan providing the same coverage immediately prior to becoming a member of the alliance; and

    2. An employee of an employer that is a member of the alliance shall not be required to pay any premium that exceeds the amount of the premium that the employee was charged for a health benefit plan providing the same coverage immediately prior to the date that the employer became a member of the alliance, if the employee purchased health insurance through a group plan made available to the employer;

  (d) Assurance that an employer that lays off or terminates the employment of an employee allows the employee, at the employee's expense, the opportunity to continue coverage with any health benefit plan with which the employee was enrolled at the time of the layoff or termination of employment. The employee shall not be required to pay a premium that exceeds the amount charged to the employer or other employees; and

  (e) Assurance that any employee who voluntarily terminates employment with an employer shall be permitted to continue to participate, at the employee's expense, in any health benefit plan with which the employee was enrolled at the effective date of the voluntary termination. The employee shall not be required to pay a premium that exceeds the amount charged to the employer or other employees.

(2) The alliance may require an employer seeking membership to agree to participate in the alliance for a specified minimum period of time, not to exceed one (1) year.

(3) The alliance shall not require an employer to pay any portion of premiums as a condition of participation in the alliance.

(4) If an employer who is a member of the alliance offers more than one (1) health benefit plan and the employer contributes to the coverage of full-time employees or dependents of the employee, the alliance shall require that the employer contribute the same dollar amount for each full-time employee, regardless of the health benefit plan chosen by the employee.

(5) For a minimum of one (1) year after January 1, 1995, an employer that seeks to participate in the alliance shall be allowed to keep the same coverage that the employer offered to its employees immediately prior to becoming a member of the alliance.

SECTION 69. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The Kentucky Health Policy Board created by Section 2 of this Act shall have the following duties with respect to the alliance:

(1) Initially and thereafter annually certifying that the alliance complies with the provisions of Sections 65 to 71 of this Act. The board may decertify the alliance if it determines the alliance fails to comply with the provisions of Sections 65 to 71 of this Act and the administrative regulations adopted by the board pursuant to KRS Chapter 13A. Thereafter, a single new health purchasing alliance may be established in accordance with the procedures under Section 66 of this Act;

(2) Providing administrative startup funds through a loan or grant to the alliance.

(3) Conducting any annual review of the performance of the alliance to ensure the alliance is in compliance with Sections 65 to 71 of this Act. The alliance shall submit data to the board to assist in this review, including:

- ***(a) Employer enrollment by employer size, industry sector, and previous insurance status;***
- ***(b) Number of total eligible employers in the area served by the alliance and the number participating in the alliance;***
- ***(c) Premium ranges for each accountable health plan for alliance member categories;***
- ***(d) Type and resolution of member grievances;***
- ***(e) Membership fees collected by the alliance; and***
- ***(f) Alliance financial statements.***

(4) Establishing a data system to be utilized by accountable health plans including data elements to be filed with the alliance.

SECTION 70. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

In addition to the other duties described in Sections 65 to 71 of this Act, the Kentucky Health Policy Board shall supervise the alliance to ensure that actions that affect market competition are not for private interest, so as to provide the alliance and its board members with protection against violating antitrust laws.

SECTION 71. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) An accountable health plan may be created by health care providers, health maintenance organizations, and health insurers for the purpose of providing health care services to alliance members.

(2) Each accountable health plan that seeks to offer services to members of the alliance shall first be certified by the alliance. The alliance shall promulgate administrative regulations pursuant to KRS Chapter 13A, in consultation with the Kentucky Health Policy Board, for certification of accountable health plans. To qualify as an accountable health plan, an applicant shall submit information acceptable to the alliance to satisfactorily demonstrate that the plan:

- ***(a) Is licensed and in good standing with the licensure boards for participating providers;***
- ***(b) Has demonstrated the capacity to administer the health plans it is offering;***
- ***(c) Has the ability, experience, and structure to arrange for the appropriate level and type of health care services;***
- ***(d) Has the ability, policies, and procedures to conduct utilization management activities;***
- ***(e) Has the ability to achieve, monitor, and evaluate the quality and cost effectiveness of care provided by its provider network;***
- ***(f) Is financially solvent;***
- ***(g) Has the ability to assure enrollees adequate access to providers, including geographic availability and adequate numbers and types;***
- ***(h) Has the ability and procedures to monitor access to its provider network;***
- ***(i) Has a satisfactory grievance procedure and the ability to respond to enrollee's inquiries and complaints;***
- ***(j) Has the ability to recruit and retain health care providers in medically underserved areas;***
- ***(k) Does not limit the participation of any health care provider in its provider network in another accountable health plan, except for providers who practice on the staff of a health maintenance organization of any other***

plan that employs providers on a full-time basis;

(l) Has the ability and policies that allow patients to receive care in the most appropriate, least restrictive setting;

(m) Does not discriminate in enrolling members;

(n) Participates in coordination of benefits;

(o) Uses standardized electronic claims and billing processes and formats; and

(p) Discloses to the alliance reimbursement arrangements with providers.

(3) The alliance shall establish a certification fee to be paid by each accountable health plan to cover the cost in performing the certification review.

(4) An accountable health plan shall require all providers participating in the plan to report to the Kentucky Health Policy Board specified data which can be used in determining medical outcomes in accordance with standards approved by the board and shall comply with all provisions of this subtitle.

PART 10

INSURANCE REFORMS

SECTION 72. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in Sections 72 to 79 of this Act, unless the context requires otherwise:

(1) "Board" means the Kentucky Health Policy Board created by Section 2 of this Act.

(2) "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as amended.

(3) "Guaranteed-issue basis" means that no applicant for insurance can be turned down except for nonpayment of premiums.

(4) (a) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; health maintenance organization contract; and standard health benefit plans as established in Section 79 of this Act.

(b) "Health benefit plan" does not include policies covering only accident, credit, dental, disability income, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(c) "Health benefit plan" means a health benefit plan which affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky.

(5) "Insurer" means a person who provides heath benefit plans in this state and is subject to insurance regulation in this state, including an authorized insurance company, health maintenance organization, self-insurer or multiple welfare arrangement not exempt from state regulation by ERISA, accountable health plans as defined in Section 65 of this Act, and nonprofit hospital, medical-surgical, dental, and health service corporation.

SECTION 73. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

All health benefit plans issued or renewed on or after July 15, 1995, shall comply with the following provisions:

(1) All health benefit plans shall be renewable with respect to all eligible persons and dependents at the option of the policyholder or contract holder, except:

(a) For nonpayment of the required premiums by the policyholder or contract holder;

(b) For fraud or misrepresentation of the policyholder or contract holder;

(c) For noncompliance with health benefit plan provisions;

(d) If the insurer ceases doing business in Kentucky and notice of the decision to cease to do business in Kentucky is provided to the Kentucky Health Policy Board, the department, and to either the policyholder or contract holder. Health benefit plans shall not be canceled by the insurer for one (1) year after the date of the notice required under this paragraph unless the business has been sold to another insurer. An insurer that ceases to do business in Kentucky shall not reenter Kentucky for a period of five (5) years from the date of the notice required under this paragraph.

(2) (a) Pre-existing conditions provisions shall not exclude or limit coverage for a period beyond six (6) months following the individual's effective date of coverage and may only relate to conditions which had, during the six (6) months immediately preceding the effective date of coverage, manifested themselves in a manner that would cause an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment or for which

medical advice, diagnosis, care, or treatment was recommended or received or as to a pregnancy existing on the effective date of coverage;

(b) In determining whether a pre-existing conditions provision applies to a person covered under a plan, all health benefit plans shall credit the time the person was covered under a previous health benefit plan provided by an insurer if the previous coverage was continuous to a date not more than sixty (60) days prior to the effective date of the new coverage.

(3) Health care benefit plans shall not discriminate against any provider who is located within the geographic coverage area of the health benefit plan and is willing to meet the terms and conditions for participation established by the health benefit plan.

(4) (a) Health benefit plans shall guarantee that all licensed and qualified providers that perform the same service shall be offered the opportunity to bid for contracts with the health benefit plans.

(b) If the commissioner finds after a hearing that the insurer has violated the provisions of this subsection, the insurer shall be subject to the penalties provided in subsection (1) of KRS 304.3-200.

(5) It shall be the responsibility of the health care provider who renders services to an insured to initiate and comply with any pre-certification process required by a health benefit plan that requires advance review and authorization to obtain any covered service under the health benefit plan. The insured shall not be liable to the health care provider for any charges for covered services not paid by the plan because of a reduction in benefits due to the failure of the health care provider to comply with the pre-certification provisions in the plan.

SECTION 74. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any other provisions of this chapter to the contrary:

(a) Each insurer maintaining policies or contracts under this chapter on February 1, 1994, shall, by September 1, 1994, file with the Kentucky Health Policy Board its rates, fees, dues, and other charges paid by insureds, members, enrollees, or subscribers in effect on February 1, 1994.

(b) Each insurer that issues, delivers, or renews any policy or contract after October 1, 1994, shall, before use thereof, file with the Kentucky Health Policy Board its rates, fees, dues, and other charges paid by insureds, members, enrollees, or subscribers and shall comply with the provisions of this section. The insurer shall adhere to its rates, fees, dues, and other charges as filed with the Kentucky Health Policy Board. The insurer may submit new filings from time to time as it deems proper, except as provided in paragraph (d) of subsection (2) of this section.

(c) Each insurer that issues, delivers, or renews any standard health benefit plan under Section 79 of this Act shall, before use thereof, file with the Kentucky Health Policy Board its rates, fees, dues, and other charges paid by insureds, members, enrollees, or subscribers and shall comply with the provisions of this section. The insurer shall adhere to its rates, fees, dues, and other charges as filed with the Kentucky Health Policy Board. The insurer may submit new filings from time to time as it deems proper, except as provided in paragraph (d) of subsection (2) of this section.

(2) (a) No filing under paragraphs (b) or (c) of subsection (1) of this section shall become effective until the Kentucky Health Policy Board, created by Section 2 of this Act, has issued an order approving the filing within thirty (30) days after receiving the filing. At the expiration of the thirty (30) day period, the filing shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the Kentucky Health Policy Board or a hearing has been held. The Kentucky Health Policy Board may hold a hearing within thirty (30) days after receiving a filing under this subtitle and shall issue an order approving or disapproving the filing within thirty (30) days following the conclusion of the hearing.

(b) In approving or disapproving a filing under paragraph (a) of this subsection, the Kentucky Health Policy shall consider:

1. Whether the benefits provided are reasonable in relation to the premium or fee charged;

2. Whether the fees paid to providers for the covered services are reasonable in relation to the premium or fee charged;

3. Previous premium rates or fees for the policies or contracts to which the filing applies;

4. The effect of the rate or rate increase on policyholders, enrollees, and subscribers;

5. Whether discounts given to providers are reflected in the premium or fee; and

6. Whether the rates, fees, dues, or other charges are excessive, inadequate, or unfairly discriminatory.

(c) Not less than ten (10) days in advance of a hearing held under paragraph (a) of this subsection, the Kentucky Health Policy Board shall notify the Attorney General in writing of the hearing. The Attorney General shall be considered a party to the hearing if the Attorney General chooses to participate.

(d) No insurer receiving the Kentucky Health Policy Board's approval of a filing under this section shall submit a new filing containing a rate or fee increase for any of the same policies or contracts until at least twelve (12) months have elapsed following the effective date of the approved increase.

(e) At any time, the Kentucky Health Policy Board, after a public hearing of which at least thirty (30) days' notice has been given, may withdraw approval of rates or fees previously approved under this section and may order an appropriate refund to policyholders, enrollees, and subscribers if the board determines that the benefits are no longer reasonable in relation to the premium or fee charged.

(3) The Kentucky Health Policy Board may by administrative regulation prescribe any additional information it deems relevant to be included in the filings and the form of the filings required by this section.

(4) As a condition of doing business in Kentucky, each insurer as defined in Section 72 of this Act shall comply with the provisions of this section.

SECTION 75. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) For all health benefit plans issued or renewed on or after July 15, 1995, insurers shall use a modified community rating methodology filed with and approved by the Kentucky Health Policy Board in which the premium for each individual policy and group policy is determined solely on the basis of age, geography, family composition, benefit plan design and cost containment provisions, and whether or not the product is offered through an alliance.

(2) Premium variations based on age shall not vary more than three hundred percent (300%) from the lowest to the highest price.

(3) The Kentucky Health Policy Board shall establish guidelines for geographic rating areas that take into consideration the following:

(a) Geographic rating should not be used to prevent areas with lower cost, more efficient delivery systems from cross-subsidizing areas where health benefit plans and providers operate inefficiently;

(b) Geographic rating shall not increase rates of higher risk and needier populations relative to healthier and wealthier populations, nor to effectively discriminate on the basis of race or socio-economic class; and

(c) Geographic rating areas may include entire communities and single metropolitan statistical areas but shall not fold lower cost and lower income rural areas into the same rating areas as higher cost urban areas.

(4) The rate structure shall differentiate between single individuals, couples, single-parent families, and two-parent families with children.

SECTION 76. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board shall promulgate administrative regulations for the establishment of a risk adjustment process to be used in equalizing risk between insurers which participate within and outside of the Kentucky Health Purchasing Alliance.

(2) Prior to promulgating the administrative regulations, the board shall appoint an expert advisory panel to provide input on the process. The panel shall be comprised of nine (9) members, one (1) of whom shall be designated by the board as chairman. The board shall appoint three (3) members and the President of the Senate and the Speaker of the House of the General Assembly shall each appoint three (3) members to the panel. The appointees shall be named no later than September 1, 1994, and shall consist of individuals with expertise particularly germane to risk adjustment, including representatives of health plans, academics, and actuaries.

(3) The risk adjustment process shall at minimum be based on gender, retiree status, continuation status, and medical condition information which represent the relative risk of individuals participating with various insurers. The risk adjustment process is not intended to, and shall not, neutralize cost variations among insurers based on efficiency, ability to manage health costs and patient care, and the administration of policy provisions. The process shall not base adjustment for insurers on their individual premiums, administrative expenses, claims, or use of health care services. Preset amounts shall be established to reflect the demographic and medical risk characteristics of individuals enrolled by insurers.

(4) The risk adjustment process shall be administered by the board so that the process can be applied on a marketwide basis. All insurers shall submit information designated by the board as necessary to administer the risk adjustment process. All insurers shall contribute on an annual basis a preset amount for each person covered toward the establishment and administration of the risk adjustment process. Insurers shall receive from, or contribute amounts to, the board based on the insurer's relative risk profile as determined by the risk adjustment process.

(5) The risk adjustment process shall be established by no later than April 1, 1995. The board may authorize one (1) or more pilot projects as part of an ongoing reevaluation and refinement of the risk adjustment process.

SECTION 77. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

All health benefit plans issued or renewed on or after July 15, 1995, which provide coverage for a family member of the insured shall provide that the health plan benefits applicable for children shall be payable with respect to legally adopted children of the insured or any child for which the insured is a court-appointed guardian from and after the date of the filing of the petition for adoption or the filing of the application for appointment of guardian.

SECTION 78. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) On and after July 15, 1995, it is an unfair trade practice for an insurer as defined in Section 72 of this Act, agent, broker, or any other person in the business of marketing and selling health plans, to commit or perform any of the following acts:

(a) Encourage individuals or groups to refrain from filing an application for coverage with the insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or

(b) Encourage or direct individuals or groups to seek coverage from another insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or

(c) Encourage an employer to exclude an employee from coverage.

The provisions of paragraphs (a) and (b) of this subsection shall not apply to information provided regarding the established geographic service area of an insurer.

(2) It is an unfair trade practice for an insurer to compensate an agent, broker, or any other person in the business of marketing and selling health plans on the basis of the health status, claims experience, industry, occupation, or geographic location of the insured or prospective insured.

(3) The remedy provided by KRS 304.12-120 shall be available for conduct proscribed by subsections (1) and (2) of this section.

SECTION 79. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board shall define no more than five (5) standard health benefit plans, one (1) of which shall be a basic benefit plan, and one (1) of which shall be comparable to the coverage provided under Kentucky Kare Standard as of January 1, 1994. The board may define a limited number of supplemental health benefit plans. The board shall submit the plans to the commissioner and the Legislative Research Commission no later than February 1, 1995. The commissioner shall review the plans and return them with written comments to the board within thirty (30) days of receipt. After consideration of the commissioner's and the Legislative Research Commission's comments, the board shall give final approval to the standard health benefit plans no later than April 1, 1995, and the plans shall become operational on July 15, 1995.

(2) Notwithstanding any other provision of this chapter to the contrary, on and after July 15, 1995:

(a) No insurer doing business in Kentucky shall issue or renew health benefit plans other than the standard health benefit plans established by the board, and any of the standard health benefit plans offered shall be offered on a guaranteed-issue basis;

(b) Every insurer shall, as a condition of transacting business in this state, offer and issue the basic health benefit plan on a guaranteed-issue basis;

(c) An insurer may elect to offer health benefit plans only to individuals and groups that purchase coverage through the Kentucky Health Purchasing Alliance and not offer coverage to individuals and groups that purchase coverage outside of the alliance; and

(d) No insurer shall exclude any eligible person or dependent, who would otherwise be covered under a group health benefit plan, on the basis of an actual or expected health condition of the person.

(3) Each of the standard health benefit plans shall be in two (2) forms, one (1) of which shall be in the form of insurance and the second of which shall be consistent with the basic method of operation and benefit plans of health maintenance organizations, including federally-qualified health maintenance organizations. Each of the standard plans shall provide for two (2) levels of cost sharing. The board shall take into consideration the levels of benefits currently provided in health benefit plans in Kentucky and appropriate medical and economic factors. The plans shall include cost containment features, such as utilization review of health care services, including review of medical necessity of hospital and physician services; case management benefit alternatives; contracting with hospitals, physicians, and other health care providers; reasonable benefit differentials applicable to participating and nonparticipating providers; and other managed care provisions. If a standard benefit plan issued by an insurer covers services which the plan's beneficiaries lawfully obtain from health departments established pursuant to KRS Chapter 212 in medically-underserved areas designated by the Kentucky Health Policy Board, that insurer shall pay

the plan's established rate for those services to the health departments.

(4) All policies and contracts providing health care benefits issued or renewed on or after July 15, 1995, shall be uniform in structure, language, designation, and format to the standard benefit plans defined by the board and shall be filed with and approved by the board before being delivered or issued for delivery in Kentucky.

(5) The board shall inform residents of Kentucky of the existence and provisions of the standard benefit plans. The board shall develop an outline and chart of coverage that describes the features of each of the standard benefit plans available in Kentucky. The board shall broadly publicize a twenty-four hour toll-free telephone number for information on health care benefit plans available in Kentucky.

(6) The commissioner and the department shall render assistance on approval of plans and any other insurance matter as requested by the board.

(7) Any insurer that between the effective date of this Act and July 15, 1995, knowingly and willfully terminates coverage of any insured or dependent solely because the insured is eligible for coverage through the Kentucky Health Purchasing Alliance shall be prohibited from issuing or delivering any health benefit plan in the Commonwealth for a period of five (5) years from the date of exclusion.

Section 80. KRS 304.5-160 is amended to read as follows:

(1) No health insurance contracts, plans, or policies delivered or issued for delivery in the state shall provide coverage for elective abortions except by an optional rider for which there must be paid an additional premium. For purposes of this section, an "elective abortion" means an abortion for any reason other than to preserve the life of the female upon whom the abortion is performed.

(2) This section shall be applicable to all contracts, plans, or policies of:

(a) All health insurers subject to Subtitle 17 of KRS Chapter 304; and

(b) All group and blanket health insurers subject to Subtitle 18 of KRS Chapter 304; and

(c) All nonprofit hospital, medical, surgical, dental, and health service corporations subject to Subtitle 32 of KRS Chapter 304; and

(d) All health maintenance organizations subject to Subtitle 38 of KRS Chapter 304; and

(e) Any provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death or injury, when such benefits or coverage are incidental to or part of other insurance described in KRS 304.5-070(1); ~~[and]~~

(f) ***All insurers subject to Subtitle 17A of KRS Chapter 304; and***

(g) All employers who provide health insurance for employees on a self-insured basis.

SECTION 81. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) On and after July 15, 1995, no health maintenance organization shall deliver or issue for delivery in this state any contract describing health benefits available, or any endorsement, rider, or application which becomes a part thereof, or any amendments thereto or modifications thereof, until a copy of that form has been filed with and approved by the Kentucky Health Policy Board created pursuant to Section 2 of this Act. Each form shall contain a complete and clear statement of:

(a) The health care services to which the enrollee is entitled;

(b) Any limitations on the services, kind of services, benefits to be provided, including any deductible or copayment feature;

(c) Where and in what manner information is available as to how services may be obtained; and

(d) Any other provisions pertaining to the delivery of health care services.

(2) At the expiration of thirty (30) days, the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the board, or a hearing has been scheduled by order of the board. In the event that a hearing is held, the thirty (30) day waiting period shall begin anew after the close of such hearing. Approval of any such form by the board shall constitute a waiver of any unexpired portion of such waiting period. The board may extend by not more than an additional thirty (30) day period within which the board may affirmatively approve or disapprove any such form by giving notice to the insurer of such extension before expiration of the initial thirty (30) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The board may at any time withdraw any such approval.

SECTION 82. A NEW SECTION OF SUBTITLE 32 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) On and after July 15, 1995, no corporation subject to the provisions of this subtitle shall deliver or issue for delivery

in this state any subscription certificate or membership certificate describing health benefits available, or any indorsement, rider, or application which becomes a part thereof, until a copy of such form has been filed with and approved by the Kentucky Health Policy Board created pursuant to Section 2 of this Act.

(2) At the expiration of thirty (30) days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the board, or a hearing has been scheduled by order of the board. In the event that a hearing is held, the thirty (30) day waiting period shall begin anew after the close of such hearing. Approval of any such form by the board shall constitute a waiver of any unexpired portion of such waiting period. The board may extend by not more than an additional thirty (30) day period within which the board may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial thirty (30) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The board may at any time withdraw any such approval. Any notice of the board withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonable to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at the expiration of such period, not less than thirty (30) days after the giving of the notice of withdrawal, as the board shall in such notice prescribe.

(3) The board's order disapproving any form or withdrawing previous approval shall state the grounds for disapproval or withdrawal.

(4) The board may, by order, exempt from the requirements of this section for so long as the board deems proper, any document or form specified in the order, to which in the board's opinion this section may not practicably be applied, or the filing and approval of which are, in the board's opinion, not desirable or necessary for the protection of the public.

Section 83. KRS 304.32-160 is amended to read as follows:

(1) On or after June 18, 1970, no corporation subject to the provisions of this subtitle shall deliver or issue for delivery in this state any subscription certificate or membership certificate describing health benefits available, or any indorsement, rider, or application which becomes a part thereof, ~~[or the schedule of rates, dues, fees, or other periodic charges, to be paid by subscribers or members,]~~ until a copy of such form has been filed with and approved by the commissioner.

(2) At the expiration of thirty (30) days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner, or a hearing has been scheduled by order of the commissioner. In the event that a hearing is held, the thirty (30) day waiting period shall begin anew after the close of such hearing. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than an additional thirty (30) day period within which he may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial thirty (30) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time withdraw any such approval. Any notice of the commissioner withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonable to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at the expiration of such period, not less than thirty (30) days after the giving of the notice of withdrawal, as the commissioner shall in such notice prescribe.

(3) The commissioner's order disapproving any form or withdrawing previous approval shall state the grounds for disapproval or withdrawal.

(4) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper, any document or form specified in the order, to which in his opinion this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(5) After July 14, 1995, KRS 304.32-160 shall become null and void.

Section 84. KRS 304.32-270 is amended to read as follows:

Nonprofit hospital, medical-surgical, dental, and health service corporations shall be subject to the provisions of this subtitle, and to the following provisions of this code, to the extent applicable and not in conflict with the express provisions of this subtitle:

(1) Subtitle 1 – Scope of Code;

(2) Subtitle 2 – The Insurance Commissioner;

(3) Subtitle 7 – Investments;

(4) Subtitle 8 – Administration of Deposits;

(5) Subtitle 12 – Trade Practices and Frauds;

(6) Subtitle 25 – Continuity of Management;

(7) Subtitle 33 – Rehabilitation and Liquidation;

(8) Subtitle 18 – KRS 304.18-110, 304.18-120 – Group Conversion and KRS 304.18-045;

(9) Subtitle 4 – Fees and Taxes;

(10) Subtitle 99 – Penalties; ~~[and]~~

(11) Subtitle 14 – KRS 304.14-500 to 304.14-560***; and***

(12) Subtitle 17A-Health Insurance.

Section 85. KRS 304.38-050 is amended to read as follows:

(1) No health maintenance organization shall deliver or issue for delivery in this state any contract describing health benefits available, or any endorsement, rider, or application which becomes a part thereof, or any amendments thereto or modifications thereof, ~~[or the schedule of fees or other periodic charges to be paid by enrollees,]~~ until a copy of such form has been filed with and approved by the commissioner. Each form shall contain a complete and clear statement of (a) the health care services to which the enrollee is entitled; (b) any limitations on the services, kind of services, benefits to be provided, including any deductible or copayment feature; (c) where and in what manner information is available as to how services may be obtained; and (d) any other provisions pertaining to the delivery of health care services. ~~[Any schedule of fees or other periodic charges to be paid by enrollees submitted to and filed with the commissioner along with adequate supporting information to show that such charges or fees are not excessive, inadequate, or unfairly discriminatory.]~~

(2) At the expiration of thirty (30) days, the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner, or a hearing has been scheduled by order of the commissioner. In the event that a hearing is held, the thirty (30) day waiting period shall begin anew after the close of such hearing. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than an additional thirty (30) day period within which he may affirmatively approve or disapprove any such form by giving notice to the insurer of such extension before expiration of the initial thirty (30) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time withdraw any such approval.

(3) After July 14, 1995, this section shall become null and void.

Section 86. KRS 304.38-130 is amended to read as follows:

(1) The commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization under this Subtitle if he finds that any of the following conditions exist:

  (a) The health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under KRS 304.38-040, unless amendments to such submissions have been filed with and approved by the commissioner;

  (b) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which do not comply with the requirements of KRS 304.38-050 ***and Section 74 of this Act***;

  (c) The health maintenance organization does not provide or arrange for health care services as approved by the commissioner in KRS 304.38-050(1)(a);

  (d) The certificate of need and licensure board certifies to the commissioner that the health maintenance organization fails to meet the requirements of the board or that the health maintenance organization is unable to fulfill its obligations to furnish health care services;

  (e) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

  (f) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;

  (g) The continued operation of the health maintenance organization would be hazardous to its enrollees;

  (h) The health maintenance organization has otherwise failed to substantially comply with this subtitle.

(2) A certificate of authority shall be suspended or revoked only after compliance with the hearing procedures set out in Subtitle 2.

(3) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of such suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.

(4) When the certificate of authority of a health maintenance organization is revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit such further operation of the organization as he may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage. If the commissioner permits such further

operation the health maintenance organization will continue to collect the periodic prepayments required of enrollees.

Section 87. KRS 304.17-060 is amended to read as follows:

There shall be a provision as follows:

"Time Limit on Certain Defenses: [~~(a)~~] After three (3) years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such three (3) year period."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial three (3) year period, nor to limit the application of KRS 304.17-190 to 304.17-230, inclusive, in the event of misstatement with respect to age or occupation or other insurance.)

A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (a) until at least age fifty (50) or (b) in the case of a policy issued after age forty-four (44) for at least five (5) years from its date of issue, may contain in lieu of the foregoing the following provision, from which the clause in parentheses may be omitted at the insurer's option, under the caption "Incontestable":

"After the policy has been in force for a period of three (3) years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."

[~~(b) No claim for loss incurred or disability (as defined in the policy) commencing after two (2) years from the date of issue of this policy, shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.~~]

Section 88. KRS 304.17-270 is amended to read as follows:

[~~Except as provided in KRS 304.17-275,~~] Health insurance policies, other than accident insurance only policies, in which the insurer reserves the right to refuse renewal on an individual basis, shall provide in substance in a provision thereof or in an indorsement thereon or rider attached thereto that subject to the right to terminate the policy upon nonpayment of premium when due, such right to refuse renewal may not be exercised so as to take effect before the renewal date occurring on, or after and nearest, each policy anniversary (or in the case of lapse and reinstatement, at the renewal date occurring on, or after and nearest, each anniversary of the last reinstatement), and that any refusal of renewal shall be without prejudice to any claim originating while the policy is in force. (The parenthetic reference to lapse and reinstatement may be omitted at the insurer's option.)

Section 89. KRS 304.14-120 is amended to read as follows:

(1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or printed rider or indorsement form or form of renewal certificate, shall be delivered, or issued for delivery in this state, unless the form has been filed with and approved by the commissioner. This provision shall not apply to ***standard health care benefit plans established under Section 79 of this Act, or to*** surety bonds, or to specially rated inland marine risks, or to policies, riders, indorsements or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner or distribution of benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to group insurance policies issued and delivered to an association outside this state but covering persons resident in this state, all or substantially all of the premiums for which are payable by the insured members, the group certificates to be delivered or issued for delivery in this state shall be filed with and approved by the commissioner. As to forms for use in property, marine (other than wet marine and transportation insurance), casualty and surety insurance coverages the filing required by this subsection may be made by rating organizations on behalf of its members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

(2) Every such filing shall be made not less than sixty (60) days in advance of any such delivery. At the expiration of such sixty (60) days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than a thirty (30) day period within which he may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial sixty (60) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.

(3) Any order of the commissioner disapproving any such form or any notice of the commissioner withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonably to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at expiration of such period, not less than thirty (30) days after the giving of the notice of withdrawal, as the commissioner shall in such notice prescribe.

(4) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order, to which, in his opinion, this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(5) Appeals from orders of the commissioner disapproving any such form or withdrawing a previous approval shall be taken as provided in Subtitle 2 of this chapter.

Section 90. KRS 304.14-130 is amended to read as follows:

(1) The commissioner shall disapprove any form filed under KRS 304.14-120, or withdraw any previous approval thereof, only on one (1) or more of the following grounds:

(a) If it is in any respect in violation of, or does not comply with, this code.

(b) If it contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

(c) If it has any title, heading, or other indication of its provisions which is misleading, or is printed in such size of type or manner of reproduction as to be substantially illegible.

(d) [~~As to an individual health insurance policy, if the benefits provided therein are unreasonable in relation to the premium charged.~~

~~(e)~~] If it excludes coverage for human immunodeficiency virus infection or acquired immunodeficiency syndrome or contains limitations in the benefits payable, or in the terms or conditions of the contract, for human immunodeficiency virus infection or acquired immunodeficiency syndrome which are different than those which apply to any other sickness or medical condition.

(2) The insurer shall not use in this state any such form after disapproval or withdrawal of approval.

Section 91. KRS 304.38-200 is amended to read as follows:

Health maintenance organizations shall be subject to the provisions of this subtitle, and to the following provisions of Chapter 304, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

(1) Subtitle 1 -- Scope of Code;

(2) Subtitle 2 -- The Insurance Commissioner;

(3) Subtitle 4 -- Fees and Taxes;

(4) Subtitle 5 -- Kinds of Insurance; Limits of Risk; Reinsurance;

(5) Subtitle 12 -- Trade Practices and Frauds;

(6) Subtitle 14 -- KRS 304.14-500 to 304.14-560;

(7) ***Subtitle 17A--Health Insurance;***

(8) Subtitle 25 -- Continuity of Management;

(9)[~~(8)~~] Subtitle 33 -- Rehabilitation and Liquidation; and

(10)[~~(9)~~] Subtitle 99 -- Penalties.

PART 11

MEDICAL EDUCATION

SECTION 92. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) Any provisions of Sections 92 to 95 of this Act which require additional General Fund moneys to implement shall be subject to biennial budget authorizations and limitations.

(2) There is hereby created the Kentucky Health Service at the University of Kentucky and the University of Louisville respectively. With respect to medicine and membership in the Kentucky Health Service, "primary care physicians" are as defined in KRS 164.925 and includes others that may be designated by the legislation as shortage medical disciplines in Kentucky. The appropriate health sciences center official designated by the board of trustees of each institution shall direct the Kentucky Health Service. The Kentucky Health Service shall, at each institution:

(a) Create and oversee the implementation of regional family practice residency training programs in community-based sites, coordinated so that the number of first year post-graduate positions in family practice is comparable to the number of graduates entering family practice; and

(b) In conjunction with the Kentucky Health Policy Board, develop contracts setting forth the amount and nature of stipends and fees to be provided by the service to medical students or residents participating in the Kentucky Health Service and the binding obligation of the student or resident entering into the contract, including requiring each student or resident to sign a binding contract obligating the student to practice primary care medicine in underserved areas of Kentucky for one (1) year for each year of participation in the service.

(3) The Kentucky Higher Education Assistance Authority shall enforce contractual obligations for students participating in the Kentucky Health Service, including the one (1) year primary care practice obligation for each year of Kentucky Health Service participation. Any participant who fails to fulfill this obligation shall be

immediately required to repay the service for the full cost of education, stipend, salary, or other benefits paid by the service to the participant. The cost of education shall include all costs as determined by the respective institution from time to time, including that portion in excess of tuition and fees. In addition, the participant shall pay all legal or collection costs incurred by the institution in connection with enforcement of the contract. The only offset allowed shall be for tuition and fees actually paid by the participant. All moneys collected from students shall be paid into the Kentucky Health Service.

(4) The Kentucky Health Policy Board shall periodically establish goals for the medical schools based upon the professional medical needs of the Commonwealth. In admitting students to the Kentucky Health Service, preference shall be given to students making a commitment to locate in a medically-underserved area as designated by the Kentucky Health Policy Board. The students shall meet the academic and related standards for admission to medical school. The service shall provide tuition and fees to cover all medical students participating in the service and an additional annual stipend to medical students and residents who contract to enter the Kentucky Health Service. Subject to the availability of funds, the stipend shall annually increase at the rate of increase in the consumer price index (CPI-U) of the United States Department of Commerce or its successor.

(5) The University of Kentucky and the University of Louisville shall cooperate in the operation of at least six (6) community-based family practice residency programs without further expansion of the Louisville and Lexington based programs until the other programs are established. There shall be at least one (1) of these programs in each Congressional district of the Commonwealth.

(6) All universities and community-based education programs shall be linked together via a single uniform telecommunications system by July 1, 1995.

(7) The Kentucky Health Service at each institution shall increase the number of family practice residency positions from their current level to a level sufficient to accommodate the medical students who are in the family practice track of the service. All additional positions shall be established at the community-based sites.

(8) By September 1, 1994, all students entering medical school and all residents participating in the Kentucky Health Service shall participate in community-based training, including long-term care facility settings, to the extent allowed by appropriate national accrediting boards.

(9) The University of Kentucky and University of Louisville shall increase the training of general pediatric, general internal medicine, geriatric and combined medicine/pediatric resident positions in community-based sites to the extent allowed by appropriate national accrediting boards. The University of Louisville and University of Kentucky colleges of medicine shall enter into contracts with all volunteer and community-based faculty that assist in training medical students. The contracts shall include performance standards and compensation for the faculty members as determined by the universities.

(10) Nonprimary-care residency programs at the University of Kentucky and the University of Louisville shall be capped at the 1994 level, and sufficient accredited primary care residency positions shall be created to accommodate the number of service participants who graduate each year.

(11) The University of Kentucky and the University of Louisville shall enhance library communications with practitioners throughout the state and with community-based educational sites and shall expand the continuing education capabilities at these sites.

(12) Beginning September 1, 1995, the University of Kentucky and University of Louisville shall provide biennial progress reports on the service at that institution to the board and General Assembly through the Council on Higher Education in Kentucky. The reports shall include the following:

  (a) The progress made by the institutions of higher education toward meeting the requirements set forth in Sections 92 to 94 of this Act;

  (b) The extent to which health professions education courses offered by the institutions of higher education in Kentucky are uniform and transferable among institutions;

  (c) The total expenditures of all institutions of higher education as relates to health professions education; and

  (d) Recommendations as to funding, allocation, or other matters relating to health professions education.

(13) The University of Kentucky and the University of Louisville shall request the federal Health Care Financing Administration to permit all graduate and resident medical education funds paid under Title 18 of the Social Security Act be allocated to the deans of the medical school at each institution to fund the regional residency programs established pursuant to this section.

(14) All funds appropriated for off-campus educational experience for medical students outside of Fayette and Jefferson Counties and all funds appropriated for Area Health Education Centers shall be transferred to the Kentucky Health Service at the University of Kentucky and University of Louisville.

SECTION 93. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Policy Board, in cooperation with the Council on Higher Education in Kentucky, shall develop

a comprehensive minority health professions education program providing for:

(a) The recruitment of minority students to attend the University of Kentucky, the University of Louisville, or other state institutions of higher education where appropriate for training in medicine, dentistry, nursing, pharmacy, physical therapy, and other allied health professions;

(b) The payment of stipends, scholarships, and other financial assistance needed by minority students in medicine, dentistry, nursing, pharmacy, physical therapy, and other allied health professions; and

(c) The payment of financial or other incentives to encourage minority graduates in medicine, dentistry, nursing, pharmacy, physical therapy, and other allied health professions to establish a practice in underserved areas as defined by the board.

(2) The board shall prepare an annual report to the General Assembly which documents:

(a) The number of minority students enrolled as a result of the program established pursuant to subsection (1) of this section;

(b) The number of minority students who successfully graduate in medicine, dentistry, nursing, pharmacy, physical therapy, and other allied health professions schools; and

(c) Recommendations for improving the recruitment of minority students in medicine, dentistry, nursing, physical therapy, and other allied health professions.

SECTION 94. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) The board shall periodically review health professions' manpower needs by service delivery region in cooperation with the Council on Higher Education in Kentucky.

(2) The board shall designate health professions shortages by service delivery region for use by institutions of higher education and the Council on Higher Education in Kentucky.

(3) The board shall biennially prepare a report identifying the special health needs of the minority population in the Commonwealth as compared to the population at-large. The report shall be completed no later than October 1 of each odd-numbered year and transmitted to the Legislative Research Commission. The report shall, at a minimum:

(a) Contain an overview of the health status of minority Kentuckians;

(b) Identify the many specific diseases experienced at disproportionate rates within the minority population and the reasons therefor, and explore the reasons the minority population is at greater risk than the general population for these diseases, and the reasons the minority population experiences higher rates of morbidity and mortality;

(c) Identify problems experienced by the minority population in obtaining health services from health care providers and governmental agencies; and

(d) Identify programs at the state and local level designed specifically to meet the health needs of the minority population.

(4) In preparing the report required by subsection (3) of this section, the board shall solicit and consider the input of individuals and organizations representing the concerns of the minority population as relates to:

(a) Health programs and services needed by the minority population;

(b) The extent to which existing health programs do not meet the needs of the minority population;

(c) The accessibility of existing health programs to the minority population;

(d) The availability and adequacy of information regarding existing health services;

(e) Health problems the minority experience at a higher rate than the general population; and

(f) Financial, social, and other barriers experienced by the minority population in obtaining health services.

(5) In administering, regulating, and funding all aspects of the health care system, the board shall assure that health services provided by the Commonwealth are designed to meet and address the needs of the minority population as identified pursuant to subsections (3) and (4) of this section.

(6) The board shall prepare a plan for the cross-disciplinary training of health care professionals. The plan shall address cross-training of clinical laboratory and radiology technicians and the cross-training of physical and occupational therapists and shall assure that all courses offered articulate among the colleges and universities offering training. The plan, together with the board's recommendations, shall be presented to the Council on Higher Education by January 1, 1996.

(7) The Council on Higher Education in Kentucky shall authorize regional physician extender training programs to assure that at least one hundred sixty (160) physician extenders shall be graduated each year. The establishment of regional physician extender training programs shall be coordinated through the academic health centers at the University of Kentucky and University of Louisville and in coordination with other institutions of higher education in Kentucky. The council shall employ a request-for-proposal process in the development of the regional physician

extender training programs. The council shall identify the need for health professionals within geographic regions. The process shall include a strong emphasis on community experience for program participants and monitoring of the service obligations of the graduates.

(8) Physician extender training programs shall be expanded at a minimum of five (5) additional sites and new programs shall be established so that at least one hundred sixty (160) students can be annually graduated as advanced registered nurse practitioners, advanced registered nurse practitioner-nurse midwives, and physician assistants. When feasible, physician extender students shall be trained along with family practice residents in the community-based training programs. A request-for-proposal process shall be employed in the development of the regional physician extender training programs. Proposals shall be solicited from all accredited colleges or universities in the Commonwealth.

(9) New regional physician extender training sites shall be established as follows:

- ***1. Two (2) by September, 1995;***
- ***2. Two (2) by September, 1996; and***
- ***3. The remainder as expeditiously as appropriations become available.***

(10) Physician extender training programs shall participate in the statewide telecommunications network required by subsection (6) of Section 92 of this Act.

(11) To the maximum extent possible, all physician extender courses, medical school courses, and residency training activities shall be provided in team settings.

(12) The students enrolled in each physician extender training program shall be participants in the Kentucky Primary Care Health Service under Section 92 of this Act. Service participants in physician extender training programs shall be eligible for funding equal to tuition, and stipends, if they agree to serve in Kentucky after graduation for one (1) year for every year of training. In admitting students to physician extender training programs, preference shall be given to students making a commitment to locate in medically-underserved areas as designated by the board.

(13) Upon receipt of an application, the board may designate as a generalist physician, any physician who has a practice open to any patient, including:

- ***(a) A general or family practitioner;***
- ***(b) An internist who agrees to treat a patient presenting with any medical problem;***
- ***(c) A pediatrician who agrees to treat a child eighteen (18) years of age or younger presenting with any medical problem; and***
- ***(d) Any other specialist as determined by the board who agrees to treat any patient presenting with any medical problem.***

(14) Any physician designated as a generalist by the board who refuses to evaluate and thereafter either treat or refer any patient presenting a medical problem may be subject to disciplinary action pursuant to KRS 311.595.

(15) The board, in conjunction with the University of Kentucky and University of Louisville medical schools, shall develop an underserved-area physician respite program.

SECTION 95. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

Each institution of higher education receiving state tuition assistance for its students, including each community college, shall develop a healthy life-styles program at a charge which covers program expenses.

PART 12

PRESCRIPTIVE AUTHORITY

Section 96. KRS 314.011 is amended to read as follows:

As used in KRS 314.011 to 314.161 and 314.991, unless the context thereof requires otherwise:

(1) "Board" shall mean Kentucky Board of Nursing.

(2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A.

(3) "Nurse" shall mean a person licensed under the provisions of this chapter as a registered nurse or as a licensed practical nurse.

(4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:

- (a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and
- (b) Planning, implementation, and evaluation based on nationally accepted standards of nursing practice.

(5) "Registered nurse" shall mean one who is licensed under the provisions of this chapter to engage in registered nursing practice.

(6) "Registered nursing practice" shall mean the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:

(a) The care, counsel, and health teaching of the ill, injured, or infirm.

(b) The maintenance of health or prevention of illness of others.

(c) The administration of medication and treatment as prescribed by a physician***,*** ~~[or]~~ dentist***, or an advanced registered nurse practitioner*** and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses. Components of medication administration include, but are not limited to:

1. Preparing and giving medications in the prescribed dosage, route, and frequency;
2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
3. Intervening when emergency care is required as a result of drug therapy;
4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
6. Instructing an individual regarding medications.

(d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care.

(e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses.

(7) "Advanced registered nurse practitioner" shall mean one who is registered and designated to engage in advanced registered nursing practice including, but not limited to, the nurse anesthetist, nurse midwife, and nurse practitioner pursuant to KRS 314.042.

(8) "Advanced registered nursing practice" shall mean the performance of additional acts by registered nurses who have gained added knowledge and skills through an organized postbasic program of study and clinical experience and who are certified by the American Nurses' Association or other nationally established organizations or agencies recognized by the board to certify registered nurses for advanced nursing practice. ***The additional acts may, subject to board approval and subject to the provision of Section 98 of this Act, include prescribing treatments, drugs, devices, and ordering diagnostic tests; however, advanced registered nurse practitioners granted Board of Nursing approval shall be authorized to issue prescriptions for legend drugs as defined in KRS 217.905, from a limited drug formulary and approved by the Kentucky Health Policy Board, but nothing in Sections 96 to 98 of this Act shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to obtain prescriptive authority, pursuant to this chapter to administer anesthesia. The formulary shall be revised annually by the board and shall permit advanced registered nurse practitioners to prescribe any controlled substances as defined in KRS Chapter 218A and under the conditions as set forth under Section 98 of this Act.*** The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by regulation.

(9) "Licensed practical nurse" shall mean one who is licensed under the provisions of this chapter to engage in licensed practical nursing practice.

(10) "Licensed practical nursing practice" shall mean the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:

(a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist.

(b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board.

(c) The administration of medication or treatment as authorized by a physician***,*** ~~[or]~~ dentist***, or an advanced registered nurse practitioner*** and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally accepted organizations of licensed practical nurses.

(d) Teaching, supervising, and delegating except as limited by the board.

(e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally accepted organizations of licensed practical nurses.

(11) "School of nursing" shall mean a nursing education program preparing persons for licensure as a registered nurse or a practical nurse.

(12) "Continuing education" shall mean offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge.

(13) "Nursing assistance" shall mean the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse.

(14) "Limited license" shall mean a license to practice nursing in a restricted capacity. The restriction may be applied to:

(a) A person with a disability who can practice nursing within the limits defined by regulation by the board; or

(b) A licensee who has been subjected to disciplinary action by the board.

Section 97. KRS 314.042 is amended to read as follows:

(1) An applicant for registration and designation to practice as an advanced registered nurse practitioner shall file with the board a written application for registration and designation and submit evidence, verified by oath, that the applicant is in good physical and mental health; has completed an organized postbasic program of study and clinical experience acceptable to the board; has fulfilled the requirements of KRS 214.615(1); is certified by a nationally established organization or agency recognized by the board to certify registered nurses for advanced nursing practice; and is able to understandably speak and write the English language and to read the English language with comprehension.

(2) The board may issue a registration to practice advanced registered nursing to an applicant who holds a current active registered nurse license issued by the board and meets the qualifications of subsection (1) of this section. An advanced registered nurse practitioner shall be designated by the board as a nurse anesthetist, nurse midwife, nurse practitioner, or such other designation as determined by the board.

(3) The applicant for registration and designation or renewal thereof to practice as an advanced registered nurse practitioner shall pay a fee to the board as set forth in regulation by the board.

(4) An advanced registered nurse practitioner shall maintain a current active registered nurse license issued by the board and maintain current certification by the appropriate national organization or agency recognized by the board.

(5) Any person who holds a registration and designation to practice as an advanced registered nurse practitioner in this state shall have the right to use the title "advanced registered nurse practitioner" and the abbreviation "ARNP." No other person shall assume such title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is an advanced registered nurse practitioner. No person shall practice as an advanced registered nurse practitioner unless registered under this section.

(6) Any person heretofore registered as an advanced registered nurse practitioner under the provisions of this chapter who has allowed the registration to lapse may be reinstated on payment of current fee and by meeting the provisions of this chapter and regulations promulgated by the board.

(7) In addition to the continuing education requirements of KRS 314.073, any person registered as an advanced registered nurse practitioner shall complete at least five (5) contact hours in pharmacology during each licensure period.

(8) (a) An advanced registered nurse practitioner who wished to prescribe a controlled substance and is approved by the board shall make application to the United States Drug Enforcement Administration (DEA) and obtain a DEA license number prior to exercising controlled substance prescribing authority. The DEA number shall be furnished to the board.

(b) An approved and DEA licensed advanced registered nurse practitioner may prescribe a Schedule II, III, IV, or V controlled substance in quantity sufficient to provide treatment for up to forth-eight (48) hours. No refills shall be allowed unless prescribed by a physician.

SECTION 98. A NEW SECTION OF KRS CHAPTER 314 IS CREATED TO READ AS FOLLOWS:

An advanced registered nurse practitioner shall be considered as a "practitioner" for the purposes of KRS Chapters 217 and 218A and shall have the authority granted to a practitioner pursuant to those chapters.

SECTION 99. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

Physician assistants, authorized to practice under KRS 311.565(22) shall be authorized to issue prescriptions for legend drugs as defined in KRS 217.905, from a limited drug formulary approved by the board. The formulary shall be revised annually by the board and shall not permit physician assistants to prescribe any controlled substance as defined in KRS Chapter 218A and administrative regulations promulgated thereunder pursuant to the provisions of KRS Chapter 13A. Physician assistants shall be required to complete at least five (5) contact hours in pharmacology during each licensure period. This prescriptive authority is in addition to any other prescriptive authority provided by law to physician assistants.

Section 100. KRS 320.210 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Board" means the Kentucky Board of Optometric Examiners;

(2) "Practice of optometry" means the employment of any means including the administration of [~~topical~~] pharmaceutical agents as authorized in KRS 320.240, except surgery [~~or injection~~] in examination, diagnosis and treatment of the human eye and its appendages, to determine the visual efficiency of the human eye, or to determine the powers or defects of vision, provided that superficial foreign bodies may be removed from the eye and its appendages; the prescribing, providing, furnishing, adapting, using or employing lenses, prisms, contact lenses, visual training, orthoptics, ocular exercise or any other means or device including topical pharmaceutical agents as authorized in KRS 320.240, excluding the use of surgery [~~or injection~~] for the aid, relief or correction of the human eye and its appendages;

(3) "Appendages" means the eyelids, the eyebrows, the conjunctiva and the lacrimal apparatus;

(4) "Visual aid glasses" means eyeglasses, spectacles or lenses designed or used to correct visual defects; provided, however, that nothing in the provisions of this chapter relating to the practice of optometry shall be construed to limit or restrict, in any respect, the sale of sunglasses designed and used solely to filter out light; and further provided that nothing in this chapter relating to the practice of optometry shall be construed to limit or restrict, in any respect, the sale of completely assembled eyeglasses or spectacles designed and used solely to magnify; and

(5) An orthoptic technician is a person who trains and directs individuals to engage in ocular exercises designed to correct visual defects, and shall not be required to be licensed under the provisions of this chapter provided that such training and directions are done pursuant to and under the instructions of a duly licensed physician, osteopath or optometrist and consists solely of visual training, orthoptics or ocular exercises.

Section 101. KRS 320.240 is amended to read as follows:

(1) The board shall meet at least once each year at which time it shall choose from among its members the president, vice president, and secretary-treasurer. In addition, the board upon call of its officers, may hold meetings at any time as it deems necessary. The secretary-treasurer shall keep a full record of its proceedings which shall be open to inspection at all reasonable times.

(2) The board shall keep a register containing the name, address, and license number of every person licensed to practice optometry in this state.

(3) The Attorney General shall render to the board legal services as it may require in carrying out and enforcing the provisions of this chapter.

(4) Subject to and consistent with the provisions of this chapter, the board shall make and promulgate reasonable administrative regulations and do any and all things which it may deem necessary or proper for the effective enforcement of this chapter and for the full and efficient performance of its duties hereunder and the reasonable regulation of the profession of optometry and the practice thereof by licensed optometrists.

(5) The board shall have a common seal.

(6) The board shall have authority to administer oaths and to require the attendance of witnesses, the production of books, records, and papers pertinent to any matters coming before the board by the issuance of process which shall be served and returned in the same manner as in civil actions and for the disobedience of which the board shall have the power to invoke the same rights as are provided in the event of disobedience of a subpoena or subpoena duces tecum in a civil action.

(7) The board shall make administrative regulations governing applicants and applications for registration or license under this chapter and governing the conduct of licensing examinations.

(8) The board shall from time to time accredit schools and colleges teaching optometry, the graduates of which shall be eligible to licensing examinations.

(9) The board shall have the right to determine what acts on the part of any person licensed as an optometrist in this state shall constitute unprofessional conduct under this chapter.

(10) The board shall have authority to assist in the prosecution of any violation of this chapter and in the enforcement of any of the provisions of this chapter.

(11) The board shall have other powers and duties as may be provided in the provisions of this chapter.

(12) The board shall make a report of its proceedings to the Governor on or about January 1 of each year, including an accounting of all moneys received and disbursed.

(13) The board may authorize persons engaging in the practice of optometry under the provisions of this chapter to administer diagnostic pharmaceutical agents limited to miotics for emergency use only, mydriatics, cycloplegics, and anesthetics applied topically only, but excluding any drug classified as a controlled substance pursuant to KRS Chapter 218A. These pharmaceutical agents shall be applied in diagnostic procedures only as part of an eye examination. The application of such diagnostic pharmaceutical agents shall be limited to those persons who have sufficient education and professional competence as determined by the board and who have earned transcript credits of at least six (6) semester hours in a

course or courses in general and ocular pharmacology, with particular emphasis on diagnostic pharmaceutical agents applied topically to the eye, from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education.

(14) The board may authorize only those persons who have qualified for use of diagnostic pharmaceutical agents as set out in subsection (13) of this section to utilize and prescribe topical [~~therapeutic~~] pharmaceutical agents in the examination or treatment of any condition of the eye or its appendages. ***Any therapeutically-certified optometrist licensed under the provision of this subsection shall be authorized to prescribe oral medication for any condition which an optometrist is authorized to treat under the provisions of this chapter and to use injections to administer benadryl, epinephrine, or equivalent medication to counteract anaphylaxis or anaphylactic reaction.*** The utilization or prescribing of [~~topical~~] therapeutic pharmaceutical agents shall be limited to those persons who have sufficient education and professional competence as determined by the board and who have earned transcript credits of at least six (6) semester hours in a course or courses in general and ocular pathology and therapy, with particular emphasis on utilization of therapeutic pharmaceutical agents from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education. These six (6) semester hours are in addition to the six (6) semester hours required by subsection (13) of this section, making a total of twelve (12) semester hours.

(15) Any optometrist authorized by the board to utilize diagnostic pharmaceutical agents shall be permitted to purchase for use in the practice of optometry diagnostic pharmaceutical agents limited to miotics for emergency use only, mydriatics, cycloplegics, and anesthetics to be applied topically only. Any optometrist authorized by the board to utilize topical therapeutic pharmaceutical agents shall be permitted to prescribe in the practice of optometry topical therapeutic pharmaceutical agents. Optometrists so authorized by the board to purchase pharmaceutical agents shall obtain them from licensed drug suppliers or pharmacists on written orders placed in the same or similar manner as any physician or other practitioner authorized by KRS Chapter 217. Purchases shall be limited to those pharmaceutical agents specified in this subsection and in subsection (13) of this section, based upon the authority conferred upon the optometrist by the board consistent with the educational qualifications of the optometrist as set out herein. All purchases of pharmaceutical drugs by optometrists shall be upon purchase order forms approved by the board.

PART 13

TAX INCENTIVES

Section 102. KRS 141.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Secretary" means the secretary of revenue;

(2) "Cabinet" means the Revenue Cabinet;

(3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 1991, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 1991, that would otherwise terminate, and as modified by KRS 141.0101;

(4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;

(5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;

(6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;

(7) "Individual" means a natural person;

(8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable income as defined in Section 63 of the Internal Revenue Code, and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;

(9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;

(10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;

(b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;

(e) Exclude Social Security and railroad retirement benefits subject to federal income tax;

(f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;

(g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990; ~~[and]~~

(h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the armed forces of the United States or any dependent of such person who served in Vietnam; ***and***

(i) Exclude any amount paid during the taxable year to any of the following for insurance which constitutes medical care or long-term care for the taxpayer or for the taxpayer's spouse or dependents:

1. A licensed provider of health or long-term care insurance;

2. A health maintenance organization;

3. A self-insured plan;

4. A multiple employer welfare arrangement; or

5. A hospital, medical-surgical or health services corporation.

This exclusion shall be permitted only to the extent that the payments have not already been excluded from gross income, and only to the extent that the total amount excluded as payments made for insurance that constitutes medical care does not exceed the cost of a standard plan, defined by the Kentucky Health Policy Board under Section 77 of this Act. Any amount excluded pursuant to this paragraph shall not be allowable deduction in computing net income under subsection (11) of this section;

(11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202 and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;

(b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);

(c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and

(d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;

(b) Exclude all dividend income received after December 31, 1969;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;

(e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of

Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;

(f) Include the amount calculated under KRS 141.205;

(g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income; and

(h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

(13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202 and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:

(a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;

(b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;

(c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;

(d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;

(e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and

(f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;

(b) "Taxable net income," in the case of corporations having property or payroll both within and without this state means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;

(c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction; and

(d) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year;

(15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;

(16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;

(17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;

(18) "Nonresident" means any individual not a resident of this state;

(19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;

(20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;

(21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;

(22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;

(23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;

(24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;

(25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a

corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

Section 103. The provisions of Section 102 of this Act shall apply for tax years beginning on or after January 1, 1994.

PART 14

MEDICAL ASSISTANCE

SECTION 104. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall establish a system within the Medical Assistance Program to reduce unnecessary hospital emergency room utilization and costs by redefining and controlling hospital emergency utilization. The cabinet shall establish by promulgation of administrative regulations, pursuant to KRS Chapter 13A, the following:

(1) Criteria and procedures for determining if a medical emergency exists;

(2) Reimbursement rates that provide for nominal reimbursement of emergency room care for care that does not meet the criteria established for a medical emergency; and

(3) Prohibition of reimbursement at hospital emergency room rates for diagnosis and treatment for a condition that does not meet the criteria established for a medical emergency.

SECTION 105. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall undertake a study to determine whether the use of copayments by medical assistance recipients as allowed by federal law would accomplish the following:

(1) Discourage emergency room utilization for nonemergency care; or

(2) Discourage the appropriate use of preventive health and health services.

SECTION 106. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall review the Medical Assistance Program reimbursement rates for emergency transportation providers to determine if existing rates are fair and reasonable. Notwithstanding this review, the cabinet shall by promulgation of administrative regulation, pursuant to KRS Chapter 13A do the following:

(1) Prescribe reimbursement rates for emergency transportation providers to ensure that emergency rates are paid only for transporting medical assistance recipients to the emergency room of a hospital in emergency situations;

(2) Establish, in nonemergency cases, lower medical assistance reimbursement rates for emergency transportation providers for the transportation of stretcher patients from nursing homes to physician offices or hospitals; and

(3) Establish a verification system that requires medical providers to confirm that medical assistance recipients have appointments for medical services and that medical services were obtained prior to payment by the cabinet to the emergency transportation provider.

SECTION 107. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall review the procedures for medical assistance reimbursement of pharmacists to reduce fraud and abuse. The cabinet shall by promulgation of administrative regulation, pursuant to KRS Chapter 13A, establish the following:

(1) Point-of-sale computer technology, with integration of data at the physician's office and the pharmacy, that will permit prospective drug utilization review;

(2) Usage parameters by drug class to enable medical necessity and appropriateness reviews to be conducted prior to payment;

(3) A dialog among the Department for Medicaid Services, the Kentucky Medical Board of Licensure, and the Kentucky Board of Pharmacy, to develop recommendations for legislation for the 1996 Regular Session of the General Assembly that will strengthen the generic substitution laws for prescription medication;

(4) A dispensing fee for each prescription in accordance with the findings of the report submitted by the cabinet pursuant to KRS 205.561.

SECTION 108. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall review the available technology associated with the medical assistance system to determine which technology is best suited to enhance program service operation, monitoring ability, and fraud and abuse detection. This shall include the ability to provide on-line access to data files to allow cross-analysis of provider and recipient utilization patterns. The cabinet shall by promulgation of administrative regulations, pursuant to KRS Chapter 13A, establish an integrated system to enhance program integrity, using a combination of staff, computer technology, and contractual services to identify potential fraud, abuse, and misutilization of services. This system shall:

(1) Utilize statisticians, program specialists, accountants, nurses, and other medical specialists to review the Medical Assistance Program to identify patterns of provider and recipient behavior that contributes to unnecessary or abusive use of program services;

(2) Utilize computer capability through contractual services or the purchase of computer software to detect the unbundling of claims and other techniques used by providers to enhance reimbursement;

(3) Impose utilization controls on the expenditures in respiratory, physical, speech, and occupational therapy and durable medical equipment provided to nursing home residents, through the use of established medical criteria or preauthorization of ancillary therapies;

(4) Establish state audit and edit requirements that exceed the federal audit and edit requirements;

(5) Obtain access to necessary data from the fiscal agent of each medical provider;

(6) Review the efficiency and effectiveness of the fraud and abuse detection and investigation process to determine whether changes shall be made;

(7) Direct that fraud and abuse detection and investigation components shall be active in initiating investigations. The fraud and abuse detection, investigation and prosecution functions shall be integrated, with access to information in files maintained by the Department for Social Insurance and the Department for Medicaid Services;

(8) Review penalties for deterrent value for medical providers that are found to have abused Medicaid regulations and statutes; and

(9) Provide for a proactive effort to work in partnership with long-term care providers to reduce costs in the long-term care system. Program officials and long-term care providers shall seek to implement innovative or experimental demonstration programs that aim to control costs, increase access to services, and improve quality patient care.

SECTION 109. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) The secretary for human resources shall take all necessary steps to cause services covered under the Kentucky Medical Assistance Program to be provided through a health maintenance organization certified under KRS Chapter 304. The secretary shall establish a competitive bidding process which shall:

(a) Allow any qualified health maintenance organization to submit a bid to provide medicaid covered services on an annual basis for all eligible medicaid recipients in the entire Commonwealth or in a specific geographic area designated by the secretary;

(b) Specify the services to be covered by the health maintenance organization;

(c) Specify the capitated monthly rate medicaid will pay the health maintenance organization for each eligible recipient;

(d) Require that health maintenance organizations serving medicaid recipients comply with all applicable state laws and administrative regulations; and shall not discriminate against any provider who is located within the geographic coverage area of the health maintenance organization and is willing to meet the terms and conditions for participation established by the health maintenance organization.

(e) Contain an appeals process for health maintenance organizations whose bids are not accepted; and

(f) Contain any other requirements deemed necessary by the secretary.

(2) The secretary may elect not to provide medicaid services through a health maintenance organization in those counties or geographic areas where it is determined not to be feasible or will not result in any savings to the medicaid program. This determination must be certified by the secretary and approved by the Kentucky Health Policy Board.

(3) The secretary may exempt high cost medical procedures or technologies from health maintenance organization coverage and employ a selective contracting process to cover these services. The services which may be exempt from health maintenance organization coverage include organ transplants, cardiac surgery, magnetic resonance imaging, and any other service or procedure that the secretary determines can be provided at a substantial savings to the medicaid program by contracting with a specific health care provider to provide the service or procedure to eligible medicaid recipients. The Kentucky Health Policy Board shall review and approve all contracts to assure that health care providers contracting to provide services have demonstrated a reasonable quality of care based on data collected by the authority.

(4) The secretary shall seek from the Federal Health Care Financing Administration any waivers of federal regulations necessary to implement this section.

SECTION 110. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall seek to strengthen the managed care component of the KenPAC Program. The cabinet shall by promulgation of administrative regulation, pursuant to KRS Chapter 13A, establish the following:

(1) Inclusion of noninstitutionalized blind, aged, and disabled recipients in an effort to reduce inappropriate usage;

(2) Financial incentives for KenPAC physicians who effectively manage the care of their patients. These incentives may include an increase in the case management fee for demonstrated effective case management, or through other arrangements that encourage the effective and efficient management of patients. Clear and concise administrative

regulations promulgated under KRS Chapter 13A shall be established by the cabinet to determine physician qualification for the incentives;

(3) An oversight and education program in the KenPAC system to assist with patient education regarding the appropriate and effective use of the system, and to assist providers with more efficient management of patients;

(4) Criteria and procedures to insure that KenPAC physicians are responsible for providing, arranging and avoiding duplication of early and periodic screening, diagnosis, and treatment type services to children in the KenPAC program;

(5) A review of the feasibility of a demonstration project to allow health maintenance organizations to bid on the provision of services to KenPAC participants;

(6) Extension of KenPAC to all counties within the state. The cabinet shall determine the feasibility of working with state-supported medical schools to obtain physicians in the counties where KenPAC does not operate; and

(7) More stringent reporting and verification requirements in contracts with KenPAC physicians regarding verification of services provided to KenPAC patients.

SECTION 111. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall seek to prohibit the sheltering of assets in medical assistance long-term care cases by promulgation of administrative regulations, pursuant to KRS Chapter 13A, that establish the following:

(1) Consideration of assets placed in Medicaid qualifying trusts as a prohibited transfer of resources, to the extent prohibited by federal law;

(2) Revision of Medicaid policy to provide that assets funding the purchase of an annuity shall be treated as a transfer of resources;

(3) Revision of Medicaid policy to treat income producing property as an available resource;

(4) Review of Medicaid eligibility procedures and operation to improve eligibility verification and detection of fraud and abuse; and

(5) Review of the feasibility of instituting a photographic identification card, possibly in conjunction with other entitlement programs, to reduce fraud and abuse through misuse of medical cards.

SECTION 112. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall by promulgation of administrative regulations enhance third-party resource collection capacity in Medicaid cases through utilization of in-house personnel and selective contracting for high-volume or high-technological services.

SECTION 113. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall review all medical assistance reimbursement systems for appropriateness and cost effectiveness. The review shall include:

(1) Review of cost-based reimbursement policies for hospitals and nursing homes to determine the effectiveness and appropriateness of alternate systems. Consideration shall be given to the use of modified diagnostic related groups and resource utilization groups systems, and using capitated payment methods; and

(2) Review of reimbursement rates for physicians to determine whether savings or cost containment would be better achieved through using a relative based resource value scale system, a capitated payment method, or other alternative methods of reimbursement.

SECTION 114. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall promulgate administrative regulations that establish a system providing for the reporting to the General Assembly, on a quarterly basis, as to the progress in implementing the provisions of Sections 104 to 116 of this Act, the findings of any reports or studies authorized by Sections 104 to 116 of this Act, and recommendations regarding the reports or studies.

SECTION 115. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall promote access to preventive health services by low-income Kentuckians through local health departments by recognizing qualified local and district health departments as primary care centers for purposes of Medicaid reimbursement.

SECTION 116. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Department for Medicaid Services shall develop and implement, effective July 1, 1995, a system for monitoring the use of medical assistance program covered services by medical assistance recipients using smart card technology. As used in this section, "smart card" means an identification card issued to each medical assistance recipient containing a photograph of the recipient and an electronic device which enables computer tracking of:

(1) All drugs and durable medical equipment prescribed for and dispensed to the recipient;

(2) All medical assistance covered physician office visits made by the recipient; and

(3) Any other medical assistance program covered service provided to the medical assistance recipient as defined by administrative regulation promulgated pursuant to KRS Chapter 13A and under this chapter.

SECTION 117. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall request any waivers of federal law that are necessary to implement the provisions of Sections 104 to 116 of this Act.

PART 15

CONFORMING AMENDMENTS

Section 118. KRS 205.640 is amended to read as follows:

(1) The commissioner of medicaid services shall adopt a disproportionate share program consistent with the requirements of Title XIX of the Social Security Act which shall include to the extent possible, but not limited to, the provisions of this section.

(2) The "Medical Assistance Revolving Trust Fund (MART)" shall be established in the State Treasury and all provider tax revenues collected pursuant to *Sections 137 to 155 of this Act* [~~KRS 142.201 to 142.259~~] shall be deposited in the State Treasury to the credit of the fund. All investment earnings of the fund shall be credited to the fund. [~~It is the intent of the General Assembly that~~] Provider tax revenues collected in accordance with *Sections 137 to 155 of this Act* [~~KRS 142.201 to 142.259~~] shall be used to fund the *provisions of Sections 5 to 10 of this Act* [~~Health Care Data Commission created in KRS 216.273~~] and to supplement the medical assistance-related general fund appropriations for fiscal year 1994 and subsequent fiscal years. *Notwithstanding the provisions of KRS 48.500 and 48.600, the MART fund shall be exempt from any state budget reduction acts*[~~, and that all funds credited to the MART fund will be matched with federal medicaid funds to the greatest extent possible~~].

(3) The "Medical Assistance Indigent Trust Fund (MAIT)" shall be established in the State Treasury for the purpose of receiving any funds transferred from the MART fund or from federal funds for the operation of the disproportionate share program established by the commissioner of medicaid services in accordance with the provisions of subsection (1) of this section. All investment earnings of the fund shall be credited to the fund. [~~It is the intent of the General Assembly that all funds transferred to the MAIT fund will be matched with federal medicaid funds.~~] *Notwithstanding the provisions of KRS 48.500 and 48.600,* the MAIT fund shall be exempt from any state budget reduction acts.

(4) An amount, *necessary to result in a total fund of eighty one million dollars ($81,000,000) for fiscal year 1995, and eighty six million five hundred thousand dollars ($86,500,000) for fiscal year 1996* including provider tax revenues and federal matching funds, to the extent possible, shall be transferred from the MART fund or from federal funds to the MAIT fund for the purpose of funding the disproportionate share program established by the commissioner of medicaid services.

(a) The sum of one million dollars ($1,000,000) in fiscal year 1995, and one and one half million dollars ($1,500,000) in fiscal year 1996, taken entirely from provider tax revenues, transferred to the MAIT fund, shall be used to compensate hospitals that do not qualify for the disproportionate share program for inpatient services provided by the hospitals to medicaid recipients beyond the covered days and to individuals and families with incomes and resources up to one hundred percent (100%) of the federal poverty level, as determined by the hospital pursuant to guidelines established by the Cabinet for Human Resources.

(b) The amount remaining in the MAIT fund shall be used to compensate hospitals qualifying for the disproportionate share program for inpatient service provided by the hospitals to medicaid recipients beyond the covered days and individuals and families with incomes and resources up to one hundred percent (100%) of the federal poverty level, as determined by the hospital pursuant to guidelines established by this section.

(c) No individual hospital shall receive distributions from the MAIT fund that exceed indigent inpatient care provided by the hospital that meet the guidelines established in paragraphs (a) and (b) of this subsection and documented to the Department for Medicaid Services, based upon compensation for the services at the hospital's medicaid rate.

(d) Distributions to hospitals from the MAIT fund shall be made on a quarterly basis. One fourth (1/4) of each share established pursuant to paragraphs (a) and (b) of this subsection shall be the maximum amount available for distribution at the close of each quarter. The amount of distributions to each hospital shall be determined as follows:

1. Hospitals shall report inpatient care provided to medicaid recipients beyond the covered days and to individuals and families with incomes and resources up to one hundred percent (100%) of the federal poverty level to the Cabinet for Human Resources on a quarterly basis. The first report shall be due on or before October 20, 1994, and shall document care provided for the quarter beginning July 1, and ending September 30. Subsequent reports shall be due on or before January 20, April 20, July 20 and October 20 of each year thereafter.

2. Within sixty (60) days of the due date of the reports established in subparagraph 1. of this paragraph, the Cabinet for Human Resources, Department for Medicaid Services shall review all reports filed and shall determine the maximum compensation authorized for each hospital filing reports, based upon payment for documented qualifying services provided at the weighted median per diem for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 each year.

3. Within sixty-five (65) days of the due date of the reports established in subparagraph 1. of this paragraph, the Cabinet for Human Resources, Department for Medicaid Services shall remit to each hospital the amount determined to be due pursuant to the provisions of subparagraph 2 of this paragraph. If the total amount due all hospitals entitled to compensation in any quarter exceeds the funds available in any quarter, the distribution received by each hospital shall be proportionately reduced. If the total amount due all hospitals entitled to compensation in any quarter is less than the funds available for distribution in that quarter, the excess funds may be used to proportionately compensate for previously filed claims that were not fully reimbursed, or may be carried forward to satisfy future claims.

(5) [~~The commissioner of the Department for Medicaid Services shall implement a disproportionate share program which will take into consideration the amount of service provided by hospitals for medicaid recipients beyond the covered days and individuals and families with incomes up to one hundred percent (100%) of the federal poverty level, as determined by the hospital pursuant to guidelines established by the Cabinet for Human Resources; the percentage of total services rendered by the hospital that consists of services provided to medicaid recipients and persons receiving SSI benefits; and hospitals serving a federally designated medically underserved area, a federally designated health manpower shortage area, or a primary care physician shortage area designated under the rural Kentucky medical scholarship fund. Provided that no individual hospital shall receive distributions from the MAIT fund that exceed indigent care provided by the hospital and documented to the Department for Medicaid Services, based upon compensation for the services at the facility's medicaid rate.~~] Hospitals receiving reimbursement from the MAIT fund shall not bill for services ***documented for reimbursement from the MAIT fund*** [~~provided to patients not eligible for medical assistance with family incomes up to one hundred percent (100%) of the federal poverty level~~].

(6) The secretary of the Cabinet for Human Resources shall promulgate administrative regulations necessary***, pursuant to KRS Chapter 13A,*** for the administration and implementation of this section.

(7) All hospitals receiving reimbursement from the MAIT fund shall:

(a) Display prominently a sign which reads as follows: "This hospital will accept patients regardless of race, creed, ethnic background, or ability to pay.";

(b) Accept benefits of state health insurance coverage described in KRS 18A.229 and 18A.2281;

(c) Provide to medicaid recipients any additional days of coverage per hospital stay, based on medical necessity determined in the usual manner, without responsibility for payment for such days of care accruing to the patient or the medicaid program; and

(d) Collect and report to the department data on the number of indigent patient days provided pursuant to this section, including additional days of coverage for medicaid recipients. ***The cabinet shall annually, no later than July 1, compile a report for the Governor and the Legislative Research Commission on the implementation of this section.***

Section 119. KRS 205.560 is amended to read as follows:

(1) The scope of medical care for which the Cabinet for Human Resources undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section. Within the limitations of any appropriation therefor, the provision of complete upper and lower dentures to recipients of Medical Assistance Program benefits who have their teeth removed by a dentist resulting in the total absence of teeth shall be a mandatory class in the scope of medical care. Payment to a dentist of any Medical Assistance Program benefits for complete upper and lower dentures shall only be provided on the condition of a preauthorized agreement between an authorized representative of the Medical Assistance Program and the dentist prior to the removal of the teeth. The selection of another class or other classes of medical care shall be recommended by the council to the secretary for Human Resources after taking into consideration, among other things, the amount of federal and state funds available, the most essential needs of recipients, and the meeting of such need on a basis insuring the greatest amount of medical care as defined in KRS 205.510 consonant with the funds available, including, but not limited to, the following categories, except where the aid is for the purpose of obtaining an abortion:

(a) Hospital care, including drugs, and medical supplies and services during any period of actual hospitalization;

(b) Nursing home care, including medical supplies and services, and drugs during confinement therein on prescription of a physician, dentist, or podiatrist;

(c) Drugs, nursing care, medical supplies, and services during the time when a recipient is not in a hospital but is under treatment and on the prescription of a physician, dentist, or podiatrist;

(d) Physician, podiatric, and dental services;

(e) Optometric services for all age groups shall be limited to prescription services, services to frames and lenses, and diagnostic services provided by an optometrist, to the extent the optometrist is licensed to perform the services and to the extent the services are covered in the ophthalmologist portion of the physician's program. Eyeglasses shall be provided only to children under age twenty-one (21);

(f) Drugs on the prescription of a physician used to prevent the rejection of transplanted organs if the patient is indigent;

(g) Nonprofit neighborhood health organizations or clinics where some or all of the medical services are provided by licensed registered nurses or by advanced medical students presently enrolled in a medical school accredited by the Association of American Medical Colleges and where the students or licensed registered nurses are under the direct supervision of a licensed physician who rotates his services in this supervisory capacity between two (2) or more of the nonprofit neighborhood health organizations or clinics specified herein;

(h) Services provided by health care delivery networks as defined in KRS 216.900; and

(i) Services provided by midlevel health care practitioners as defined in KRS 216.900.

(2) Payments for hospital care, nursing home care, and drugs or other medical, ophthalmic, podiatric, and dental supplies shall be on bases which relate the amount of the payment to the cost of providing the services or supplies. It shall be one (1) of the functions of the council to make recommendations to the Cabinet for Human Resources with respect to the bases for payment. In determining the rates of reimbursement for long-term care facilities participating in the Medical Assistance Program, the Cabinet for Human Resources shall, to the extent permitted by federal law, not allow the following items to be considered as a cost to the facility for purposes of reimbursement:

(a) Motor vehicles that are not owned by the facility, including motor vehicles that are registered or owned by the facility but used primarily by the owner or family members thereof;

(b) The cost of motor vehicles, including vans or trucks, used for facility business shall be allowed up to fifteen thousand dollars ($15,000) per facility, adjusted annually for inflation according to the increase in the consumer price index-u for the most recent twelve (12) month period, as determined by the U. S. Department of Labor. Medically equipped motor vehicles, vans or trucks shall be exempt from the fifteen thousand dollar ($15,000) limitation. Costs exceeding this limit shall not be reimbursable and shall be borne by the facility. Costs for additional motor vehicles, not to exceed a total of three (3) per facility, may be approved by the Cabinet for Human Resources if the facility demonstrates that each additional vehicle is necessary for the operation of the facility as required by regulations of the cabinet;

(c) Salaries paid to immediate family members of the owner or administrator, or both, of a facility, to the extent that services are not actually performed and are not a necessary function as required by regulation of the cabinet for the operation of the facility. The facility shall keep a record of all work actually performed by family members;

(d) The cost of contracts, loans, or other payments made by the facility to owners, administrators or both, unless the payments are for services which would otherwise be necessary to the operation of the facility and the services are required by regulations of the Cabinet for Human Resources. Any other payments shall be deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Human Resources. Interest paid to the facility for loans made to a third party may be used to offset allowable interest claimed by the facility;

(e) Private club memberships for owners or administrators, travel expenses for trips outside the state for owners or administrators, and other indirect payments made to the owner, unless the payments are deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Human Resources; and

(f) Payments made to related organizations supplying the facility with goods or services shall be limited to the actual cost of the goods or services to the related organization, unless it can be demonstrated that no relationship between the facility and the supplier exists. A relationship shall be considered to exist when an individual, including brothers, sisters, father, mother, aunts, uncles, and in-laws, possesses a total of five percent (5%) or more of ownership equity in the facility and the supplying business. An exception to the relationship shall exist if fifty-one percent (51%) or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(3) No vendor payment shall be made unless the class and type of medical care rendered and the cost basis therefor has first been designated by regulation.

(4) The rules and regulations of the Cabinet for Human Resources shall require that a written statement, including the required opinion of a physician, shall accompany any claim for reimbursement for induced premature births. This statement shall indicate the procedures used in providing the medical services.

(5) The range of medical care benefit standards provided and the quality and quantity standards and the methods for determining cost formulae for vendor payments within each category of public assistance and other recipients shall be uniform for the entire state, and shall be designated by regulation promulgated within the limitations established by the

Social Security Act and federal regulations. It shall not be necessary that the amount of payments for units of services be uniform for the entire state but amounts may vary from county to county and from city to city, as well as among hospitals, based on the prevailing cost of medical care in each locale and other local economic and geographic conditions, except that insofar as allowed by applicable federal law and regulation, the maximum amounts reimbursable for similar services rendered by physicians within the same specialty of medical practice shall not vary according to the physician's place of residence or place of practice, as long as the place of practice is within the boundaries of the state.

(6) Nothing in this section shall be deemed to deprive a woman of all appropriate medical care necessary to prevent her physical death.

(7) To the extent permitted by federal law, no medical assistance recipient shall be recertified as qualifying for a level of long-term care below the recipient's current level, unless the recertification includes a physical examination conducted by a physician licensed pursuant to KRS Chapter 311 or by an advance registered nurse practitioner licensed pursuant to KRS Chapter 314 and acting under the physician's supervision.

(8) If payments made to community mental health centers, established pursuant to KRS Chapter 210, for services provided to the mentally retarded exceed the actual cost of providing the service, the balance of the payments shall be used solely for the provision of other services to the mentally retarded through community mental health centers.

(9) No long-term care facility, as defined in KRS 216.510, providing inpatient care to recipients of medical assistance under Title XIX of the Social Security Act on July 15, 1986, shall deny admission of a person to a bed certified for reimbursement under the provisions of the Medical Assistance Program solely on the basis of the person's paying status as a medicaid recipient. No person shall be removed or discharged from any facility solely because they became eligible for participation in the Medical Assistance Program, unless the facility can demonstrate the resident or the resident's responsible party was fully notified in writing that the resident was being admitted to a bed not certified for medicaid reimbursement. No facility may decertify a bed occupied by a medicaid recipient or may decertify a bed that is occupied by a resident who has made application for medical assistance.

(10) Family practice physicians practicing in geographic areas with no more than one (1) primary care physician per five thousand (5,000) population, as reported by the United States Department of Health and Human Services, shall be reimbursed one hundred twenty-five percent (125%) of the standard reimbursement rate for physician services.

(11) The Cabinet for Human Resources shall not expand the scope of services or categories of eligible recipients beyond those receiving services on January 1, 1994, unless:

- *(a) The expansion of the scope of services or eligible recipients is mandated by the federal government; or*
- *(b) The General Assembly has specifically appropriated funds for the expansion of the scope of services or eligible recipients.*

(12) The provisions of subsection (11) of this section shall not prevent the Cabinet for Human Resources from petitioning the federal government for waivers to expand or alter the Medicaid program. The cabinet shall notify the Legislative Research Commission in writing prior to petitioning the federal government for any waiver that will expand or alter the Medicaid program. The notification shall describe the expansion or amendment sought and the estimated fiscal impact of the waiver if granted. Any waiver granted that has the effect of expanding the scope of services or eligible recipients shall not be implemented until specifically authorized by the General Assembly. The provisions of this subsection shall apply to any waivers that have been granted but not implemented as of January 1, 1994, as well as any waivers obtained in the future.

(13) For all medicaid covered long-term care services, the Cabinet for Human Resources shall implement a standardized patient assessment tool, develop additional medicaid reimbursement methodologies as may be needed, and implement consistent quality of care mandates.

Section 120. KRS 214.450 is amended to read as follows:

As used in KRS 214.452 to 214.466, unless the context otherwise requires:

(1) "Blood" means any blood, blood product, blood component, or blood derivative including plasma.

(2) "Blood establishment" means a place of business under one (1) management at one (1) general physical location which engages in the collection, preparation, processing, labeling, packaging, and dispensing of blood or blood products to any health care facility, health service, or health care provider.

(3) "Communicable disease" means only a communicable disease which may be transmitted by blood and as set forth in any administrative regulation issued under KRS 214.460 and pursuant to KRS Chapter 13A.

(4) "Health facility" means any health facility set forth under KRS 216B.015*(10)*[~~(11)~~] which provides for the transfusion of blood into a living human body.

(5) "Health care provider" means any licensed dentist, physician, osteopath, registered nurse, practical nurse, certified paramedic, certified emergency medical technician, or physician assistant.

(6) "Health service" means any health service as set forth under KRS 216B.015*(11)*[~~(12)~~] and which provides for the transfusion of blood into a living human body.

(7) "Sexually transmitted disease" means only a blood borne sexually transmitted disease as provided under KRS 214.410(2) and as set forth in any administrative regulation issued under KRS 214.460 and pursuant to KRS Chapter 13A.

(8) "Donor" means either a paid or volunteer donor of blood.

Section 121. KRS 194.030 is amended to read as follows:

The Cabinet for Human Resources shall consist of the following major organizational units which are hereby created:

(1) Office of the Secretary;

(2) The Office for Policy and Budget. The Office for Policy and Budget shall provide the secretary with professional support in planning, budgeting, and policy analysis, including the appraisal of needs, the formulation of policy, and the evaluation of programs. The Office for Policy and Budget shall be headed by an administrator who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;

(3) The Office of the Counsel. The Office of the Counsel shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of the Counsel shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of the Counsel shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be directly responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general in accordance with the provisions of KRS 15.105;

(4) The Office of the Ombudsman. The Office of the Ombudsman shall provide a review of citizen complaints on services of the Cabinet for Human Resources when such complaints cannot be resolved through normal administrative remedies. The Office of the Ombudsman shall be headed by an ombudsman who shall be appointed by the Governor with the advice of the secretary. The ombudsman shall be directly responsible to the secretary;

(5) The Office of Administrative Services. The Office of Administrative Services shall be responsible for providing administrative support services within the Cabinet for Human Resources. All fiscal, facility, and information management functions of the cabinet shall be vested in the Office of Administrative Services. The Office of Administrative Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The executive director shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director shall exercise authority over the office of administrative services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(6) The Department for Social Insurance. The Department for Social Insurance shall develop and operate programs of the cabinet that provide income maintenance or income supplementation services and social insurance benefit programs not assigned to another department. The Department for Social Insurance shall also be responsible for all eligibility determination and certification functions associated with these programs. The Department for Social Insurance shall be headed by a commissioner for social insurance who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for social insurance shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for social insurance shall exercise authority over the Department for Social Insurance under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(7) The Department for Medicaid Services. The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the federal Social Security Act. The Department for Medicaid Services shall be headed by a commissioner for medicaid services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for medicaid services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for medicaid services shall exercise authority over the Department for Medicaid Services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(8) The Department for Health Services. The Department for Health Services shall develop and operate all programs of the cabinet that provide health services and all programs for the prevention, detection, care, and treatment of physical disability, illness, and disease. The Department for Health Services shall be headed by a commissioner for health services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for health services shall be a duly licensed physician who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner shall advise the head of each major organizational unit enumerated in this section on policies, plans, and programs relating to all matters of public health, including any actions necessary to safeguard the health of the citizens of the Commonwealth. The commissioner shall serve as chief medical officer of the Commonwealth. The commissioner for health services shall exercise authority over the Department for Health Services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(9) The Department for Mental Health and Mental Retardation Services. The Department for Mental Health and Mental

Retardation Services shall provide services for all programs for the prevention, detection, and treatment of mental disability, illness, and disease and administer all programs for the assistance of community treatment and prevention of such disability, illness, and disease. The Department for Mental Health and Mental Retardation Services shall be headed by a commissioner for mental health and mental retardation who shall be appointed by the secretary for human resources with the approval of the Governor in accordance with KRS 12.050. The commissioner for mental health and mental retardation shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for mental health and mental retardation shall exercise authority over the department under the direction of the secretary for human resources and shall only fulfill such responsibilities as delegated by the secretary;

(10) The Department for Social Services. The Department for Social Services shall develop and operate all social service programs of the cabinet. The Department for Social Services shall be headed by a commissioner for social services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for social services shall be a person who by education, professional qualification, training, and experience in the administration and management of social service programs is qualified to perform the duties of this office. The commissioner for social services shall exercise authority over the Department for Social Services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(11) The Department for Employment Services. The Department for Employment Services shall develop and operate all employment development and placement programs including all job recruitment and business liaison functions, employability development and training programs, and all job counseling and job placement programs of the cabinet. In addition, the department shall develop and operate all programs relating to unemployment insurance laws of the Commonwealth including responsibilities relating to hearing and judging unemployment insurance benefit appeals. The Department for Employment Services shall be headed by a commissioner for employment services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for employment services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for employment services shall exercise authority over the Department for Employment Services under the direction of the secretary and shall fulfill only such responsibilities as delegated by the secretary;

(12) The Office of the Inspector General. The Office of the Inspector General shall be responsible for:

(a) The conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and the conduct of special investigations requested by the secretary, commissioners, or office heads of the Cabinet for Human Resources into matters related to the cabinet or its programs;

(b) Licensing and regulatory functions as the secretary may delegate;

(c) Review of health facilities participating in transplant programs, as determined by the secretary, for the purpose of determining any violations of KRS 311.165 to 311.247; and

(d) The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority.

The Office of the Inspector General shall be headed by an inspector general who shall be appointed by the secretary with the approval of the Governor. The inspector general shall be directly responsible to the secretary;

(13) The Commission for Handicapped Children. The duties, responsibilities and authority set out in KRS 200.460 to 200.490 shall be performed by the commission. The commission shall advocate the rights of handicapped children, and to the extent that funds are available, shall provide such services and facilities for handicapped children as are deemed appropriate by the commission. The commission shall be composed of seven (7) members appointed by the Governor to serve a term of office of four (4) years. The commission may promulgate such administrative regulations pursuant to KRS Chapter 13A as may be necessary to implement and administer its responsibilities. The duties, responsibilities, and authority of the commission for handicapped children shall be performed through the Office of the Executive Director of the Commission. The executive director shall be appointed by the Governor pursuant to KRS 12.040, and the commission may at any time recommend the removal of the executive director upon filing with the Governor a full written statement of its reasons for such removal. The executive director shall report directly to the Commission for Handicapped Children and serve as the commission's secretary; and

(14) The ***Kentucky Health Policy Board*** [~~Commission for Health Economics Control in Kentucky~~]. The duties, responsibilities and authority pertaining to the certificate of need functions and the licensure appeal functions, as set out in KRS 216B.010 to 216B.990, shall be performed by the commission. The commission may promulgate administrative regulations pursuant to KRS Chapter 13A necessary to implement and administer its responsibilities.

Section 122. KRS 194.120 is amended to read as follows:

The ***Kentucky Health Policy Board*** [~~Commission for Health Economics Control in Kentucky~~] and the Commission for Handicapped Children shall be the only statutory bodies attached to the cabinet that shall have the authority to issue administrative regulations. No other corporate body or instrumentality of the Commonwealth, advisory committee, interstate compact, or other statutory body, presently or hereinafter attached to the cabinet, shall issue administrative regulations, but shall operate only in an advisory capacity.

Section 123. KRS 216.510 is amended to read as follows:

As used in KRS 216.515 to 216.530:

(1) "Long-term care facilities" means those health care facilities in the Commonwealth which are defined by the ***Kentucky Health Policy Board*** [~~Commission for Health Economics Control in Kentucky~~] to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing facilities as defined in Public Law 100-203, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.

(2) "Resident" means any person who is admitted to a long-term care facility as defined in KRS 216.515 to 216.530 for the purpose of receiving personal care and assistance.

(3) "Cabinet" means the Cabinet for Human Resources.

Section 124. KRS 216.535 is amended to read as follows:

As used in KRS 216.537 to 216.590:

(1) "Long-term care facilities" means those health care facilities in the Commonwealth which are defined by the ***Kentucky Health Policy Board*** [~~Commission for Health Economics Control in Kentucky~~] to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing facilities as defined in Public Law 100-203, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.

(2) "Cabinet" means the Cabinet for Human Resources.

(3) "Resident" means any person admitted to a long-term care facility as defined by this section.

(4) "Licensee" in the case of a licensee who is an individual means the individual, and in the case of a licensee who is a corporation, partnership, or association means the corporation, partnership, or association.

(5) "Secretary" means the secretary of the Cabinet for Human Resources.

(6) "Long-term care ombudsman" means the person responsible for the operation of a long-term care ombudsman program which investigates and resolves complaints made by or on behalf of residents of long-term care facilities.

(7) "Willful interference" means an intentional, knowing, or purposeful act or omission which hinders or impedes the lawful performance of the duties and responsibilities of the ombudsman as set forth in this chapter.

Section 125. KRS 216.885 is amended to read as follows:

(1) It is unlawful to operate or maintain a PPEC center without first obtaining a certificate of need from the ***Kentucky Health Policy Board*** [~~Commission for Health Economics Control in Kentucky~~] and a license for the PPEC center from the cabinet. The cabinet is responsible for licensing PPEC centers in accordance with the provisions of KRS Chapter 216B.

(2) Separate licenses are required for PPEC centers maintained on separate premises, even though they are operated under the same management. Separate licenses are not required for separate buildings on the same grounds.

(3) The Cabinet for Human Resources may deny, revoke, modify or suspend a license in accordance with KRS 216B.105.

PART 16

MISCELLANEOUS PROVISIONS

SECTION 126. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) The secretary of the Finance and Administration Cabinet, after consultation with the secretary for the Cabinet for Human Resources, shall on a quarterly basis, certify to the Interim Committee on Appropriations and Revenue the general fund savings realized from the procedures required by Sections 104 to 116 of this Act and any other procedures adopted by the Cabinet for Human Resources or the Kentucky Health Policy Board to control the cost of health care.

(2) The certification shall indicate the following:

- ***(a) The means by which savings were achieved, including a description of the discrete procedure used to achieve the savings; and***
- ***(b) The amount saved as a result of the specific procedure, including an explanation as to the calculations and assumptions used in determining the amount.***

(3) The amount certified by the secretary under this section shall be transferred to a trust account to be utilized by the secretary of the Cabinet for Human Resources to provide health care coverage for additional categories of citizens, but the funds in the trust account shall not be spent until appropriated by the General Assembly. The funds in the trust account shall not lapse. The secretary shall give priority in utilizing any appropriated trust account funds to matching available federal funds in the Medicaid program.

(4) Savings in the general fund appropriation for the Medicaid program shall be determined as follows:

- ***(a) To the extent that the average cost per month per eligible actually experienced by the Medicaid program is***

less than the average cost per month per eligible reflected in the enacted budget, the savings attributable to that difference shall be deemed to be eligible for certification under this section.

(b) To the extend that the number of eligibles actually participating in the Medicaid program is less than the number reflected in the enacted budget, the savings attributable to that difference shall be deemed not eligible for certification under this section.

(5) Savings in the general fund appropriation to the Department of Mental Health shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.

(6) Savings in the general fund appropriation to the Department of Health Services shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.

(7) Savings in the general fund appropriation to the Department of Social Services shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.

(8) Only those savings that can be certified as being recurring shall be transferred to the trust fund.

Section 127. KRS 216B.250 is amended to read as follows:

(1) For purposes of this section, "paying patient" means persons receiving health care services who pay directly for services rendered, patients with private health insurance or health maintenance organization coverage, persons receiving medicaid or medicaid benefits under Title XVIII and Title XIX of the Social Security Act and persons receiving veteran's health care benefits. "Paying patient" does not include medically indigent persons with no source of payment whatsoever.

(2) When a copy of an itemized statement is requested by any paying patient, each health ***care provider as defined in Section 1 of this Act*** [~~facility~~] shall furnish to the patient within thirty (30) days of the patient's discharge or within fifteen (15) days of the patient's request, whichever is later, one (1) copy free of charge of the itemized statement of services rendered and charges incurred by the patient. The itemized statement shall be stamped "Kentucky Revised Statutes prohibit the use of this statement for insurance payment purposes where benefits have been assigned."

(3) Each health ***care provider as defined in Section 1 of this Act*** [~~facility~~] shall post in a publicly visible place in their admission, outpatient areas and, where applicable, emergency areas that an itemized statement is available to any paying patient upon request.

(4) The itemized statement rendered shall be the record maintained by the health ***care provider*** [~~facility~~] that details the charges made for services rendered to patients and shall indicate whether an assignment of benefits has been obtained.

(5) Each health ***care provider as defined in Section 1 of this Act*** [~~facility~~] shall designate and make available appropriate staff to provide, upon patient request, an explanation of charges listed in the itemized statement.

(6) If a health ***care provider*** [~~facility~~] knows of a discrepancy in the total charges as reported in an itemized statement and that which is reported to a third party payor, or at any time that a health ***care provider*** [~~facility~~] becomes aware of such a discrepancy, the health ***care provider*** [~~facility~~] shall provide the patient and third party payor with notification, an explanation and, if applicable, any reconciliation of the discrepancy in total charges.

Section 128. KRS 216B.990 is amended to read as follows:

(1) Any person who, in willful violation of this chapter, operates a health facility without first obtaining a license or continues to operate a health facility after a final decision suspending or revoking a license, shall be fined not less than five hundred dollars ($500) nor more than ten thousand dollars ($10,000) for each violation.

(2) Any person who, in willful violation of this chapter, acquires major medical equipment, establishes a health facility, or obligates a capital expenditure without first obtaining a certificate of need, or after the applicable certificate of need has been withdrawn, shall be fined one percent (1%) of the capital expenditure involved but not less than five hundred dollars ($500) for each violation.

(3) Any hospital acting by or through its agents or employees which violates any provision of KRS 216B.400 shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(4) Any hospital acting by or through its agents or employees which violates any provision of KRS 311.241 to 311.245 shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(5) Any hospital violating the provisions of KRS 311.241 may be denied a license to operate under the provisions of this chapter.

(6) Any health ***care provider who*** [~~facility which~~] willfully violates KRS 216B.250 shall be fined one hundred dollars ($100) per day for failure to post required notices and one hundred dollars ($100) per instance for willfully failing to provide an itemized statement within the required time frames.

(7) Any boarding home which does not register as required by KRS 216B.305, shall be fined one hundred dollars ($100) and ten dollars ($10) per day thereafter until they have registered.

PART 17

REIMBURSEMENT METHODOLOGY

SECTION 129. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) On or before July 1, 1995, the board shall develop a reimbursement methodology for hospitals, including inpatient and outpatient hospital based physician services, and for nonhospital-based emergency outpatient services.

(2) On or before July 1, 1996, the board shall develop a reimbursement methodology for physician services.

(3) On or before July 1, 1996, the board shall develop a reimbursement methodology for all other services of providers, as defined in Section 1 of this Act.

SECTION 130. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) Except for the development of a reimbursement methodology under Section 129 of this Act, the implementation of Sections 129 to 136 of this Act, shall only become effective when the board, in its discretion, makes a finding that the state's total health-care expenditure in the target year, defined as the most recent year for which data is available, exceed the state's health expenditure target for the same year. The health expenditure target shall be defined as a baseline dollar amount, equal to the state's total health expenditures in the baseline year, adjusted in each subsequent year by the health-expenditure inflation factor. The health-expenditure inflation factor shall be defined as the greater of:

(a) The percent change in the annual average Consumer Price Index for Urban Consumers (CPI-U) between the year previous to the target year and the target year; and

(b) The percent change in the annual average Consumer Price Index for Urban Consumers (CPI-U) between the year previous to the target year and the target year, adjusted by the change in the state's population and a weighted change in the state's age composition, as given by the formula: A + B + 4C, with A equaling the percent change in the annual average CPI-U, B equaling the percent change in the state's population; and C equaling the point change in the percentage of Kentuckians aged sixty-five (65) or over, with all changes being between the year previous to the target year and the target year.

(2) Prior to the implementation of any reimbursement methodology, the Health Policy Board shall seek approval of the methodology from the United States Department of Health and Human Services.

(3) The Kentucky Health Policy Board shall not implement any reimbursement methodology under Sections 129 to 136 of this Act unless specifically authorized by the General Assembly at the next regular or extraordinary session of the General Assembly held after the board makes a finding supporting reimbursement methodology pursuant to subsection (1) of this section.

SECTION 131. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) Except for a facility or health care provider that does not charge or bill for any health service provided and for the purposes of Sections 129 to 136 of this Act, the board has jurisdiction over services provided in hospitals, facilities, and over all services offered by a health care provider as defined in Section 1 of this Act.

(2) Nothing in this section shall preclude providers from charging less than the maximum allowable rate for services, nor shall health insurers and health maintenance organizations be precluded from developing reimbursement methodologies that result in payments for services rendered that are less than the applicable maximum allowable reimbursement. If provider reimbursement is less than the maximum allowable reimbursement established by the board, they shall be deemed approved.

(3) For purposes of delivering more efficient and cost effective health care, the board may establish and modify reimbursement methodologies. The board may also establish utilization targets, annual budgets, and revenue caps for providers, with proscriptions on excess volume or revenue.

(4) The Kentucky Medical Assistance Program shall not be bound by reimbursement methodologies established or negotiated by the board until:

(a) State law authorizes the Kentucky Medical Assistance Program to reimburse providers at board set or negotiated reimbursement methodologies; and

(b) The United States Department of Health and Human Services agrees to accept board set or negotiated reimbursement methodologies as a method of providing federal financial participation in the Kentucky Medical Assistance Program.

(5) The board shall exempt any health care service from reimbursement methodology activity that the United States Health Care Financing Administration deems necessary to obtain approval to include medicaid or medicare services in board established reimbursement methodologies.

(6) The board shall review costs and charges and make any investigation that the board considers necessary to assure each purchaser of services provided at a facility that:

(a) The total costs of all services offered by or through a facility are reasonable;

(b) The aggregate charges of the facility are related reasonably to the aggregate costs of the facility; and

(c) The charges are equitable among all purchasers or classes of purchasers without undue discrimination or preference.

(7) A facility shall charge for services only in accordance with Sections 129 to 136.

(8) In determining the reasonableness of any implemented reimbursement methodology under this section, the board may take into account objective standards of efficiency and effectiveness and the following:

(a) The reimbursement methodologies of the medicaid and medicare programs;

(b) Reimbursement methodologies for services not reimbursed by medicare and which are derived on the basis of the methodology underlying the initial calculation of the Federal Health Care Financing Administration's resource based relative value scale and diagnostic related groups;

(c) Factors used by the Federal Prospective Payment Advisory Commission in developing reimbursement under the medicare program; and

(d) A price-indexing system deemed appropriate by the board.

(9) To have the statistical information needed for reimbursement review and approval, the board shall compile all relevant financial and accounting information including:

(a) Necessary operating expenses;

(b) Appropriate expenses that are incurred in providing services to patients who cannot or do not pay;

(c) Incurred interest charges; and

(d) The relative value of services provided by providers other than facilities.

(10) The board shall obtain from each facility its current reimbursement schedule and each later change in the schedule that the board requires.

SECTION 132. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

The board shall:

(1) Review for reasonableness and certify the costs and charges of each health care provider. The board shall establish or negotiate rates for services that may be charged for each class of health care providers as defined in Section 1 of this Act. The board shall promulgate, and may periodically revise, by administrative regulation a schedule of the allowable or negotiated rates that may be charged by health care providers for services provided to patients;

(2) Consider whether a health care provider has enough resources to meet its financial requirements; and

(3) Recommend solutions if an efficiently operated health care provider does not have enough resources to provide services for which there is a demonstrated need.

SECTION 133. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) The board shall promulgate by administrative regulation, pursuant to KRS Chapter 13A, a uniform accounting and financial reporting system that:

(a) Includes any cost allocation method that the board determines; and

(b) Requires each health care provider, for that provider's professional practice, to record its income, revenues, assets, expenses, outlays, liabilities, and units of service.

(2) Each health care provider shall use the uniform accounting and financial reporting system.

(3) As required by this section, the board may allow and provide for modifications in the uniform accounting and financial reporting system to reflect correctly any differences among health care providers by type, size, financial structure, or scope or type of service.

(4) The board shall use generally accepted accounting principles to establish or negotiate rates for each health care provider or class of health care providers.

SECTION 134. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) For the purpose of setting or negotiating rates, in any matter that relates to the cost of services in facilities or services offered by a health care provider, the board may:

(a) Hold a public hearing;

(b) Conduct an investigation;

(c) Require the filing of any information that relates to costs; or

(d) Subpoena any witness or evidence.

(2) The executive director of the board may administer oaths in connection with any hearing or investigation under this section.

(3) If the board considers a further investigation necessary to authenticate the information in a report that a health care provider files under this chapter, the board may make further investigation of the records or accounts of the health care provider.

(4) The investigation under this section may include a full or partial audit of the provider's records or accounts supplied to the board by the health care provider. The audit may be performed by the staff of the board or a third party for the board.

SECTION 135. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) As a condition of licensure, a health care provider shall not charge for services at a rate more than that set or negotiated in accordance with Sections 129 to 136 of this Act.

(2) To promote the most efficient and effective use of health care services, the board may promote and approve alternative methods of rate determination and payment that are of an experimental nature.

(3) Except as otherwise provided by law, in reviewing rates or considering or negotiating a request for changes in rates, the board shall not hold executive sessions.

SECTION 136. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

A health care provider or group of providers may file a written request to the board to permit or negotiate a change in rates in a manner determined by administrative regulations promulgated by the board, pursuant to KRS Chapter 13A.

PART 18

PROVIDER TAX

SECTION 137. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

As used in Sections 137 to 155 of this Act:

(1) "Cabinet" means the Revenue Cabinet ;

(2) "Charitable provider" means any provider which does not charge its patients for health care items or services, and which does not seek or accept medicare, medicaid, or other financial support from the federal government or any state government. The collaboration with public hospitals, agencies, or other providers in the delivery of patient care; affiliation with public institutions to provide health care education; or the pursuit of research in cooperation with public institutions or agencies shall not be considered as the receipt of government support by a charitable provider.

(3) "Dispensing" means to deliver one (1) or more doses of a prescription drug in a suitable container, appropriately labeled for subsequent administration or use by a patient or other individual entitled to receive the prescription drug.

(4) "Entity" means any firm, partnership, joint venture, association, corporation, company, joint stock association, trust, business trust, syndicate, cooperative, or other group or combination acting as a unit;

(5) "Gross revenues" means the total amount received in money or otherwise by a provider for the provision of health care items or services in Kentucky, less the following:

  (a) Amounts received by any provider as an employee or independent contractor from another provider for the provision of health care items or services if:

    1. The employing or contracting provider receives revenue attributable to health care items or services provided by the employee or independent contractor receiving payment; and

    2. The employing or contracting provider is subject to the tax imposed by Section 138, 139, or 140 of this Act on the receipt of that revenue;

  (b) Amounts received as a grant or donation by any provider from federal, state, or local government or from an organization recognized as exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code for:

    1. Research; or

    2. Administrative or operating costs associated with the implementation and operation of an experimental program;

  (c) Salaries or wages received by an individual provider as an employee of the federal government or any state or local governmental entity;

  (d) Salaries or wages received by an individual provider as an employee of a public university for the provision of services at a student health facility; and

  (e) Amounts received by an HMO on a fixed, prepayment basis as premium payments.

(6) "Health care items or services" means:

  (a) Inpatient hospital services;

  (b) Outpatient hospital services;

(c) Nursing facility services;

(d) Services of intermediate care facilities for the mentally retarded;

(e) Physicians' services;

(f) Home health care agency services;

(g) Outpatient prescription drugs; and

(h) HMO services;

(7) "Health maintenance organization" or "HMO" means an organization established and operated pursuant to the provisions of Subtitle 38 of KRS Chapter 304;

(8) "Hospital" means an acute care, rehabilitation, or psychiatric hospital licensed under KRS Chapter 216B;

(9) "Hospital services" means all inpatient and outpatient services provided by a hospital. "Hospital services" does not include services provided by a noncontracted, university-operated hospital, or any freestanding psychiatric hospital, if necessary waivers are obtained by the Cabinet for Human Resources from the Health Care Financing Administration, or hospitals operated by the federal government;

(10) "Human resources secretary" means the secretary of the Cabinet for Human Resources or that person's authorized representative;

(11) "Inpatient hospital services," "outpatient hospital services," "intermediate care facility services for the mentally retarded," "physician services," "home health care agency services," and "outpatient prescription drugs" have the same meaning as set forth in regulations promulgated by the Secretary of the Department of Health and Human Services and codified at 42 C.F.R. part 440, as in effect on December 31, 1993.

(12) "Medicaid" means the state program of medical assistance as administered by the Cabinet for Human Resources in compliance with 42 U.S.C. sec. 1396;

(13) "Nursing facility services" means services provided by a licensed skilled care facility, nursing facility, nursing home or intermediate care facility, excluding intermediate care facilities for the mentally retarded;

(14) "Person" means any individual, firm, partnership, joint venture, association, corporation, company, joint stock association, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit and the legal successor thereof;

(15) "Provider" means any person receiving gross revenues for the provision of health care items or services in Kentucky, excluding any facility operated by the federal government; and

(16) "Secretary" means the secretary of the Revenue Cabinet or that person's authorized representative.

SECTION 138. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

A tax is hereby imposed at a rate of two and one-half percent (2.5%) on gross revenues received by all providers on or after the effective date of this Act for the provision of hospital services. The tax imposed by this section shall not apply to gross revenues received for dispensing outpatient prescription drugs subject to tax under Section 140 of this Act.

SECTION 139. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

A tax is hereby imposed at a rate of two percent (2%) on gross revenues received by each provider on or after the effective date of this Act for the provision of nursing facility services, intermediate care facility services for the mentally retarded, physician services, home health care services and HMO services. The tax imposed by this section shall apply to freestanding psychiatric hospitals if necessary waivers are obtained by the Cabinet for Human Resources from the Health Care Financing Administration. The tax imposed by this section shall not apply to gross revenues received for dispensing outpatient prescription drugs subject to tax under Section 140 of this Act.

SECTION 140. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

A tax is hereby imposed on pharmacies or any other provider, dispensing or delivering in a suitable container outpatient prescription drugs in this state, at the rate of twenty-five cents ($0.25) per prescription for which any initial payment is received on or after the effective date of this Act.

SECTION 141. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

For the purposes of the taxes imposed under Sections 138, 139, and 140 of this Act:

(1) If two (2) or more providers provide health care items or services as an entity, and the entity is also a provider, then the entity shall be the taxable provider with regard to gross revenues received for health care items and services provided through the entity.

(2) If a provider who provides services through an entity receives gross revenues for the provision of health care items and services from a source other than the entity, the individual provider shall be the taxable provider with respect to that revenue.

SECTION 142. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

Charitable providers as defined in Section 137 of this Act shall be exempt from the taxes imposed by Sections 138, 139, and 140 of this Act, as well as the provisions of Sections 143, 149, and 150 of this Act upon providing proper certification to the cabinet.

SECTION 143. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

(1) Every provider subject to the taxes imposed by Sections 138, 139, and 140 of this Act that is not registered with the cabinet pursuant to the provisions of KRS 142.221 shall, on the effective date of this Act, file an application for a certificate of registration with the cabinet. A certificate of registration filed in accordance with the provisions of KRS 142.221 shall remain valid for purposes of Sections 137 to 155 of this Act. Every provider seeking to provide health care items or services in Kentucky for the first time after the effective date of this Act shall, prior to providing these items or services, file an application for a certificate of registration with the cabinet. The application shall be in the form prescribed by the cabinet. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

(2) Every state board responsible for licensing or governing any provider subject to the tax imposed by Sections 138, 139, and 140 of this Act shall, upon request by the cabinet, provide any information available to the licensing board necessary for the administration of the taxes imposed by Sections 138, 139, and 140 of this Act. The information shall be in the form required by the cabinet and shall be used by the cabinet for the sole purpose of administering the taxes imposed by Sections 138, 139, and 140 of this Act.

(3) Every state board responsible for licensing or governing any provider subject to the tax imposed by Sections 138, 139, and 140 of this Act shall, upon request by the cabinet, include the application for certificate of registration required by subsection (1) of this section with any new license issued. Application forms shall be provided by the cabinet to the licensing board.

SECTION 144. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

The taxes imposed by Sections 138, 139, and 140 of this Act are due and payable to the cabinet monthly and shall be remitted on or before the twentieth day of the next succeeding calendar month.

SECTION 145. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

(1) On or before the twentieth day of the month following each calendar month, a return for the preceding month shall be filed with the cabinet in the form prescribed by the cabinet, together with payment of any tax due.

(2) A return shall be filed by every provider. The return shall be signed by the person required to file the return or a duly authorized agent.

(3) The return shall show the gross revenues of the provider during the preceding reporting period. The return shall also show the amount of taxes for the period covered by the return and other information as the cabinet deems necessary for the proper administration of Sections 137 to 155 of this Act.

(4) The person required to file the return shall deliver the return, together with a remittance of the amount of the tax due, to the cabinet.

(5) For the purpose of facilitating the administration, payment, or collection of the taxes levied by Sections 138, 139, and 140 of this Act, the cabinet may permit or require returns to be filed or tax payments to be made other than as specifically required by the provisions of Section 145 of this Act, except the cabinet shall not require or permit returns or payments to be filed or remitted more frequently than monthly.

SECTION 146. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall, upon written request received on or prior to the due date of the return or tax, for good cause satisfactory to the cabinet, extend the time for filing the return or paying the tax for a period not to exceed thirty (30) days.

(2) Any person for which the extension is granted shall pay, in addition to the tax, interest at the tax interest rate as defined in KRS 131.010(6) from the date on which the tax would otherwise have been due.

SECTION 147. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

(1) As soon as practicable after each return is received, the cabinet shall examine it. If the amount of tax computed by the cabinet is greater than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within four (4) years from the later of the date the return was filed or due, except that in the case of a failure to file a return or a fraudulent return, the excess may be assessed at any time. A notice of assessment shall be mailed to the provider. The provider and the cabinet may agree to extend this time period.

(2) Any provider aggrieved by an action of the cabinet may request a review and shall have the rights of appeal as set forth in KRS Chapter 131.

(3) Notwithstanding the four (4) year time limitation set forth in subsection (1), in the case of a return where the

provider understates gross revenues by twenty-five percent (25%) or more, the excess shall be assessed by the cabinet within six (6) years from the later of the date the return is due or filed.

SECTION 148. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

In making a determination of tax liability, the cabinet may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments.

SECTION 149. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

(1) Every provider shall keep records, receipts, invoices, and other pertinent papers in the form as the cabinet may require.

(2) Every provider who files the returns required under Section 144 of this Act shall keep records for not less than six (6) years from the making of records unless the cabinet in writing authorizes their destruction at an earlier date.

SECTION 150. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

In every case, any tax not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the date due until the date of payment.

SECTION 151. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

(1) Except when the human resources secretary has been granted specific authority in KRS Sections 137 to 155 of this Act, the cabinet shall administer the provisions of Sections 137 to 155 of this Act, and shall have all of the powers, rights, duties, and authority with respect to the assessment, collection, refunding, and administration of the taxes imposed by Sections 138, 139, and 140 of this Act, conferred generally by the Kentucky Revised Statutes including KRS Chapters 132, 135, and 136.

(2) The Cabinet for Human Resources shall be responsible for compliance with all federal reporting requirements regarding the taxes imposed by Sections 138, 139, and 140 of this Act.

(3) The Cabinet for Human Resources shall fully cooperate with the cabinet and shall provide the cabinet with any information requested to carry out the provisions of Sections 137 to 155 of this Act.

SECTION 152. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

(1) A report of revenue receipts from the taxes imposed by Sections 138, 139, and 140 of this Act shall be provided on a quarterly basis by the cabinet to the human resources secretary on or before the tenth day of the second month following the close of each fiscal quarter.

(2) It is the responsibility of each provider, subject to tax under Sections 138, 139, and 140 of this Act to register with the cabinet, and comply with the tax and reporting provisions of Sections 137 to 155 of this Act.

SECTION 153. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

(1) Whenever it is deemed necessary to insure compliance with the provisions of Sections 137 to 155 of this Act, the cabinet may require any person subject to the taxes imposed by Sections 138, 139, and 140 of this Act to place security with it. The amount of the security shall be fixed by the cabinet, but shall not be greater than three (3) times the estimated average liability of the provider or all providers in the same class as the provider, whichever is greater. This limitation shall apply regardless of the type of security placed with the cabinet.

(2) The amount of the security may be increased or decreased by the cabinet, subject to the limitations provided in subsection (1) of this section.

(3) (a) If necessary, the cabinet may sell the security at public auction in order to recover any tax, penalty, or interest due. However, security in the form of a bearer bond issued by the United States or any state or local governmental unit which has a prevailing market price may be sold by the cabinet at a private sale at a price not lower than the prevailing market price.

(b) 1. The cabinet shall provide notice by certified mail, sent to the last known address as reflected in the records of the cabinet, or by delivery, to the person who placed the security with the cabinet of the date, time, and place of the sale.

2. Delivery means mailing the notice to the person it is addressed to, leaving the notice at his place of business with the person in charge of the place of business, or, if there is no one in charge, leaving the notice at a conspicuous place at the place of business. If the place of business is closed, or the person to be served has no place of business, leaving it at his home, with a person of suitable age and discretion residing in the home. Notice by certified mail must be postmarked no later than ten (10) days prior to the sale. Notice by delivery must be given no later than ten (10) days prior to the sale.

(c) Any amount in excess of the amount due the cabinet after the sale shall be returned to the person placing the security.

(4) The Commonwealth may bring an action for a restraining order, or a temporary or permanent injunction to restrain

or enjoin the operation of a provider's business until the security is obtained. The action may be brought in the Franklin Circuit Court or in the Circuit Court having jurisdiction over the provider.

SECTION 154. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provisions of Sections 137 to 155 of this Act, the president, vice president, secretary, treasurer, or any other person holding any equivalent corporate office of any corporation subject to the provisions of Sections 137 to 155 of this Act shall be personally and individually liable jointly and severally, for the taxes imposed under Sections 138, 139, and 140 of this Act. Neither the corporate dissolution or withdrawal of the corporation from the state nor the cessation of holding any corporate office shall discharge the liability imposed by this section. The personal and individual liability shall apply to each and every person holding a corporate office at the time the taxes become or became due. No person will be personally and individually liable pursuant to this section if that person did not have authority in the management of the business or financial affairs of the corporation at the time the taxes imposed by Sections 138, 139, and 140 of this Act become or became due. "Taxes" as used in this section shall include interest accrued at the rate provided by KRS 131.010(6) and all applicable penalties and fees imposed under the provisions of Sections 137 to 155 of this Act, and KRS 131.180, 131.440, and 131.990.

SECTION 155. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

Penalties shall be imposed and assessed in accordance with the provisions of KRS 131.180.

PART 19

MEDICAL RECORDS

SECTION 156. A NEW SECTION OF KRS 422.300 TO 422.350 IS CREATED TO READ AS FOLLOWS:

Upon a patient's written request, a hospital licensed under KRS Chapter 216B or a health care provider shall provide, without charge to the patient, a copy of the patient's medical record. A copying fee, not to exceed one dollar ($1.00) per page, may be charged by the health care provider for furnishing a second copy of the patient's medical record upon written request either by the patient or the patient's attorney or the patient's authorized representative.

PART 20

REPEALERS

Section 157. The following KRS sections are repealed:

142.201 Definitions for KRS 142.201 to 142.259.

142.203 Tax on gross revenues of hospitals for provision of health care items or services or hospital services.

142.207 Tax on gross revenues for provision of specified health care items or services – Exception.

142.211 Tax on pharmacies providing prescription drugs and prescribed durable medical equipment – Transfers of tax to named entities – Tax on contractors for provision of outpatient prescription drugs.

142.213 Prohibition against transfer of taxes to recipient of taxable items or services – Exemption of charitable hospitals and providers from tax – Time when taxes imposed by KRS 142.201 to 142.259 become inapplicable.

142.217 Adjustments to tax rates set in KRS 142.203, 142.207, and 142.211 – Method – Requirement of General Assembly approval to increase rates.

142.221 Application for certificate of registration – Information to Revenue Cabinet from licensure boards.

142.223 Due date of taxes.

142.227 Filing of returns – Requirements.

142.231 Extension of time for filing return.

142.233 Processing of return – Billing for additional tax – Review of action of Revenue Cabinet – Taxpayer's right of appeal.

142.237 Offset of overpayments.

142.241 Records to be kept by provider.

142.243 Interest on unpaid tax.

142.247 Administration by Revenue Cabinet.

142.251 Reports of revenue receipts – Notification of rate changes – Duties of providers to register and comply.

142.253 Surety bond – Restraining order or injunction.

142.257 Liability of corporate officers for taxes imposed by KRS 142.203, 142.207, and 142.211.

142.259 Penalties.

216.270 Definitions for KRS 216.273 to 216.287.

216.273 Kentucky Health Care Data Commission – Membership – Terms – Executive director and staff – Liability of members.

216.275 Powers and duties of commission.

216.277 Limitation of powers of Cabinet for Human Resources with respect to commission.

216.280 Data required to be submitted to commission -- Promulgation of administrative regulations -- Other duties of commission.

216.283 Private data -- Treatment and use of personal and aggregate data -- Penalty.

216.285 Reports by commission.

216.287 Furnishing of data as condition of licensure of provider.

304.17-275 Renewal of hospital or surgical or medical expense insurance.

304.17-380 Filing of rates.

304.17-383 Procedure for approval of rate filing containing increase -- Exception for loss ratio guarantor.

PART 21

NONCODIFIED MATERIAL

Section 158. The Kentucky Health Policy Board shall be the successor to the Kentucky Health Data Commission, repealed under Section 157 of this Act, and all records, materials, and work of that commission shall be transferred to the Kentucky Health Policy Board.

Section 159. The tax levied under the provisions of Sections 137 to 155 of this Act is for the purpose of providing funding for the state medicaid program.

The Committee Title Amendment to **HB 250** is as follows:

By amending the title to read as follows:

"AN ACT relating to health care reform and providing funding therefor."

The Committee on Tourism Development and Energy reported **HB 613**, with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 613, AN ACT relating to utility and underground facility damage prevention.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds that the objective of underground facility damage prevention and the resulting benefits of public and workplace safety and protection of consumer services require an effective underground damage prevention procedure. Sections 1 through 9 of this Act, which may be cited as the "Underground Facility Damage Prevention Act of 1994," are created to provide for this procedure and accomplish this objective.

SECTION 2. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

As used in Sections 2 through 9 of this Act:

(1) "Underground facility" means a line or system used for producing, storing, conveying, transmitting, or distributing telecommunications, electricity, gas, petroleum, petroleum products, cable television, hazardous liquids, water, steam, or sewerage, including storm drainage.

(2) "Damage" means weakening of structural or lateral support or penetration of a facility coating, housing, or other protective device. It also means the partial or complete dislocation or severance of underground facilities.

(3) "Demolition" means any operation by which a structure or mass of material is wrecked, razed, moved, or removed by means of mechanized equipment, or discharge of explosives.

(4) "Mechanized equipment" means any equipment or tool energized by other than human or animal power.

(5) "Excavator" means any entity or individual engaged in a trade or business or government service which includes excavation or demolition. "Excavator" does not mean a utility operator or utility operator sub-contractor performing work to provide or repair utility customer service.

(6) "Operator" means any entity or individual owning underground facilities to serve the public.

(7) "Excavation" means any activity that results in the movement, placement, probing, or removal of earth, rock, or other material in or on the ground by the use of mechanized equipment or by the discharge of explosives.

(8) "Emergency" means there exists substantial likelihood that loss of life, property, or utility service will result before procedures required under Sections 5 through 7 of this Act can be completed.

(9) "Protection notification center" means an operator-provided notification center through which an excavator can contact the operator to enable the operator to provide the excavator with the approximate location of underground

facilities.

(10) "One-call center" means a private sector, multi-member protection notification center providing a single telephone contact number through which an excavator may contact all operator one-call center members and all affected operators may receive information to enable them to provide the excavator with the approximate location of underground facilities.

(11) "Routine road maintenance" means preservation, including road repairs and resurfacing, but not construction at the sub-grade level; and surface ditch grading, but not grading below the original surface ditch depth.

(12) "Approximate location" means:

(a) For underground metallic facilities and underground non-metallic facilities with metallic tracer wire, a distance not to exceed the combined width of the underground facility plus eighteen (18) inches measured from the outer edge of each side of the underground facility; or

(b) For non-metallic facilities without metallic tracer wire, the underground facility shall be located as accurately as possible from field location records.

(13) "Business day" means from 8 a.m. to 5 p.m. every day except Saturday, Sunday and holidays established by federal or state statute.

SECTION 3. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

A permit issued pursuant to law authorizing excavation or demolition work shall not relieve a person from the responsibility for complying with Sections 3 to 9 of this Act.

SECTION 4. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

Every person who engages in non-emergency excavation or demolition work shall conform to Sections 3 through 9 of this Act. Compliance with excavator and operator notification requirements of Sections 3 to 9 of this Act shall not be required of authorized persons responding to emergency situations. However, these persons shall take every reasonable precaution to protect the public safety and underground facilities of others.

SECTION 5. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

(1) Each operator shall provide protection notification center access to excavators.

(2) Voluntary operator membership in a one-call protection notification center shall satisfy the requirement of subsection (1) of this section.

(3) Each operator member of a one-call center shall provide and update as needed to the one-call center the general location of its facilities, the operator identity and business address, and emergency notification telephone numbers.

(4) An operator shall, within two (2) business days after receiving notification from an excavator:

(a) Inform the excavator of the approximate location and description of any of the operator's facilities that may be damaged or pose a safety concern because of excavation or demolition;

(b) Inform the excavator of any other information that would assist in locating and avoiding contact with or damage to operator facilities; and

(c) Unless permanent facility markers are provided, the operator shall provide temporary markings to inform the excavator of the approximate location of the underground facility.

(5) Temporary underground facility markers shall consist of paint, chalk, flags, stakes, or any combination thereof and shall conform to the following color code:

(a)	*Electric power distribution and transmission*	*Safety Red*
(b)	*Municipal electric systems*	*Safety Red*
(c)	*Gas distribution and transmission*	*High visibility safety yellow*
(d)	*Oil distribution and transmission*	*High visibility safety yellow*
(e)	*Dangerous materials, product lines*	*High visibility safety yellow*
(f)	*Telecommunication systems*	*Safety alert orange*
(g)	*Cable television*	*Purple*
(h)	*Police and fire communications*	*Safety alert orange*
(i)	*Water systems*	*Safety precaution blue*
(j)	*Sewer and storm drainage systems*	*Safety green*
(k)	*Proposed excavation or construction boundaries*	*White*

SECTION 6. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

(1) Each excavator planning excavation or demolition work shall, not less than two (2) business days nor more than ten (10) business days prior to commencing work, notify each affected operator of the excavator's intended work and

work schedule. Contacting the applicable protection notification centers shall satisfy this requirement.

(2) Each excavator shall provide each applicable protection notification center with adequate information regarding:

(a) The name of the individual making the notification;

(b) The complete company name, address, and business telephone number;

(c) The work site location street address, including the cross street where applicable;

(d) The type, extent, duration, and scheduled starting date and time of work to be performed;

(e) A contact name and telephone number of the person responsible for the work to be performed.

(3) The excavator shall inform and provide to each work site employee the facility location and safety information provided by each operator.

(4) The excavator shall protect and preserve temporary underground facility markers until the scheduled work is completed.

(5) Each excavator shall request each operator to remark its facilities if the temporary facility markers become non-functional or the excavator materially alters his work plan or location.

(6) Each excavator who conducts or is responsible for any excavation or demolition that results in underground facility damage or which causes concern for public or workplace safety shall, immediately upon discovery of same, cease excavation and demolition activities and notify all affected operators of the location and nature of the safety concern or underground facility damage.

(7) Upon request by an operator, an excavator shall mark the boundaries of the location to be excavated using the procedure set forth in Section 5(5) of this Act. This marking shall not alter, or relieve the excavator from complying with, the requirements of Sections 3 to 9 of this Act.

SECTION 7. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

Each protection notification center shall:

(1) Operate the protection notification center during all business days.

(2) Immediately after receiving an excavation or demolition work notification from an excavator, provide to each of its affected operator members the excavator information required by Section 6(2) of this Act.

(3) Maintain a list of all its operator member's identities, business address and business and emergency telephone numbers and provide this information to the county clerk of each county where the operator member has underground facilities. The county clerk shall provide this information upon request for a fee of five dollars ($5.00), to be paid by the requesting party to the county clerk. The county clerk shall assume no liability associated with the receipt of this information from the protection notification center or for subsequent provision of this same information to the requesting party.

(4) Make the operator members information list available to any person for inspection at its place of business without charge or provide a copy of the list to any person for any county upon request for a fee not to exceed the actual cost of providing a copy.

SECTION 8. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

The requirements of Sections 3 to 9 of this Act shall not apply to the following:

(1) Excavation after all involved excavators and operators have completed joint working agreements and documented that all proposed excavation and demolition was reviewed and notification provided.

(2) Excavation by an operator on its own easement except where that easement is crossed by another operator's facilities.

(3) Routine road maintenance.

(4) Excavation using only non-powered hand tools or animal power.

(5) Tilling of soil for agricultural purposes.

(6) Persons, other than those in the excavation business for hire, excavating on residential property.

(7) The opening of a grave in a cemetery.

(8) A solid waste disposal site which is properly permitted.

SECTION 9. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

Any person who violates any provision of Sections 3 to 7 of this Act shall be subject to a civil penalty of one thousand dollars ($1,000) for each violation, except for persons or acts excluded under Sections 2(5), 4, and 8 of this Act. Action to recover the penalty provided for in this section may be brought by the Attorney General at the request of the injured party in the county in which the cause arose or in which the defendant has its principal in-state place of business or residence. The Attorney General may engage the assistance of the county attorney or Commonwealth attorney in the appropriate

jurisdiction. Each involved enforcement authority may recover its enforcement cost incurred under this section. Reimbursement of enforcement authority costs shall be administered by the Attorney General. All penalties recovered in an action under this section shall be paid to the Attorney General, who shall deduct enforcement costs from the recovered penalties and remit the remainder to the General Fund. If enforcement costs exceed recovered penalties, the violator may be held responsible for any remaining enforcement costs.

Section 10. This Act shall become effective on January 1, 1995.

The Committee Amendment No. 1 to **HB 613** is as follows:

on page 7, line 10, after "***except***" by adding "***that the civil penalty shall be two hundred and fifty dollars ($250) for the first violation and five hundred dollars ($500) for the second violation. This penalty shall not apply***".

Consent Calendar

HB 425, HB 469, SB 142 and **SB 147** taken from the Consent Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Calendar

HB 449, HB 534, HB 605, HB 158, HB 388, HB 412, HB 479, HB 589, HB 448, HB 558, SB 146, HB 503, HB 526, HB 527, HB 528, HB 529, HB 257, HB 258, HB 259, HB 260, HB 261, HB 262, HB 263, HB 464, HB 573, HCR 36, HCR 37, HCR 43 and **HR 45** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Floor Amendments

Floor Amendment No. 6 to the Committee Substitute to **HB 225**, by Representative Little:

On page 7 between lines 13 and 14, insert a new Section 5 to read as follows:

"SECTION 5. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

Each dealer licensed to sell motor vehicles in the Commonwealth shall place a written addendum to the manufacturer's sticker of origin on a vehicle notifying a customer if the vehicle has been damaged prior to delivery of the vehicle from the dealer to the customer. If a motor vehicle is damaged prior to delivery from the dealer to a customer, the title shall be branded to reflect the extent of damage and cost of repairs incurred by the motor vehicle."; and

On page 7, line 14, renumber "SECTION 5" as "SECTION 6"; and

On page 7, line 21, renumber "Section 6" as "Section 7".

Orders of the Day

HB 511, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lear moved the adoption of the Committee Substitute to **HB 511**. Agreed.

Representative Lear moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 511**. Agreed.

Representative Lear moved that **HB 511**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 95, Nays 0. (See February 25, 1994 roll call on **HB 511** - Appendix)

HB 511, by way of Committee Substitute as amended, was passed and the title agreed to.

Representative Lear moved that the vote by which **HB 511**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 547 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Cave moved that **HB 547** be passed.

On the roll call the vote was: Yeas 97, Nays 0. (See February 25 , 1994 roll call on **HB 547** - Appendix)

HB 547 was passed and the title agreed to.

Representative Cave moved that the vote by which **HB 547** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 347, with Senate Committee Substitute attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Committee Substitute to **HB 347** is as follows:

HB 347, AN ACT relating to corn.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 247.6003 is amended to read as follows:

As used in KRS 247.6005 to 247.6035, unless the context otherwise requires:

(1) "Commissioner" means the Commissioner of Agriculture;

(2) "Board" means the State Board of Agriculture;

(3) "Corn" means all kinds and varieties of corn, ***including popcorn,*** except sweet corn and ornamental corns;

(4) "Bushel" means fifty-six (56) pounds of corn by weight or as otherwise defined by the United States Department of Agriculture (USDA);

(5) "Producer" means every person who produces and markets corn;

(6) "New producer" means a producer who was not engaged in the business of producing corn at the time a referendum was conducted in accordance with the provisions of KRS 247.6001 to 247.6035;

(7) "Person" means any individual, corporation, partnership, association, cooperative, or other business entity;

(8) "Marketing year" means from September 1 to August 31 of the following year;

(9) "Purchaser" means any person, public or private corporation, Federal Commodity Credit Corporation, association or partnership buying, accepting for shipment, or otherwise acquiring the property in or to corn from a producer, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the producer, when the actual or constructive possession of the corn is taken as part payment or in satisfaction of a mortgage, pledge, lien, or claim; and

(10) "Marketed" means any quantities that are sold, bartered, or for which other items of value are exchanged.

Section 2. KRS 247.6017 is amended to read as follows:

With respect to any referendum conducted under the provisions of KRS 247.6001 to 247.6035, the Commissioner of Agriculture shall, before calling and announcing the referendum, fix, determine, and publicly announce at least thirty (30) days before the date determined for the referendum, the date, hours, and polling places for voting in the referendum, the effective date of the assessment, if adopted, the amount and basis of the assessment proposed to be collected, the means by which the assessment shall be collected if authorized by the producers, and the general purposes to which the amount collected shall be applied. No annual assessment levied under the provisions of any referendum shall exceed one fourth of one percent (0.25%) of the ***net*** [~~gross~~] marketed price per bushel on the corn marketed in the state during a marketing year by any producer included in the group to which the referendum was submitted or by any person subsequently becoming a new producer.

Section 3. KRS 247.6019 is amended to read as follows:

The hours, voting places, rules, and regulations for the referendum shall be established and determined by the Commissioner of Agriculture and shall be published by the Commissioner through the medium of the public press in the Commonwealth of Kentucky at least thirty (30) days before the holding of the referendum, and direct written notice thereof shall likewise be given to each county or area agent in any county covered by the referendum. The notice shall likewise contain a statement of the amount of the assessment proposed to be levied, which assessment in any event shall not exceed one fourth of one percent (0.25%) of the ***net*** [~~gross~~] marketed price per bushel, and shall likewise state the method by which the assessment shall be collected and how the proceeds shall be administered and the purposes to which the proceeds shall be applied, which purposes shall be in keeping with the provisions of KRS 247.6001 to 247.6035.

Section 4. KRS 247.6025 is amended to read as follows:

If a majority of the eligible producers in the referendum who vote therein shall vote in favor of the assessment, the Commissioner shall notify, by certified mail, all persons engaged in the business of purchasing corn in this state, that on and after the date specified in the letter, the specified assessment shall be deducted from the producer's payment by the purchaser, or his agent or representative, from the ***net*** [~~gross~~] marketed price of the corn. The assessment so deducted shall, on or before the fifteenth day of the month following the end of the month in which the corn is sold to the purchaser, be remitted by the purchaser to the duly certified association which conducted the referendum. The books and records of all the purchasers of corn shall at all times be open for inspection by the Commissioner of Agriculture or his duly authorized agents during regular business hours.

Section 5. KRS 247.6027 is amended to read as follows:

There is hereby established a ***Kentucky Corn Promotion Council*** [~~Fund Utilization Committee~~] composed of four (4) members appointed by the certified organization; two (2) members appointed by the association representing the largest number of corn farmers in the state; and one (1) member appointed by the Commissioner. These appointments shall be for terms of two (2) calendar years and each appointing body shall promptly file with the Commissioner the names of its respective appointees.

Section 6. KRS 247.6029 is amended to read as follows:

The funds, including donations from individuals, concerns, corporations, and grants from the state or governmental agencies, shall be used for the purpose of promoting and stimulating, by research, market development and education, the increased use and sale, domestic and foreign, of corn and corn products; and for the prevention, modification, or elimination of trade barriers which obstruct the free flow of corn and corn products to market. None of these funds shall be used to lobby as defined in KRS 6.611. The duly certified association receiving the assessment funds shall, upon the advice and consent of the ***Kentucky Corn Promotion Council*** [~~Fund Utilization Committee~~], use and disburse the same as follows:

(1) The association may first refund to itself therefrom the costs and expenses incurred in the conduct of the referendum;

(2) The association may spend or disburse the necessary funds therefrom for administrative costs and expenses, but no more than fifteen percent (15%) of the funds collected in any marketing year shall be so utilized; and

(3) The balance remaining shall be used for the purposes provided in this section, as determined by the ***Kentucky Corn Promotion Council*** [~~Fund Utilization Committee~~].

Section 7. KRS 247.6031 is amended to read as follows:

If the referendum is carried in the affirmative and the assessment is levied and collected as provided, any producer upon and against whom the assessment shall have been levied and collected under the provisions of KRS 247.6001 to 247.6035, if dissatisfied with the assessment and the result thereof, may demand of and receive from the treasurer of the certified association a refund of the assessment collected from the producer; if the demand for refund is made in writing within thirty (30) days ***after*** [~~from~~] the date on which the assessment is collected from the producer.

Section 8. KRS 247.6033 is amended to read as follows:

(1) ***The question of the levy of the assessment on corn may be referred to a vote of the corn producers of the state by filing petitions with the certified association containing signatures of Kentucky corn producers equal in number to ten percent (10%) of all corn producers in the state as recorded in the latest United States Census of Agriculture. If after the petitions are filed and at the referendum election a majority of Kentucky corn producers voting on the question vote against the levy on corn, the assessment shall be terminated at the end of the marketing year in which the referendum was conducted; otherwise, the assessment program shall continue*** [~~The board shall review the assessment program annually. If, at the end of each year after the first year of the assessment program, the board determines that the producers in the referendum representing ten percent (10%) of the production of corn have indicated their dissatisfaction with the program by demanding a refund of the assessment collected from them, the Commissioner shall conduct a referendum among the producers. If, upon the referendum, a majority of the eligible producers, who vote therein, reject the program, it shall be terminated at the end of the marketing year in which the referendum was conducted; otherwise, the assessment program shall continue in force and effect~~].

(2) [~~The Commissioner shall conduct a referendum five (5) years after the date of the first referendum and each subsequent five (5) year period thereafter to determine if the assessment should be continued or terminated.~~

~~(3)~~] If the duly certified association of corn producers expresses in writing its desire to the Commissioner to discontinue the assessment program and terminate the program, the Commissioner shall within fifteen (15) days following receipt of the request convene the board to review and act on the request. The board, after reviewing the request and conducting whatever proceedings are deemed appropriate and necessary in connection with the request, may terminate the program effective at the end of the marketing year in which the board action is taken; and, in this event, the Commissioner shall notify, by certified mail, the purchasers of corn affected thereby of the termination of the program.

Representative McElroy moved that the House concur in the Senate Committee Substitute to **HB 347**. Agreed.

Representative McElroy moved that **HB 347**, by way of Senate Committee Substitute, be passed.

On the roll call the vote was: Yeas 94, Nays 0. (See February 25, 1994 roll call on **HB 347** - Appendix)

HB 347, by way of Senate Committee Substitute, was passed and the title agreed to.

HB 348, with Senate Committee Substitute attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Committee Substitute to **HB 348** is as follows:

HB 348, AN ACT relating to small grains.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 247.5077 is amended to read as follows:

With respect to any referendum conducted under the provisions of KRS 247.5061 to 247.5095, the Commissioner of Agriculture shall, before calling and announcing the referendum, fix, determine, and publicly announce at least thirty (30) days before the date determined for the referendum, the date, hours, and polling places for voting in the referendum, the effective date of the assessment, if adopted, the amount and basis of the assessment proposed to be collected, the means by which the assessment shall be collected if authorized by the producers, and the general purposes to which the amount collected shall be applied. No assessment levied under the provisions of any referendum shall exceed one fourth of one percent (0.25%) of the ***net*** [~~gross~~] marketed price per bushel on the small grains marketed in the state during a marketing year by any producer included in the group to which the referendum was submitted or by any person subsequently becoming a new producer.

Section 2. KRS 247.5079 is amended to read as follows:

The hours, voting places, rules, and regulations for the referendum shall be established and determined by the Commissioner of Agriculture and shall be published by the Commissioner through the medium of the public press in the Commonwealth of Kentucky at least thirty (30) days before the holding of the referendum, and direct written notice thereof shall likewise be given to each county or area agent in any county covered by the referendum. The notice shall likewise contain a statement of the amount of the assessment proposed to be levied, which assessment in any event shall not exceed one fourth of one percent (0.25%) of the ***net*** [~~gross~~] marketed price per bushel, and shall likewise state the method by which the assessment shall be collected and how the proceeds shall be administered and the purposes to which the proceeds shall be applied, which purposes shall be in keeping with the provisions of KRS 247.5061 to 247.5095.

Section 3. KRS 247.5085 is amended to read as follows:

If a majority of the eligible producers in the referendum who vote therein shall vote in favor of the assessment, the Commissioner shall notify, by certified mail, all persons engaged in the business of purchasing small grains in this state, that on and after the date specified in the letter, the specified assessment shall be deducted from the producer's payment by the purchaser, or his agent or representative, from the ***net*** [~~gross~~] marketed price of the small grains. The assessment so deducted shall, on or before the fifteenth day of the month following the end of the month in which the small grains are sold to the purchaser, be remitted by the purchaser to the duly certified association which conducted the referendum. The books and records of all the purchasers of small grains shall at all times be open for inspection by the Commissioner of Agriculture or his duly authorized agents during regular business hours.

Section 4. KRS 247.5087 is amended to read as follows:

There is hereby established a ***Kentucky Small Grain Promotion Council*** [~~Fund Utilization Committee~~] composed of four (4) members appointed by the certified organization; two (2) members appointed by the association representing the largest number of small grains farmers in the state; and one (1) member appointed by the Commissioner. These appointments shall be for terms of two (2) calendar years and each appointing body shall promptly file with the Commissioner the names of its respective appointees.

Section 5. KRS 247.5089 is amended to read as follows:

The funds, including donations from individuals, concerns, corporations, and grants from the state or governmental agencies, shall be used for the purpose of promoting and stimulating, by research, market development and education, the increased use and sale, domestic and foreign, of small grains and small grains products; and for the prevention, modification, or elimination of trade barriers which obstruct the free flow of small grains and small grains products to market. None of these funds shall be used to lobby as defined in KRS 6.611. The duly certified association receiving the assessment funds shall, upon the advice and consent of the ***Kentucky Small Grain Promotion Council*** [~~Fund Utilization Committee~~], use and disburse the same as follows:

(1) The association may first refund to itself therefrom the costs and expenses incurred in the conduct of the referendum;

(2) The association may spend or disburse the necessary funds therefrom for administrative costs and expenses, but no more than fifteen percent (15%) of the funds collected in any marketing year shall be so utilized; and

(3) The balance remaining shall be used for the purposes provided in this section, as determined by the ***Kentucky Small Grain Promotion Council*** [~~Fund Utilization Committee~~].

Section 6. KRS 247.5091 is amended to read as follows:

If the referendum is carried in the affirmative and the assessment is levied and collected as provided, any producer upon and against whom the assessment shall have been levied and collected under the provisions of KRS 247.5061 to 247.5095, if dissatisfied with the assessment and the result thereof, may demand of and receive from the treasurer of the certified association a refund of the assessment collected from the producer, if the demand for refund is made in writing within thirty (30) days ***after*** [~~from~~] the date on which the assessment is collected from the producer.

Section 7. KRS 247.5093 is amended to read as follows:

(1) ***The question of the levy of the assessment on small grains may be referred to a vote of the small grains producers of the state by filing petitions with the certified association containing signatures of Kentucky small grains producers equal in number to ten percent (10%) of all small grains producers in the state as recorded in the latest United States Census of Agriculture. If after the petitions are filed and at the referendum election a majority of Kentucky small***

grains producers voting on the question vote against the levy on small grains, the assessment shall be terminated at the end of the marketing year in which the referendum was conducted; otherwise, the assessment program shall continue ~~[The board shall review the assessment program annually. If, at the end of each year after the first year of the assessment program, the board determines that the producers in the referendum representing ten percent (10%) of the production of small grains have indicated their dissatisfaction with the program by demanding a refund of the assessment collected from them, the Commissioner shall conduct a referendum among the producers. If, upon the referendum, a majority of the eligible producers, who vote therein, reject the program, it shall be terminated at the end of the marketing year in which the referendum was conducted; otherwise, the assessment program shall continue in force and effect]~~.

(2) ~~[The Commissioner shall conduct a referendum five (5) years after the date of the first referendum and each subsequent five (5) year period thereafter to determine if the assessment should be continued or terminated.~~

~~(3)~~] If the duly certified association of small grains producers expresses in writing its desire to the Commissioner to discontinue the assessment program and terminate the program, the Commissioner shall within fifteen (15) days following receipt of the request convene the board to review and act on the request. The board, after reviewing the request and conducting whatever proceedings are deemed appropriate and necessary in connection with the request, may terminate the program effective at the end of the marketing year in which the board action is taken; and, in this event, the Commissioner shall notify, by certified mail, the purchasers of small grains affected thereby of the termination of the program.

Representative McElroy moved that the House concur in the Senate Committee Substitute to **HB 348**. Agreed.

Representative McElroy moved that **HB 348**, by way of Senate Committee Substitute, be passed.

On the roll call the vote was: Yeas 95, Nays 0. (See February 25, 1994 roll call on **HB 348** - Appendix)

HB 348, by way of Senate Committee Substitute, was passed and the title agreed to.

Representative McElroy moved that the vote by which **HB 348**, by way of Senate Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 265, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved the adoption of the Committee Substitute to **HB 265**. Agreed.

Representative Stumbo moved that **HB 265**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 94, Nays 1. (See February 25, 1994 roll call on **HB 265** - Appendix)

HB 265, by way of Committee Substitute, was passed and the title agreed to.

Representative Stumbo moved that the vote by which **HB 265**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 266 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 266** be passed.

On the roll call the vote was: Yeas 90, Nays 0. (See February 25 , 1994 roll call on **HB 266** - Appendix)

HB 266 was passed and the title agreed to.

Representative Stumbo moved that the vote by which **HB 266** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 548, with Committee Amendment and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Cave moved the adoption of Committee Amendment No. 1 to **HB 548**. Agreed.

Representative Riggs moved the adoption of Floor Amendment No. 1 to **HB 548**. Agreed.

Representative Cave moved that **HB 548**, as amended, be passed.

On the roll call the vote was: Yeas 92, Nays 1. (See February 25, 1994 roll call on **HB 548** - Appendix)

HB 548, as amended, was passed and the title agreed to.

Representative Cave moved that the vote by which **HB 548**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 569 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rapier moved that **HB 569** be passed.

On the roll call the vote was: Yeas 82, Nays 5. (See February 25 , 1994 roll call on **HB 569** - Appendix)

HB 569 was passed and the title agreed to.

Representative Rapier moved that the vote by which **HB 569** was passed be reconsidered and said motion be placed on the table. Agreed.

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 4, HB 128, HB 154** and **HB 208** have been examined and found correctly enrolled . Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -9:37 a.m.)

Orders of the Day (Continued)

HB 398, with Committee Amendment and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Damron moved the adoption of Committee Amendment No. 1 to **HB 398**. Agreed.

Representative Gedling moved the adoption of Floor Amendment No. 1 to **HB 398**. Agreed.

Representative Damron moved that **HB 398**, as amended, be passed.

On the roll call the vote was: Yeas 90, Nays 1. (See February 25, 1994 roll call on **HB 398** - Appendix)

HB 398, as amended, was passed and the title agreed to.

Representative Damron moved that the vote by which **HB 398**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 562, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Ford moved the adoption of the Committee Substitute to **HB 562**. Agreed.

Representative Ford moved that **HB 562**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 95, Nays 0. (See February 25, 1994 roll call on **HB 562** - Appendix)

HB 562, by way of Committee Substitute, was passed and the title agreed to.

Representative Ford moved that the vote by which **HB 562**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HCR 30 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Burch moved that **HCR 30** be adopted.

On the roll call the vote was: Yeas 84, Nays 6. (See February 25 , 1994 roll call on **HCR 30** - Appendix)

HCR 30 was adopted.

Representative Burch moved that the vote by which **HCR 30** was adopted be reconsidered and said motion be placed on the table. Agreed.

HB 88, with Senate Floor Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Floor Amendment No. 1 to **HB 88** is as follows:

On page 6, line 5, after "*(5)*" insert "*(a) Except as provided in paragraph (b) of this subsection,*"

On page 6, between lines 23 and 24, insert "*(b) If the Finance and Administration Cabinet includes lease-*

purchase of the leased property in a lease with the federal government, the terms of the lease-purchase shall be determined through negotiations between the Commonwealth and the federal government."

On page 8, line 8, after "***(b)***" insert "***1. Except as provided in subparagraph 2. of this paragraph,***"

On page 8, line 10, delete "***1.***" and insert in lieu thereof "***a.***"

On page 8, line 12, delete "***2.***" and insert in lieu thereof "***b.***"

On page 8, line 14, delete "***3.***" and insert in lieu thereof "***c.***"

On page 8, line 15, delete "***4.***" and insert in lieu thereof "***d.***"

On page 8, line 17, delete "***5.***" and insert in lieu thereof "***e.***"

On page 8, between lines 17 and 18, insert "***2. If the federal government is the lessor, the report shall include the substance of the lease-purchase.***"

On page 10, line 4, after "***(8)***" insert "***(a)***" and after "***pursuant to***" insert "***paragraph (a) of***"

On page 10, line 10, delete "***(a)***" and insert in lieu thereof "***1.***"

On page 10, line 12, delete "***(b)***" and insert in lieu thereof "***2.***"

On page 10, line 14, delete "***(c)***" and insert in lieu thereof "***3.***"

On page 10, line 15, delete "***(d)***" and insert in lieu thereof "***4.***"

On page 10, between lines 15 and 16, insert "***(b) When, pursuant to paragraph (b) of subsection (5) of Section 2 of this Act, the Finance and Administration Cabinet attempts to complete a lease-purchase, the cabinet shall report to the Capital Projects and Bond Oversight Committee no more than ninety (90) days before the final lease payment. The report shall include the terms of the lease purchase.***"

On page 10, line 22, after "***by***" insert "***paragraph (a) or (b) of***" and after "***section***" insert "***as appropriate***"

Representative Bowling moved that the House concur in Senate Floor Amendment No. 1 to **HB 88**. Agreed.

Representative Bowling moved that **HB 88**, as amended by the Senate, be passed.

On the roll call the vote was: Yeas 85, Nays 5. (See February 25, 1994 roll call on **HB 88** - Appendix)

HB 88, as amended by the Senate, was passed and the title agreed to.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 707, by Representatives Jensen and Keith: AN ACT relating to the permitting of surface coal mining operations.

HB 708, by Representative Kerr: AN ACT relating to committed juveniles absent without authorization from state custody.

HB 709, by Representative Lewis: AN ACT relating to campaign funds.

HB 710, by Representatives Nesler and Zimmerman: AN ACT relating to telephone solicitations.

HB 711, by Representative Morris: AN ACT relating to state inventories.

HB 712, by Representative Wayne: AN ACT relating to disaster and emergency services.

HB 713, by Representative Geveden: AN ACT relating to the regulation of sports agents.

HB 714, by Representative B. Smith: AN ACT relating to insurance.

HB 715, by Representative Long: AN ACT relating to the Kentucky lottery.

HB 716, by Representatives Allen and Zimmerman: AN ACT relating to water plant operators.

HB 717, by Representative LeMaster: AN ACT relating to business entities.

HB 718, by Representative Lewis: AN ACT relating to crimes and punishments.

HB 719, by Representatives Zimmerman, Allen and R. Smith: AN ACT relating to wages and hours.

HB 720, by Representative Riner: AN ACT relating to public servants.

HB 721, by Representatives Nunn and B. Smith: AN ACT relating to insurance.

HB 722, by Representatives Nunn and B. Smith: AN ACT relating to motor vehicle accidents.

HB 723, by Representative Wayne: AN ACT relating to the Commonwealth Corps.

HB 724, by Representative Heleringer: AN ACT relating to safety rails on thoroughbred race tracks.

HCR 55, by Representative Ballard: A CONCURRENT RESOLUTION urging Congress to adopt a federal law requiring automobile manufacturers to construct automobiles with headlights that automatically turn on when windshield wipers are engaged.

HR 56, by Representative Geveden: A RESOLUTION declaring April 25-29, 1994 as Kentucky Federation of Women's Clubs week.

HR 57, by Representative Adkins: A RESOLUTION establishing the Special Advisory Commission on Clean Coal Technology and Kentucky Coal Markets.

Floor Amendments (Continued)

Floor Amendment No. 3 to **SB 62**, by Representative Riner:

On page 104, line 21, by inserting after "KRS 158.645.", the following: "***If the information is personally identifiable, the assessment program shall not include any test, questionnaire, survey, or examination containing any questions about the student's personal beliefs or practices in sex, family life, morality and religion, or any questions about his parents' or guardians' beliefs and practices in sex, family life, morality, and religion, unless the parent or guardian of the student is notified in writing that the test, questionnaire, survey, or examination is to be administered, and the parent or guardian of the student gives informed written permission for the student to take the test, and upon request, the parent or guardian has an opportunity to inspect the test, questionnaire, survey, or examination.***";

On page 231, after line 19 by adding the following:

"SECTION 177. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

If the information is personally identifiable, local school districts shall not administer or include on any test, questionnaire, survey, or examination containing any questions about the student's personal beliefs or practices in sex, family life, morality and religion, or any questions about his parents' or guardians' beliefs and practices in sex, family life, morality, and religion, unless the parent or guardian of the student is notified in writing that the test, questionnaire, survey, or examination is to be administered, and the parent or guardian of the student gives written permission for the student to take the test, and upon request, the parent or guardian has an opportunity to inspect the test, questionnaire, survey or examination."

On page 231, line 20 after the word "Section" by changing "177" to "178".

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills and Resolution have been posted for Committee consideration:

Business Organizations and Professions: **SB 150**

Banking and Insurance: **HB 611**

Economic Development: **HB 574, HCR 53**

Counties and Special Districts: **HB 252**

Motions, Petitions and Communications (Continued)

Representative Graham moved that the rules be suspended to introduce guests. Agreed.

Representative Lear moved that the rules be suspended to act upon Legislative Citations. Agreed.

Representative Lear moved the adoption of the following **Legislative Citation No. 75**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to Keiji Goto in recognition of your participation as the first foreign public administrator to join our legislative program. The House of Representatives thanks Keiji Goto for giving Kentuckians an opportunity to increase their familiarization with and understanding of Japan. The entire membership extends its very best wishes on this memorable occasion and expresses the hope for continued good fortune.

Representative Farrow moved the adoption of the following **Legislative Citation No. 80**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to Mr. and Mrs. Raymond Tackett in recognition of their 71 Years of Marriage. The entire membership joins Representative Mark Farrow, your family, and dearest friends in extending its very best wishes on this memorable occasion and expresses the hope for many more years of cherished companionship.

Representative Farrow moved the adoption of the following **Legislative Citation No. 83**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby salutes Raymond Tackett in recognition of his 90th Birthday February 16, 1994. The entire membership joins Representative Mark Farrow, family, and dearest friends in extending its very best birthday wishes to Raymond Tackett.

Representative Farrow moved the adoption of the following **Legislative Citation No. 84**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to George Lusby, Scott County Judge-Executive, for being recognized as Scott County Man of the Year for his 30 years of service through the school system as an educator, administrator, and coach; his service to his church as a deacon; his public service for 26 years on the city council and five years as judge-executive. The entire membership joins Representative Mark Farrow in extending its very best wishes on this memorable occasion and expresses the hope for continued good fortune.

Representative Hancock moved the adoption of the following **Legislative Citation No. 86**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby commends the Kentuckiana Fire Sprinkler, Inc. for donating thousands of dollars of man hours and materials for the construction of a "Burn" Trailer for the Department of Housing, Building, and Construction. This prestigious body joins Representative Hank Hancock in commending the Kentuckiana Fire Sprinkler, Inc., for their much appreciated donation and extends its very best wishes on this memorable occasion.

Representative Hancock moved that the rules be suspended to introduce guests. Agreed.

Representative Lee moved the adoption of the following **Legislative Citation No. 81**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hails Charles W. Logsdon in recognition of his appointment as a United States Marshall for the Western District of Kentucky. Charles W. Logsdon has dedicated his life's work to law enforcement, a socially correct society, the citizens and youth of his community, and the Commonwealth of Kentucky. The entire membership joins Representative Jimmie Lee in extending its very best wishes and congratulations to United States Marshall for the Western District of Kentucky, Charles W. Logsdon.

Representative Lee moved the adoption of the following **Legislative Citation No. 82**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to retired Lieutenant Pete and Fran Contreras in recognition of their 40th Wedding Anniversary, for forty years of revered companionship and a model marriage. No other qualities can be held in equal regard as the capability to sustain and advance the relationship between two people that creates a loving family and cherished friendship. The entire membership joins Representative Jimmie Lee in recognizing those unique qualities in the Contreras' and wishes for them continued years of marital rapture.

Representative Damron moved the adoption of the following **Legislative Citation No. 76**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby salutes the members of the East End Ambulance Service, Crab Orchard, Kentucky for donating their well deserved overtime pay, back to their community. Whereas, the members of the East End Ambulance Service generously renounced their entitlement putting aside personal financial reward for the continued advancement of their community. NOW, THEREFORE, this entire membership unites with Representative Robert Damron and the citizens of Lincoln County in Crab Orchard, Kentucky in saluting the members of the East End Ambulance Service.

Representative LeMaster moved the adoption of the following **Legislative Citation No. 85**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby salutes an All American Sportsman Basil Hayden in recognition of his 95th Birthday May 19, 1994. The entire membership joins Representative Jim LeMaster, family, and dearest friends in extending its very best birthday wishes, to Basil Hayden.

Representative Stumbo moved the adoption of the following **Legislative Citation No. 79**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in honor of Doctor Henry Campbell a unique individual whose lifelong commitment to education has benefited thousands of East

Kentucky students thirsting for learning. Whereas, the person who encourages the craving for knowledge and pilots those inquiring minds is indeed exceptional and Dr. Henry Campbell, past president of Prestonsburg Community College, was indeed that distinctive navigator. His contribution to the advancement of higher learning in East Kentucky is a remarkable memorial to a true visionary.

Roll call to show co-sponsors of **Legislative Citation No. 79**:--Adams, Adkins, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Bowling, Brown, Bryant, Buis, Butler, Callahan, Cave, L. Clark, P. Clark, Clarke, Coleman, Collins, Crenshaw, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, French, Gedling, Gee, Geveden, Graham, Gray, Hampton, Hancock, Harper, Jensen, Johnson, Kerr, Lear, Lee, Lewis, Lile, Lindsay, Long, Maggard, Maricle, Marzian, Mason, Moberly, Morris, Mullinix, Napier, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riggs, Riner, Sanders, Scorsone, Scott, Shacklette, Simpson, B. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Walton, Worthington, Zimmerman.

Representative Trapp moved the adoption of the following **Legislative Citation No. 77**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest condolences and expressions of sympathy to The Ben P. Bransom Family on the passing of Ben P. Bransom. Ben P. Bransom former chairman and chief executive officer of Citizens Union National Bank & Trust Company, was known to his friends and colleagues as the "Dean" of Lexington, Kentucky bankers. Mr. Bransom devoted much of his spare time to various community organizations and causes. The entire membership joins Representative Leslie Trapp on this rueful occasion in memory of a gentleman and friend.

Representative Zimmerman moved that the rules be suspended to withdraw **HB 409** and **HJR 7**. Agreed.

Representative Ballard moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Ballard moved that he be recorded as voting "yea" on **HB 177**. Agreed.

Representative Lindsay moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Lindsay moved that he be recorded as voting "yea" on **HB 562**. Agreed.

Representative Morris moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Morris moved that he be recorded as voting "yea" on **HB 347**. Agreed.

Representative Reinhardt moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Reinhardt moved that his vote be changed from "nay" to "yea" on **HCR 30**. Agreed.

The following members filed requests to have their names added as co-sponsors to Bills under rules previously suspended: **HB 569**, Representative Northup; **HB 592**, Representative Kerr.

Announcements

The Clerk announced the following meetings:

Budget Review Subcommittee on General Government, 10:00 a.m., February 28, 1994

Committee on Rules, upon adjournment, Speaker's Office

Committee Chairs and Subcommittee Chairs, 1:00 p.m., February 28, 1994

Budget Review Subcommittee Chairs, upon adjournment, Room 336

Health and Welfare, 1:00 p.m., February 28, 1994

Adjournment

Representative Stumbo moved that the House adjourn until 4:00 p.m., Monday, February 28, 1994.

On the roll call the vote was **Yeas 78**--Ackerson, Adams, Adkins, Allen, Altman, Arnold, Ballard, Barrows, Bentley, Bondurant, Brown, Bryant, Buis, Butler, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Crenshaw, Cyrus, Damron, DeWeese, Donnermeyer, Farley, Farrow, Ford, Fox, French, Gedling, Gee, Graham, Gray, Hampton, Hancock, Harper, Johnson, Keith, Kerr, Lear, Lindsay, Maggard, Marzian, Mason, McElroy, Moberly, Morris, Mullinix, Napier, Nesler, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Ridley, Riner, Sanders, Scorsone, Scott, Shacklette, B. Smith, R. Smith, Stacy, Stengel, Stumbo, Todd, Trapp, Treesh, Turner, Walton, Wayne, Worthington, Zimmerman. **Nays 3**--Heleringer, LeMaster, Lile.

The motion to adjourn was adopted.